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IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL DAVID STIPP, Appellant, vs. CHRISTINA CALDERON STIPP, Respondent.	SUPREME COURT CASE NO. 57876

REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE AND MOTION FOR SANCTIONS TO ISSUE AGAINST APPELLANT PURSUANT TO NRAP 38

COMES NOW, Respondent, CHRISTINA CALDERON STIPP, ("CHRISTINA"), and hereby submits her Reply to Response to Order to Order filed by Appellant, MITCHELL DAVID STIPP, ("MITCH"), on May 18, 2011. MITCH has not shown adequate cause why his Appeal should not be dismissed. MITCH should be assessed with monetary sanctions pursuant to NRAP 38 for filing a frivolous Appeal and for miserably failing in attempting to show cause as to why the Appeal should not be dismissed.

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I.

THE FACTS AND LAW SUPPORT DISMISSAL OF MITCH'S APPEAL

1. MITCH has not provided, in his Reponse filed with this Court, factual or legal justification why his Appeal must not be dismissed.
2. The legal authority cited by MITCH in his Response to this Court's Order to Show Cause supports dismissal of his Appeal.
3. MITCH lacks standing to appeal, and this Court lacks jurisdiction pursuant to NRAP 3A, as MITCH is not an "aggrieved" party. The District Court Order from which MITCH appeals does not adversely and substantially affect his personal right to joint legal custody or his rights concerning discoverable tax records.
4. The Order from which MITCH appeals does not alter MITCH's custody rights or CHRISTINA's rights to discovery concerning tax records. Therefore, the Order is not appealable.
5. The post-judgment Order from which MITCH appeals does not affect his rights growing out of any previous, final judgment. Thus, the Order is not appealable pursuant to NRAP 3A(b)8 as a special order made after final judgment.

II.

THIS COURT LACKS JURISDICTION OVER MITCH'S APPEAL PURSUANT TO NRAP 3(A) AND BECAUSE MITCH IS NOT AN AGGRIEVED PARTY

MITCH is simply not an aggrieved party. MITCH mistakenly argues that the Court failed to grant him sole legal custody per his request, and the denial of such a request by the District Court makes him an aggrieved party.

In Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729, this Court held that even assuming that the order approving a proposed settlement is substantively appealable, the Supreme Court has has jurisdiction to entertain an appeal only where the appeal is brought by an aggrieved party. MITCH has not demonstrated in his Response to the Order to Show Cause for dismissal that he is an aggrieved party. MITCH has cited zero legal authority which reveals that a litigant who does not have a Motion granted for sole legal custody is an "aggrieved party".

NRAP 3A(a) limits the right of appeal to "part[ies] aggrieved" by a district court's decision. A party is "aggrieved" within the meaning of NRAP 3A(a) "when either a personal right or right of property is adversely and substantially affected" by a district court's ruling. Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980). In the case at bar, MITCH's joint legal custody rights as outlined in the parties' Marital Settlement Agreement remain status quo. If the District Court changed MITCH's status of joint legal custodian, and granted CHRISTINA sole legal custody, then MITCH could be considered an aggrieved party.

This Court has repeatedly established that a party is "aggrieved" if "either a personal right or right of property is adversely and substantially affected by a District Court's ruling. In Las Vegas Police Prot. Ass'n Metro v. Eighth Judicial Dist. Ct., 122 Nev. 230, 239-40, 130 P.3d 182, 189 (2006) (citations omitted) (quoting Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994)), this Court again explained what facts give rise to the right to appeal.

The term "aggrieved" means a "substantial grievance", as cited in Esmeralda County v. Wildes, 36 Nev. 526, 535, 137 P. 400, 402 (1913), which "includes 'the imposition of some injustice, or illegal obligation or burden, by a court, upon a party, or the denial to him of some equitable or legal right." Las Vegas Police Prot. Ass'n Metro, 122 Nev. at 240, 130 P.2d at 189 (alteration in original) (quoting Esmeralda County, 36 Nev. at 535, 137 P. at 402). The denial of MITCH's request for sole legal custody was proper. Indeed, this Court cannot consider such proper denial to be a substantial grievance. The District Court record reveals MITCH's egregious conduct in the District Court action could not be rewarded by allowing him to be declared as a sole legal custodian. Pursuant to Rooney v. Rooney, 110 Nev. 40, 853 P.2d 123 (1993), MITCH's Countermotion for sole legal custody did not even meet the prima facie requirements to warrant a hearing upon MITCH's request.

In the Estate of Matthew Lomastro v. American Family Insurance Group 195 P.3d 339 (2009), American Family filed a notice of cross-appeal from the district court's judgment, challenging the district court's determination that it could not contest liability. However, the Supreme Court found that American Family was not aggrieved because the district court ultimately granted summary judgment to American Family on the claims against it. See NRAP

3A(a) (noting that any aggrieved party may appeal).

