

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EUGENE DIMONACO,  
Appellant,  
vs.  
ADRIANA DAVINA FERRANDO,  
Respondent.

No. 80576

FILED

DEC 10 2020

ELIZABETH L. SEBASTIAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF LIMITED REMAND

This is an appeal from a district court order directing that respondent shall care for the parties' minor child over any third-party caregiver after school until appellant can pick the child up on appellant's custodial school days. Appellant has filed an unopposed motion seeking to remand this matter in its entirety to the district court to allow the district court to conduct an evidentiary hearing regarding appellant's emergency motion relating to custody.<sup>1</sup> Attached to the motion is a district court order certifying the district court's intent to set an evidentiary hearing on the parties' competing custody and visitation claims and reopen discovery.

---

<sup>1</sup>Appellant has not provided this court with a copy of his motion. It does not appear that the district court treated the motion as an emergency motion. However, this court notes that the district court retains jurisdiction to rule on emergency, temporary orders relating to child custody during the pendency of an appeal. *Mack-Manley v. Manley*, 122 Nev. 849, 856, 138 P.3d 525, 530 (2006) (despite the pendency of an appeal, the district court may issue "short-term, temporary adjustments to the parties' custody arrangement, on an emergency basis to protect and safeguard a child's welfare and security").

Alternatively, appellant moves for a limited remand and an order from this court setting forth the issues to be retained on appeal.

“[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal’s merits.” *Mack-Manley*, 122 Nev. at 855, 138 P.3d at 529-30. NRCP 62.1 and NRAP 12A provide a procedure to follow when a party moves for relief that the district court lacks authority to grant due to a pending appeal: the district court may defer or deny the motion or may indicate that it is inclined to grant the motion or that the motion presents substantial issues.

This court construes the district court’s certification as indicating that appellant’s motion raises a substantial issue, the determination of which could potentially affect the issues on appeal. Accordingly, the motion is granted to the following extent. This appeal is hereby remanded to the district court for the limited purpose of deciding appellant’s motion and any related pending custody claims. As set forth in NRAP 12A, the parties must promptly notify this court when the district court has decided the motion; thus, appellant and respondent shall have 60 days from the date of this order to either (1) notify this court of the district court’s decision on appellant’s motion or (2) otherwise inform this court of the status of the district court proceedings. If either party is aggrieved by an order entered in the district court pursuant to this remand and wishes to challenge it on appeal, that party must thereafter file a timely notice of appeal from the district court’s written order in accordance with NRAP 4(a).

In light of the limited remand, briefing of this appeal is suspended pending further order of this court. Appellant's request for an extension of time to file the fast track statement is denied as moot.

It is so ORDERED.

Pickering, C.J.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division  
Ford & Friedman, LLC  
Fine Carman Price  
Eighth District Court Clerk