

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA S. MYERS,
Appellant,
vs.
CALEB O. HASKINS,
Respondent.

Supreme Court No. 57825
District Court No. D434495
Due Date: 4/11/11

FILED

MAR 17 2011

CIVIL PROPER PERSON APPEAL STATEMENT

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

Lisa S. Myers
9360 W. Flamingo Rd., #110-326
Las Vegas, NV 89147
Appellant, in proper person

Roberts Stoffel Family Law group
Amanda M. Roberts
2011 Pinto Lane, Suite 100
Las Vegas, NV 89106

Appellants:
Lisa S. Myers

Respondents:
Caleb O. Haskins

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Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
01/11/2011	Minute Order by Judge Moss, parties not present and all of her decisions thereafter

Notice of Appeal. Give the date you filed your notice of appeal in the district court: February 23, 2011.

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
57621	Myers v. Haskins	Supreme Court of Nevada

Issues on Appeal. Does your appeal concern any of the following issues? Check all that apply:

- divorce
- relocation
- paternity
- adoption
- child custody/visitation
- termination of parental rights
- marital settlement agreement
- prenuptial agreement
- child support
- attorney fees
- division of property
- spousal support
- other - briefly explain: Peremptory Challenge of Family Court Judge Cheryl Moss and her decisions already rendered, to include her Order for a Psychological Evaluation. *Appellant reserved the right to supplement, should it become necessary.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.) At the 1/19/2011 hearing, Judge Moss awarded Respondent three full unsupervised days with the parties minor child, Sydney Rose Myers-Haskins (now 11mos.), specifically giving the parties Joint Physical and Legal Custody, despite the fact this Appellant has been the de facto Sole Physical and Sole Legal Custodian of the minor child. The Judge further made her decision despite the evidence of his mental and physical impairments, conviction, extensive history of drug and alcohol abuse, anger problems, domestic abuse issues (to include shoving Appellant's other minor child down the stairs), violence (to include punching a hole in the wall of the parties' home), Respondent's abandonment of the minor child who has a history of RSV, Respondent's own admissions in Court and his parents own admissions. Further, Judge Moss failed to acknowledge the fact that Respondent previously signed a Joint Agreement giving Appellant Sole Physical and Sole Legal Custody of the parties' minor child waiving any visitation, signed July of 2010. Respondent further refused a drug test and therefore waived any visitation of the minor child yet again at the parties' TPO hearing, as well.

The parties' hearing of January 19, 2011 was to be a 16.2 Case Management Conference, although opposing counsel, Amanda Roberts filed a Motion for primary physical and sole legal custody and for a psychological evaluation of this Appellant at the last minute providing Appellant a copy just minutes prior to this 16.2 Conference, despite NRCP 6(d)(e). No OST was ever signed and filed or provided to Appellant, nor did Ms. Roberts ever provide Appellant the

Motion at least 5 full Judicial days prior to the scheduled hearing. Appellant was further never given 10 days in order to properly file an Opposition/Counter-motion, as per EDCR 2.20. Moreover, since opposing counsel stated she also mailed a copy of the Motion to Appellant the same day of this hearing, Appellant did not receive opposing counsel's Motion until after the hearing. Ms. Roberts further admitted to having ex-parte communication with the Judge the prior week requesting her Motion to be heard at this 16.2 Case Conference, as well. Therefore, Appellant was prejudiced in this matter as Appellant was not properly prepared to defend or provide all necessary documentation to justify her defenses or claims.