Again, Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) provides that a party is aggrieved within the meaning of NRAP 3A(a) when a district court's order adversely and substantially affects either a personal right or a right of property. Because American Family was not aggrieved, it lacked standing to appeal. Thus, this Court dismissed American Family's cross-appeal. Similarly, this Court must dismiss MITCH's Appeal because MITCH has not demonstrated how an Order allowing him and CHRISTINA to maintain their joint legal custody rights per the parties' Marital Settlement Agreement adversely and substantially affects his rights.

NRAP 3A(b) and other statutes list the orders and judgments from which an appeal may be taken; no court rule or statute provides for an appeal from a finding of fact or from a conclusion of law. This court has consistently held that the right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. State, Taxicab Authority v. Greenspun, 109 Nev. 1022, 1024-25, 862 P.2d 423, 424 (1993); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984); Kokkos v. Tsalikis, 91 Nev. 24., 530 P.2d 756 (1975). Yet, MITCH fails to cite how he is aggrieved or how his rights as a joint legal custodian are "substantially and adversely affected" by a denial of his Motion for sole legal custody.

Again, the simple fact that MITCH did not receive an Order granting him sole legal custody cannot render him an aggrieved party. Indeed, this Court would be faced with countless, frivolous appeals if a litigant could file an appeal from a District Court Order denying a request to modify a previous Order of joint legal custody. MITCH has simply and improperly argued that the denial of his request for sole legal custody makes him an aggrieved party because he did not get his Motion granted for sole legal custody. Indeed, such argument must be rejected by this Court, as MITCH's custody rights have not been affected whatsoever by the District Court's denial of his Motion.

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III.

MITCH'S APPEAL WAS FRIVOLOUSLY FILED

Recently, MITCH filed an Opposition to CHRISTINA's Motion which was filed in the District Court on March 10, 2011. CHRISTINA was attempting to receive MITCH's compliance with previous Court Orders and an Order allowing the children to receive specific and necessary healthcare treatment. At page eight, line 15.5 of his Opposition, MITCH stated to the District Court "If Ms. Vaccarino had prepared an Order from the December 1, 2010 hearing that accurately reflected the decisions of the Court, MITCH would not have filed an appeal". MITCH could not really have meant that statement because MITCH's appeal has nothing to do with"corrections" to an Order. Indeed, the law provides that a renotice of Motion, Motion for Reconsideration pursuant to EDRC 2.24 or a Motion to correct the Order pursuant to NRCP 60(a) are the proper means to correct the Order if the Order needed correction. MITCH could have even requested relief with the District Court pursuant to NRCP 59. MITCH ignored the law, and instead, filed a frivolous Appeal.

Nevada and Federal law is clear that a judgment must be final and absolute to be appealable, and the party must be aggrieved. MITCH has incorrectly complained to the District Court that the January 25, 2011 Order on file with the District Court should not be deemed final. Yet, MITCH tells this Court that the Order is a final judgment affecting his rights. MITCH is also arguing that the District Court omitted a ruling on sole versus joint legal custody and the Order contains mistakes. MITCH does have a "final" and correct Order that is simply NOT appealable. MITCH's requested corrections to the Order do NOT change the record or result he obtained. MITCH is not an aggrieved party, and the January 25, 2011 Order is not appealable, except possibly as to the issue of denying CHRISTINA's request for fees and costs. Obviously, CHRISTINA declined to cross-appeal to the Supreme Court as to that issue due to the amount of fees and costs at issue and the fees and costs associated with prosecuting a Cross-Appeal.

MITCH withdrew his Motion to correct the Minutes and Order which he filed on February 2, 2011 in the District Court action. On February 15, 2011 MITCH withdrew his Motion. The proper approach would have been to seek correction of the Minutes and Order in the District Court

by a noticed Motion filed with the District Court. If the Motion to correct the Order was denied by the District Court, such denial still would not have rendered MITCH as an "aggrieved party" by virtue of the Order left on file. MITCH does NOT have standing to appeal. MITCH's Appeal is, pure and simple, more costly and serious abuse of Court process.

