

IN THE SUPREME COURT OF THE STATE OF NEVADA

TED CHENEY,
Appellant,
vs.
CHERYL M. CHENEY, N/K/A CHERYL
M. HAEFFELE,
Respondent.

No. 41185

TED CHENEY,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK
AND, THE HONORABLE CHERYL
MOSS, DISTRICT JUDGE, FAMILY
COURT DIVISION,
Respondents,
and
CHERYL M. CHENEY, N/K/A CHERYL
M. HAEFFELE,
Real Party in
Interest.

No. 41188

FILED

APR 04 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL AND DENYING PETITION
FOR WRITS OF MANDAMUS AND PROHIBITION

This appeal and petition for writs of mandamus and prohibition concern child custody and visitation issues regarding the parties' minor child. On July 3, 2002, Cheryl M. Cheney, respondent in Docket No. 41185 and real party in interest in Docket No. 41188 ("respondent"), filed a motion for change in custody and for attorney fees in the Eighth Judicial District Court. Ted Cheney, appellant in Docket No. 41185 and petitioner in Docket No. 41188 ("appellant"), responded by filing a "Motion for Finding of Lack of Subject Matter Jurisdiction and/or Forum Non-Conveniens [sic] . . ." Specifically, appellant contended that

Georgia, not Nevada, is the appropriate forum to resolve the child custody issues under the UCCJA.

On March 25, 2003, the district court entered an order that, among other things, concluded that "Nevada retains subject matter jurisdiction, based on a forum of non-convenience." Additionally, the district court scheduled respondent's motion for change in custody for an evidentiary hearing on April 3, 2003, and April 4, 2003. On March 28, 2003, appellant filed a notice of appeal from the district court's order. The appeal was docketed in this court on April 3, 2003, under Docket No. 41185.

The parties attended the first portion of the evidentiary hearing on April 3, 2003. On the morning of April 4, 2003, appellant filed in this court an emergency petition for writs of mandamus and prohibition, which was docketed under Docket No. 41188. Appellant argues in the petition that the district court is divested of jurisdiction to go forward with the second portion of the evidentiary hearing on April 4, 2003, because of his pending appeal in Docket No. 41185. On April 4, 2003, appellant also filed in Docket No. 41185 an emergency motion to stay the evidentiary hearing.¹

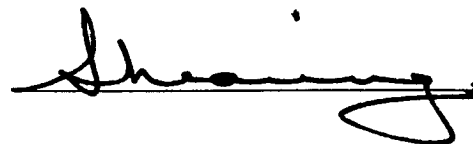
¹The emergency petition and emergency motion were received in this court by facsimile transmission on April 3, 2003, after court business hours. They were filed the morning of April 4, 2003. We note that the district court initially scheduled the April 3 and 4, 2003, hearing in a March 7, 2003, minute order. The district court's written order was subsequently entered on March 25, 2003. We admonish appellant's counsel for waiting until April 4, 2002 – after completion of the first portion of the hearing – to file the emergency petition and emergency motion.

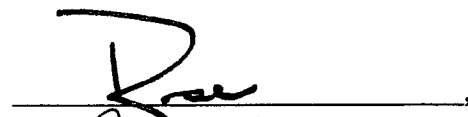
This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984). We are unaware of any statute or court rule that authorizes an appeal from an order entered pursuant to the UCCJA determining the proper forum to resolve child custody issues. Accordingly, because this court lacks jurisdiction to review the district court's order, we dismiss the appeal and deny the emergency motion for a stay in Docket No. 41185.

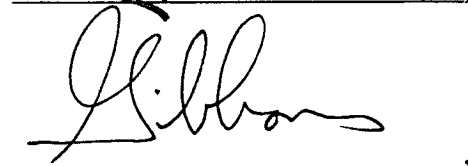
Next, we note that the petition in Docket No. 41188 asserts that the district court lacks jurisdiction to proceed with the hearing on April 4, 2003, because of the pending appeal in Docket No. 41185. As we have concluded that this court lacks jurisdiction to entertain the appeal in Docket No. 41185 and have dismissed that appeal, we deny the petition for writs of mandamus and prohibition in Docket No. 41188.

Finally, we note that appellant is not without a remedy. Specifically, appellant can raise his challenge to the Nevada district court's assertion of jurisdiction under the UCCJA by filing a timely notice of appeal from an order of the district court that fully resolves respondent's motion for change in custody.

It is so ORDERED.

 J.

 J.

 J.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Carol A. Menninger
Lukens & Kent
Clark County Clerk