Despite these issues, Judge Moss still allowed the Motion to be heard, specifically awarding the Respondent three full unsupervised days with the parties' minor child, Sydney Rose Myers-Haskins (now 11 mos.), specifically giving the parties Joint Physical and Legal Custody, despite the fact this Appellant has been the *de facto* Sole Physical and Sole Legal Custodian of the minor child, despite the evidence of his mental and physical impairments, conviction, extensive history of drug and alcohol abuse, anger problems, violence (to include Respondent punching a hole in the wall of the parties' home), domestic abuse issues (to include Respondent shoving Appellant's other minor child down the stairs), Respondent's own admissions in Court and his parents own admissions and his abandonment of the minor child who has a history of RSV. Judge Moss further refused to acknowledge that Respondent previously signed a Joint Agreement giving Appellant Sole Physical and Sole Legal Custody of the parties' minor child waiving any visitation. Respondent also waived any visitation and refused a drug test at the prior TPO hearing, as well. Further, opposing counsel, Ms. Roberts was Ordered to prepare and submit the 1/19/11 and 1/10/11 Orders to Appellant and the Court within 10 days of the ruling, as per EDCR 7.21, which she has still yet to do. The Court further Ordered the Appellant to undergo a psychological evaluation based on a completely unrelated matter which is currently on Appeal (reference Supreme Court Case No. 56426) and specifically a 2003 report by an unqualified individual (as per the State Psychological Board) and despite the acceptance of expert testimony and reports rebutting same. The Court not only forced Appellant to discuss in detail this completely unrelated matter which is on Appeal, but placed her in the position of defending herself in this matter. Interestingly to note, despite the fact Respondent has a conviction in the State of Colorado and that he also has mainly resided in the Carson City, Nevada area, Judge Moss only Ordered a Scope for Clark County, Nevada.

Additionally, the minor child was returned to Appellant lethargic, dehydrated, listless and ill. Appellant had to take the minor child to her Pediatrician who thereby diagnosed her with a serious, contagious, rare illness (nasal strep), in which her Pediatrician wrote a note stating she is to remain in Appellant's care. Recently, the minor child again became ill while in Respondent's care and custody; vomiting repetitiously, having diarrhea, etcetera and was diagnosed with a gastrointestinal virus. She left with Appellant and remained in Appellant's care until the following week. It is extremely important to note for the record, since the Respondent has been out of the home permanently and has had no contact with the minor child as July of 2010 and up until Judge Moss' Order where Respondent began having contact with her January 19, 2011, the minor child was healthy, developing well, happy and without incident while in the care and custody of this Appellant and her immediate family. Further, Respondent never cared for the minor child while he was "living" at the parties' townhome prior to his leave, even taking the last of the food out of the home, taking all of the parties' money, to include the money for the minor child's doctor visit and leaving the Appellant without any necessities or food for the minor child and her other minor child. The minor child was ill with RSV at approximately 5 weeks of age and Respondent refused to quit smoking indirectly and directly around her, even yelling obscenities while the minor child was ill and having difficulty breathing, refusing to assist or acknowledge her in every way possible. Respondent still smokes to date and still refuses to cease

smoking both indirectly and directly around the minor child, despite the Court's Order and the health of the minor child. Appellant is extremely concerned for the minor child's health, safety and overall well-being, her Pediatrician is as well, as the District Court's Order would continue to put the minor child in direct harm's way by allowing Respondent to have the 3 unsupervised days with her, especially when she is continuously becoming ill in his care and custody.

It is important to note the events leading up to this hearing. The 16.2 Conference was originally noticed for November 22, 2010, although Amanda Roberts, counsel for Respondent requested it be vacated at the last minute and submitted a Stipulation and Order. This hearing was then vacated and the new hearing was to be noticed to both counsels by the Department, although a notice was never filed and the on-line system evidenced the conference as being "off calendar". During his time, Appellant's now former counsel, Preston P. Rezaee, Esq. filed a Motion to Withdraw as counsel of record, which was currently on calendar for January 10th, although the hearing was recently vacated as an Order granting his Motion to Withdraw was signed and filed December 23rd, without a hearing or a filed Request for Entry of Order. Mr. Rezaee never filed Appellant's 16.2 Financial Disclosure Form signed on August 15th and provided to his office, and never filed other documents while he was still Appellant's counsel. Appellant received a responsive email January 3rd, by Mr. Rezaee's secretary notifying her of the new hearing date for the 16.2 Conference (re-scheduled for January 10th), the time of this hearing was not known and a Notice was never received to counsel. Therefore, Appellant contacted the Law Clerk who notified Appellant of the hearing time.