MITCH's appeal is all about his continued refusal to visit with a Parenting Coordinator and to delay the provision of mental health evaluations for the young children which evaluations were requested by two, separate pediatricians. MITCH's Appeal is also a lame and latent attempt at reversal of the District Court's valid Order. MITCH's appeal on the Parenting Coordinator issue is, at minimum, two months too late. The issue of appointment of a Parenting Coordinator was first filed in open Court on October 6, 2010 and entered as an Order on November 18, 2010, by MITCH's counsel. The issue of the appointment of a Parenting Coordinator is *Res Judicata*. If MITCH was concerned with the appointment of a Parenting Coordinator, he should have filed a timely Motion for Reconsideration and/or an Appeal once the Notice of Entry of Order for the October 6, 2010 hearing was filed on November 18, 2010. As EDCR 2.24 provides, "no Motion once heard and disposed of may be renewed in the same cause, nor may the same matters therein be embraced or be reheard, unless by leave of the Court granted upon Motion therefore, after notice of such Motion the adverse party".

In Willerton v. Barsham, 111 Nev. 10, 889 P.2d 823 (1995), this Court held that an action ending even in a stipulated judgment or Order satisfies the "issue preclusion" requirement of being "actually litigated". Once the Order and Judgment is entered, it bars a later action or Motion on the same claim or cause of action.

Pursuant to NRAP 3 and NRAP 4, MITCH and his counsel had to appeal, in a timely manner, the District Court's entered Order which first appointed Dr. Lenkeit as the parties' Parenting Coordinator. MITCH had no more than 30 days from November 18, 2010 to file such frivolous Appeal. The Supreme Court now lacks jurisdiction to hear MITCH's purported complaints about why or how a Parenting Coordinator could somehow be a bad idea. It is noteworthy that MITCH's Response to this Court's Order to Show Cause is silent as to the Parenting Coordinator issue he listed in his Docketing Statement. Again, MITCH's Appeal was

frivolously pursued.

Also, the District Court impliedly denied MITCH's request for sole legal custody as requested in his Countermotion. The parties continue to share joint legal custody, and were ordered to consult and cooperate with Dr. Lenkeit per the District Court's previous Order. The denial of MITCH's request for sole legal custody is not a substantially appealable order pursuant to NRAP 3A and well-settled law. See Board of Gallery of History v. Datecs Corporation, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000).

As stated in Alvis v. State, 99 Nev. 184, 660 P.2d 980 (1983) and Burton v. Burton, 99 Nev. 698, 669 P.2d 703 (1983) , Grimm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002) and Koester v. Administration of Estate of Koseter 101 Nev. 68, 693 P.2d 569 (1985) a final post-judgment order must affect the final rights of the parties growing out of a final judgement in order to be appealable as a special order made after a judgment. The mere fact that the order in point of time is made after a final judgment has been entered does not automatically render it appealable. Indeed, the District Court's order filed on January 25, 2011, stemming from the December 1, 2010 hearing did not affect MITCH's previous, legally settled rights concerning his joint legal custody and appointment of a Parenting Coordinator or any other issue as defined in the last final judgments on file in this action concerning those issues.

MITCH also utterly failed to address in his Response to this Court's Order to Show Cause how the previous Order concerning his tax records was modified by the Order from which he appeals to this Court. In fact, MITCH failed to attach to his Docketing Statement and his Response to the Order to Show Cause the previous Order concerning discovery of his tax records. Yet, the Order from which MITCH appeals states that the discovery concerning his tax records would remain as "previously ordered". The Order also states "...it appears that Judge Sullivan intended the tax returns from the years 2007 and 2008 for this business to be reviewed by a tax expert...CHRISTINA and her counsel are granted the authorization to receive the ordered documents from Aquila through discovery for only the years 2007 and 2008."

Indeed, the District Court Order did not modify CHRISTINA's rights to discover MITCH's tax records from the business known as Aquila. The Order filed on April 9, 2010 remains the

standing Order as to which tax records CHRISTINA may discover in the District Court action (See Exhibit "A"). MITCH is also not aggrieved as to the issue of discoverable tax records, and he well understands this point. MITCH's Docketing Statement and his Response to this Court's Order to Show Cause filed April 18, 2011 does not touch upon this alleged, appealable issue. Thus, MITCH's appeal as to this issue must also be dismissed, and MITCH must be sanctioned by this Court.

IV.

MITCH CANNOT SEEK RELIEF BY EX PARTE MOTION TO CORRECT AN ORDER PENDING APPEAL

The proper procedure to have the District Court address an Order which is pending appeal is set forth in Honeycutt v. Honeycutt, 94 Nev. 79, 575 P.2d 585 (1978). Indeed, MITCH has failed to comply with the procedure set forth in Honeycutt. MITCH claims he filed an Ex Parte Motion to correct the Order which is the subject of this Appeal.

MITCH's abuse of Court process is out of control. Indeed, MITCH must be sanctioned pursuant to NRAP 38. CHRISTINA requests that this Court impose monetary sanctions against MITCH in an amount of no less than $10,000.00 for his frivolous appeal filed with this Court and for ignoring his duties in properly submitting his Docketing Statement and the Response to the Order to Show Cause.

