

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINE THOMPSON,
Appellant,
vs.
MICHAEL THOMPSON,
Respondent.

No. 59785

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a fast track child custody appeal from a district court post-divorce decree order denying a motion to modify child custody. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

As an initial matter, respondent contends in the fast track response that this court lacks jurisdiction over this appeal because the district court's order is not a final, appealable order under NRAP 3A(b)(1). Respondent argues that the district court declined to modify custody based on the evidence before it, but allowed appellant additional time to obtain respondent's medical records. Thereafter, appellant chose to pursue an appeal rather than additional discovery. We have considered respondent's contention and conclude that it is without merit. The district court's order was an effective denial of appellant's motion to modify the custodial terms, and was therefore appealable. *See Burton v. Burton*, 99 Nev. 698, 700, 669 P.2d 703, 705 (1983).


On appeal, appellant contends that the district court abused its discretion in denying the motion to modify custody without conducting an evidentiary hearing. Appellant argues that she established adequate cause for an evidentiary hearing by alleging that respondent had

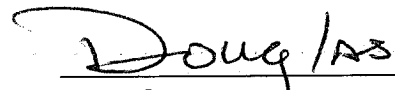
historically experienced seizures, that appellant obtained information that respondent was experiencing seizures again after his surgery, and that the child's safety while in respondent's care was relevant to modifying custody.


Having reviewed the record, we conclude that appellant's contentions are without merit. Decisions regarding child custody rest in the district court's sound discretion, *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996), and this court will not disturb the decision absent an abuse of that discretion. *Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993). Moreover, the district court may deny a motion to modify custody without an evidentiary hearing unless the moving party demonstrates adequate cause for the hearing. *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993). To demonstrate adequate cause, the moving party must set forth a prima facie case for modification, such that "(1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching." *Id.* at 543, 853 P.2d at 125.

Here, in concluding that appellant had not met the adequate cause standard for an evidentiary hearing under *Rooney*, the district court determined that even if respondent suffered from epilepsy, that fact was not an adequate ground to change custody. See NRS 125.510(2); *Truax v. Truax*, 110 Nev. 437, 438-39, 874 P.2d 10, 11 (1994) (recognizing that the child's best interest is the sole consideration when modifying joint physical custody). As for appellant's request that respondent be prohibited from driving with the child, the district court determined that such a restriction was not warranted based on the evidence before the court. Respondent provided a physician's statement that respondent had been seizure-free

since his operation in 2007 and was able to drive without limitations. The court gave appellant an opportunity to obtain additional medical evidence, but appellant declined to pursue further discovery and instead advised the court of her intention to appeal the decision. Under these circumstances, we conclude that the district court's decision was not an abuse of discretion. *See Sims*, 109 Nev. at 1148, 865 P.2d at 330. Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Law Firm Express
Jillian M. Tindall
Eighth District Court Clerk