Prior to this January 10th hearing date, Appellant then attempted to file an Emergency Motion to Proceed in Forma Pauperis, Affidavit and most importantly a Peremptory Challenge, although the District Court Clerk's office declined to file these documents and referred Appellant to file all with the Nevada Supreme Court. In speaking with the Clerk and Supervisor of the Supreme Court, it was determined that these documents were in fact to be filed with the District Court Clerk's office. The District Court Clerk still declined to file such documents for Appellant. Therefore, Appellant attempted to e-file all to ensure no further prejudice, although the Court rejected the Peremptory Challenge and Motion. Appellant then contacted the Court and spoke with the Law Clerk for the Presiding Judge in attempt at a resolution to the above circumstances, who then in turn spoke with the assigned Department I and the Supreme Court. While the Law Clerk informed he was awaiting a response from Supreme Court legal counsel, he later informed he passed the Peremptory Challenge, and associating documents on to the assigned Department, the very same Department in which this Appellant was challenging. The documents still had yet to be filed by the Court at this point, despite the fact this was a time sensitive situation. Further, Judge Moss said she would pass the Peremptory Challenge back to the Presiding Judge for decision, although Judge Moss issued an Order the very next day stating she herself made the decision to deny Appellant's Peremptory Challenge and calendared the 16.2 Conference for that following week (January 19th), thereby necessitating Appellant's filing of the Notice of Appeal. In sum, Appellant was never properly noticed of the new hearing date and time. Further, Respondent's counsel, Ms. Roberts failed to appear on her client's behalf, although Judge Moss allowed the hearing to move forth discussing the Peremptory Challenge and other issues.

Additionally, there exists a conflict of interest with Respondent's counsel, as Appellant consulted with an associate attorney at Ms. Robert's law firm on this matter and Appellant's other unrelated matter prior to the commencement of this case. It has also recently come to the attention of this Appellant that the Office Mgr/Snr Paralegal has a long-standing personal relationship with not only this Appellant, but with the her immediate/extended family, as well. Opposing counsel, however, continues to refuse to conflict themselves out of this matter for an unknown reason. Appellant is in the process of filing a State Bar complaint against Ms. Roberts and her firm and is in the process of filing a Motion to Disqualify, as well. Ms. Roberts'

continued harassment, perjury, attempts at the destruction of this Appellant's credibility in this State, failure to ensure the health and safety of the subject minor (an 11 month old baby) and her failure to follow the laws and rules under her own code of ethics as counsel must not be tolerated.

Appellant believes this Honorable Supreme Court will act in the best interest, rights and protection of the subject minor (an 11 month old baby), rights of the Appellant, in accordance with the laws and so as to avoid any further prejudice and bias against Appellant in these matters. Appellant reserves her right to supplement additional information and documentation should she deem necessary and as it becomes available.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed). At the 1/19/2011 hearing, Judge Moss awarded Respondent three full unsupervised days with the parties minor child, Sydney Rose Myers-Haskins (now 11mos.), specifically giving the parties Joint Physical and Legal Custody, despite the fact this Appellant has been the *de facto* Sole Physical and Legal Custodian of the minor child. The Judge further made her decision despite the evidence of his mental and physical impairments, conviction, extensive history of drug and alcohol abuse, anger problems, domestic abuse/violence issues, his abandonment of the minor child, his own admissions in Court and his parents own admissions. Further, Judge Moss failed to acknowledge the fact that Respondent previously signed a Joint Agreement giving Appellant Sole Physical and Sole Legal Custody of the parties' minor child waiving any visitation, signed July of 2010. Respondent further refused a drug test and therefore waived any visitation of the minor child yet again at the parties' TPO hearing, as well.

The parties' hearing of January 19th was to be a 16.2 Conference, although opposing counsel filed a Motion for primary physical and sole legal custody and for a psychological evaluation of this Appellant providing Appellant a copy just minutes prior to this Conference, despite NRCPC 6(d)(e). No OST was ever signed and filed or provided to Appellant, nor did Ms. Roberts ever provide Appellant the Motion at least 5 full Judicial days prior to the scheduled hearing. Appellant was further never given time to properly file an Opposition/Counter-motion and properly defend herself or provide documentation justifying her defenses/claims, as per EDCR 2.20, prejudicing Appellant. Moreover, since opposing counsel stated she also mailed a copy of the Motion to Appellant the same day of this hearing, Appellant did not receive opposing counsel's Motion until after the hearing. Ms. Roberts further admitted to having *ex-parte* communication with the Judge the prior week requesting her Motion to be heard at this 16.2 Conference, as well. Despite these issues, Judge Moss still allowed the Motion to be heard, specifically awarding the Respondent three full unsupervised days with the parties 11 month old minor child, despite the fact this Appellant has been the *de facto* Sole Physical and Sole Legal Custodian of the minor child, despite the evidence of his mental/physical impairments, conviction, extensive history of drug and alcohol abuse, anger problems, violence, domestic abuse/violence issues, Respondent's own admissions in Court, his parents own admissions and his abandonment of the minor child who has a history of RSV. Judge Moss further refused to acknowledge that Respondent previously signed a Joint Agreement giving Appellant Sole Physical and Sole Legal Custody of the parties' minor child waiving any visitation. Respondent also waived any visitation and refused a drug test at the prior TPO hearing, as well. Judge Moss Ordered the Appellant to undergo a psychological evaluation based on an unrelated matter which is currently on Appeal (reference Supreme Court Case No. 56426) and specifically a 2003 report