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V.

CONCLUSION

For all the foregoing reasons, this Court must issue an Order of Dismissal of MITCH's Appeal. This Court lacks jurisdiction to entertain MITCH's frivolous Appeal. Pursuant to NRAP 38, MITCH must be assessed with monetary sanctions of no less than $10,000.00 to be immediately awarded to CHRISTINA in an attempt to deter his filing of another frivolous Appeal. MITCH's Response to this Court's Order to Show Cause is a mere four-and-one-half pages in length. The Response fails to address all issues as requested by this Court. Moreover, the Response blatantly ignores well-settled law revealing that MITCH is NOT an aggrieved party with standing to appeal as to any issue he has addressed in his Docketing Statement.

DATED this 1st day of June 2011.

Respectfully submitted by:
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CHRISTINA CALDERON STIPP

CERTIFICATE OF SERVICE

I certify that on the 1st day of June 2011, I served a copy of REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE AND MOTION FOR SANCTIONS TO ISSUE AGAINST APPELLANT PURSUANT TO NRAP 38 upon all counsel of record:

[ ] NRAP 25 By personally serving it upon him/her; or

[x] By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Radford J. Smith, Esq.
Mitchell David Stipp, Esq.
64 N. Pecos Rd., #700
Henderson, NV 89074

Dated this 1st day of June 2011.

Matt Layton

EXHIBIT "A"

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CLERK OF THE COURT

ORDR
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DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTINA STIPP,

Plaintiff,

v.

MITCHELL STIPP,

Defendant.

CASE NO.: D-08-389203-Z
DEPT NO.: O

FAMILY DIVISION

ORDER FROM PLAINTIFF'S MOTION TO STAY DISCOVERY

DATE OF HEARING: February 3, 2010
TIME OF HEARING: 10:00 a.m.

This matter coming on for hearing on Plaintiff's Motion to Stay Discovery; Plaintiff CHRISTINA STIPP ("Christina"), being present and represented by DONN W. PROKOPIUS, ESQ., and Defendant, MITCHELL STIPP ("Mitchell"), being present and represented by RADFORD J. SMITH, ESQ., of RADFORD J. SMITH, CHARTERED; the Court, having reviewed the pleadings on file, having heard the arguments of counsel, and being fully advised in the premises, and good cause appearing therefor, FINDS AND ORDERS AS FOLLOWS:

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1. Christina has moved to stay all discovery in this matter pending return of the report of the court appointed expert, Dr. John Paglini. Because of the nature of Dr. Paglini's investigation, the motion is denied in part and granted in part.

2. The court has referred this matter to assessment, and set an evidentiary hearing, in part based upon the continuing problems experienced by the parties' minor daughter Mia, and to determine the root of those problems. Each party, as joint legal custodians, is permitted access to their children's school records and treatment records for Dr. Mishalow and Dr. Kalodner. Thus, the discovery seeking those records will be permitted. Mitchell has noticed the deposition of Dr. Mishalow, and that deposition will be permitted for the sole purpose of determining the content of his records, as they were illegible.

3. The Court will temporarily stay Christina's obligation to respond to discovery propounded by Mitchell, and appear at her deposition scheduled by Mitchell. The Court anticipates that there will be sufficient time to conduct this discovery after the release of Dr. Paglini's report, and the Court will determine whether Christina will be obligated to respond to Mitchell's discovery requests and appear for her deposition at the hearing scheduled for March 9, 2010.

4. The Court does not intend to re-litigate the financial issues between the parties, and is inclined to deny Christina's Motion to partition omitted assets. The Court is not willing to re-open the litigation unless it can be shown that a fraud was committed upon the Court. Christina has provided no evidence of such fraud. Christina's motion to open discovery is based upon her allegations relating to Aquila Investments, LLC. The court notes that Christina was aware of the Aquila Investments, LLC, and its assets prior to the parties' divorce. She had sufficient opportunity to explore and investigate that asset during any discovery process prior to divorce. Her failure to do so does not constitute a fraud committed upon the Court by Mitchell.

5. Mitchell has provided the court with tax returns from Aquila Investments for the years 2007 and 2008. Christina's counsel may review those tax returns in chambers, and he alone shall be provided access to the returns upon the parties' entry into a mutually acceptable Confidentiality Agreement drafted by Mitchell's counsel.

IT IS SO ORDERED this 31 day of March 2010.

JOSEPH T. BONAVENTURE

DISTRICT COURT JUDGE

FRANK P. SULLIVAN

Submitted by:

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Approved as to form and content: