IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK EDWARD SUMMIT,
Appellant,
vs.
MARGARET MARIE SUMMIT,
Respondent.

No. 74205

ORDER VACATING JUDGMENT AND REMANDING

Mark Edward Summit appeals from a district court post-divorce decree order concerning child custody and distribution of proceeds from the sale of the parties' marital residence. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

After the underlying divorce decree was entered, disputes arose between Mark and respondent Margaret Marie Summit with regard to child custody and the distribution of proceeds from the sale of their marital residence. Following a September 2016 hearing on these disputes, the district court entered a post-divorce decree order in November 2016 to resolve them, and Mark appealed that decision in *Summit v. Summit*, Docket No. 71912. Based on the record and the parties' representations in the present appeal, it appears that, while the prior appeal was pending before the appellate courts, the underlying case was administratively reassigned from Judge William S. Potter to Judge Cynthia Dianne Steel. Meanwhile, this court reversed the district court's child custody determination and remanded that matter, along with certain issues relating

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to the distribution of the parties' marital residence proceeds, for further proceedings. *See Summit*, Docket No. 71912 (Order Affirming in Part, Reversing in Part and Remanding, August 17, 2017).

On remand, Mark filed a new motion to address the issues identified in the order resolving the appeal in Docket No. 71912 and to seek attorney fees and costs, and Judge Steel scheduled that motion for resolution in chambers. But without notice to the parties or Judge Steel, Judge Potter sua sponte entered an order in September 2017 that purported to resolve the issues identified in Docket No. 71912. This appeal followed.

Although Mark focuses his appellate arguments on the merits of Judge Potter's September 2017 order, that order presents a more fundamental concern. In particular, it appears that the September 2017 order was entered after the underlying case had properly been reassigned to Judge Steel. *See* EDCR 1.60 (authorizing the presiding judge of the family division to reassign cases and setting forth limited circumstances in which one judge may act in a matter pending before another judge); *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (recognizing that, even when an appeal is pending, the district court "retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order"). But when a case is reassigned to a new judge, the original judge is divested of all jurisdiction over the matter. *Cf. State, Dep't of Motor Vehicles & Pub. Safety v. Eighth Judicial Dist. Court*, 113 Nev. 1338, 1341, 948 P.2d 261, 262 (1997) (holding, in the context of a challenge to the timeliness of a peremptory challenge, that "[o]nce the case has been reassigned . . . the challenged judge is divested of all jurisdiction, and the judge to whom the case is reassigned must resolve the

issue of timeliness"). And because the underlying case was reassigned to Judge Steel, Judge Potter lacked jurisdiction to enter the September 2017 order.[1] As a result, the September 2017 order must be vacated, with this matter remanded to the district court for further proceedings in the appropriately assigned chambers.

While we need not address the parties' appellate arguments given our disposition of this appeal, because there are issues with some of the rulings contained in the district court's September 2017, order we address them here for the sake of judicial efficiency. For example, the district court denied Mark's motion to modify custody based on a finding that he failed to establish that Margaret had committed domestic violence against him or that there had been a de facto change in the parties' custodial arrangement, which the district court concluded were the only arguments Mark presented in support of modifying custody. But Mark supported his requests to modify custody with numerous other arguments relating to Margaret's allegedly erratic behavior, and the record reflects that the district court failed to address these additional issues on remand. As a result, although the district court indicated in its September 2017 order that it was applying the substantial change of circumstances test to evaluate Mark's motion to modify custody, because the court failed to consider these additional points, it does not appear that the court fully

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[1]Although the parties both agree that the underlying case was reassigned to Judge Steel, only Margaret presents arguments on appeal relevant to the jurisdictional issue before us. But despite Margaret's assertion to the contrary, nothing in our order in Docket No. 71912 directed Judge Potter's continuing participation in the underlying case.

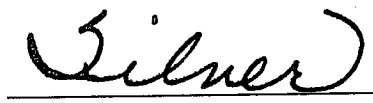
applied that test before denying Mark's motion. *See Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007) (setting forth the test for evaluating whether to modify a primary physical custody arrangement).

Turning to Mark's argument that, because he made a mortgage payment on Margaret's behalf, he was entitled to a share of her proceeds from the sale of their marital residence, the district court rejected this argument finding that Mark received a credit against his child support arrears for the mortgage payment. But the record does not support that finding, as Margaret represented that Mark was current on his child support obligation. Thus, on remand, the district court must further consider whether Mark is entitled to a portion of Margaret's proceeds from the sale of the martial residence for making a mortgage payment on her behalf.

Lastly, we note that, when the district court entered its September 2017 order, Margaret had not yet responded to Mark's post-remand motion, and her time for doing so had yet to expire. *See* EDCR 2.20(e) (setting forth the timeframe for opposing a motion before the district court). Because it was therefore unclear whether the issues raised in this motion were uncontested, stipulated or resolved, the district court should not have resolved the motion until the time for filing an opposition had expired. *See* EDCR 5.207 (providing that "[u]nless a hearing is required by statute or by the court, any uncontested, stipulated, or resolved matter may be submitted to the court for consideration without a hearing"); *see also Ramsey v. City of N. Las Vegas*, 133 Nev. ___, ___, 392 P.3d 614, 619 (2017) (recognizing that Nevada follows the maxim "*expressio unius est exclusio alterius*," which means that "the expression of one thing is the exclusion of

another"). Thus, given the foregoing, we order this matter remanded to the district court for further proceedings in the appropriately assigned chambers.

It is so ORDERED.



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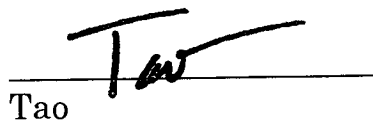

_____, J.
Tao

_____, J.
Gibbons

cc: Presiding Judge, Family Division, Eighth Judicial District
Chief Judge, Eighth Judicial District
Hon Cynthia Dianne Steel, District Judge, Family Court Division
Hon. William S. Potter, District Judge, Family Court Division
Mark Edward Summit
Roberts Stoffel Family Law Group
Eighth District Court Clerk