by an unqualified individual (as per the State Psychological Board) and despite the acceptance of expert testimony and reports rebutting same. The Court not only forced Appellant to discuss in detail this completely unrelated matter which is on Appeal, but placed her in the position of defending herself in this matter. Interestingly to note, despite the fact Respondent has a conviction in the State of Colorado and that he also has mainly resided in the Carson City, Nevada area, Judge Moss only Ordered a Scope for Clark County, Nevada. Additionally, opposing counsel was Ordered to prepare and submit the 1/19/11 and 1/10/11 Orders to Appellant and the Court within 10 days of the ruling, as per EDCR 7.21, which he has yet to accomplish to date.

The 16.2 Conference was originally noticed for November 22nd, although Amanda Roberts, Respondent's counsel requested it be vacated at the last minute, submitting a Stipulation and Order. This hearing was then vacated and the new hearing was to be noticed by the Department, although a notice was never filed and the on-line system noted the conference as being "off calendar". During his time, Appellant's now former counsel, Preston P. Rezaee, Esq. filed a Motion to Withdraw as counsel, which was calendared for January 10th, although the hearing was vacated as an Order granting his Motion was signed and filed December 23rd, without a hearing or a filed Request for Entry of Order. Appellant did receive a responsive email January 3rd, by Mr. Rezaee's secretary notifying Appellant of the new hearing date for the 16.2 Conference (re-scheduled for January 10th), the time of this hearing was not known and a Notice was never received by counsel. Appellant contacted the Law Clerk who notified Appellant of the hearing time. Prior to this January 10th hearing, Appellant attempted to file an Emergency Motion to Proceed in Forma Pauperis, Affidavit and most importantly a Peremptory Challenge, although the District Court Clerk's office declined to file these documents. Appellant then attempted to e-file all to ensure no further prejudice, although the Court rejected the Peremptory Challenge and Motion. Judge Moss then issued an Order the day after the January 10th hearing stating she herself made the decision to deny Appellant's Peremptory Challenge and re-calendared the 16.2 Conference for January 19th, thereby necessitating Appellant's filing of the Notice of Appeal. In sum, Appellant was never properly noticed of the new hearing date and time.

Further, and specifically, Appellant pleads with this Court for the following additional Orders: 1. Recusal of Family Court Judge Cheryl Moss; 2. Sole Physical/Sole Legal Custody of the minor child to Appellant with supervised visitation to Respondent due to his mental/physical issues, conviction, history of drug/alcohol abuse, and his agreement of and signature upon the parties' Joint Agreement; 3. Child Support to continue at the statutory rate, Child Support /medical arrears, medical insurance, educational costs, spousal support and costs of this matter to Appellant and against Respondent; 4. Order Protecting Appellant from the District Court's ability to discuss, utilize, accept and consider Appellant's other unrelated matter which is currently on Appeal; 5. Recusal of opposing counsel and her firm due to her unethical, unlawful and harassing actions; 6. Order insuring Appellant's right of due process without prejudice or bias, especially since Appellant is In Proper Person. *Appellant reserves the right to supplement this list.

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CERTIFICATE OF SERVICE

I certify that on the 15th day of March, 2011, I served a file-stamped copy of Appellant's **CIVIL PROPER PERSON APPEAL STATEMENT** by first class U.S. Mail with sufficient postage prepaid to the following address:

Amanda M. Roberts
2011 Pinto Lane, Suite 100
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Attorney for Respondent

Honorable Judge Cheryl B. Moss
Department I
Eighth Judicial District Court - Family Division
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LISA MYERS

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Appellant In Proper Person