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LISA MYERS,
Appellant,
v.
CALEB HASKINS,
Respondent.

DOCKETING STATEMENT

Client(s)	Caleb Haskins
Address	340 N. 16 th Lane Philomath, Oregon 97370
Firm	Gary M. Zernich, Esq. Roberts Stoffel Family Law Group 4411 S. Pecos Rd. Las Vegas, Nevada 89121

***Note, attorney Zernich represented Respondent in an unbundled capacity in the underlying action and filed a**

Notice of Withdrawal on August 31, 2021.

Attorney Telephone

(702) 474-7007 (telephone)

4. Nature of disposition:

The Complaint for Divorce was filed on August 20, 2010. The Motion that initiated this subsequent appeal was filed by Respondent on September 21, 2020 and Appellant filed an Opposition and Countermotion on October 12, 2020.

This is a long litigated custodial case regarding the custody of the minor child both prior and subsequent to the parties' divorce on November 13, 2012. On September 21, 2020, Respondent filed a Motion for an Order to Show Cause and October 12, 2020, Appellant filed an Opposition and Countermotion for modification of custody. The Court denied Appellant's Countermotion and concluded that the supporting filings did not support a substantial change in circumstances affecting the welfare of the child and that the child's best interest would be served by modification. The District Court denied Appellant an evidentiary hearing.

5. Does this appeal raise issues concerning any of the following, child custody, venue, or termination of parental rights?

Yes, child custody.

6. Pending and prior proceedings in this court.

i. *Myers v. Haskins*; February 23, 2011; Supreme Court Case No. 57621;

ii. *Myers v. Haskins*; April 28, 2011;

1 iii. *Myers v. Haskins*; June 13, 2011;

2 iv. *Myers v. Haskins*; November 3, 2011;

3 v. *Myers v. Haskins*; December 19, 2011;

4 vi. *Myers v. Haskins*; April 12, 2012;

5 vii. *Myers v. Haskins*; June 11, 2012;

6 viii. *Myers v. Haskins*; September 5, 2012; Supreme Court Case Nos. 60690

7 and 61046; Federal Case No. 2:12-cv-01035;

8 ix. *Myers v. Haskins*; December 17, 2012;

9 x. *Myers v. Haskins*; December 18, 2012;

10 xi. *Myers v. Haskins*; April 21, 2014.

11 **7. Pending and prior proceedings in other courts.** List the case name, number and
12 court of all pending and prior proceedings in other courts which are related to this
13 appeal.

14 None, other than the underlying divorce action in the Eighth Judicial District Court
15 and the aforementioned proceedings in this Court.

16 **8. Nature of the action.** Briefly describe the nature of the action and the result
17 below:

18 This appeal arises from the Court's denial of an evidentiary hearing for Appellant's
19 request to modify custody, specifically, on the basis of insufficiency of evidence.

20 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal:

21 The issues on appeal are as follows:

1 **10. Pending proceedings in this court raising the same or similar issues.**

2
3 Counsel is unaware of any pending proceedings in this court other than those stated
4 herein above.

5 **11. Constitutional issues.**

6
7 Not applicable.

8 **12. Other issues.** Does this appeal involve any of the following issues?

9
10 Reversal of well-settled Nevada precedent (identify the case(s))

11 An issue arising under the United States and/or Nevada Constitutions

12 A substantial issue of first impression

13 An issue of public policy

14 An issue where *en banc* consideration is necessary to maintain uniformity of this
15 court's decisions

16 A ballot question

17 No.

18 If so, explain:

19 **15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a
20 justice recuse him/herself from participation in this appeal? If so, which Justice? Was
21 it a bench or jury trial?

22 No. Counsel does not intend to file a motion to disqualify any Justice from
23 participation in this appeal.

24 **14. Trial.** If this action proceeded to trial, how many days did the trial last?

25 The case did not proceed to evidentiary hearing and in fact, the basis for Appellant's
26 appeal is the Court's denial of an evidentiary hearing.

27 **13. Assignment to the Court of Appeals or retention in the Supreme Court.**

28 Briefly set forth whether the matter is presumptively retained by the Supreme Court

1 or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of
2 the Rule under which the matter falls. If appellant believes that the Supreme Court
3 should retain the case despite its presumptive assignment to the Court of Appeals,
4 identify the specific issue(s) or circumstance(s) that warrant retaining the case, and
include an explanation of their importance or significance:

5 This case is presumptively assigned to the Court of Appeals pursuant to NRAP
6 17(10).

7 **TIMELINESS OF NOTICE OF APPEAL**

8 **16. Date of entry of written judgment or order appealed from**

9 August 31, 2021

10 **17. Date written notice of entry of judgment or order was served**

11 August 31, 2021.

12 **18. If the time for filing the notice of appeal was tolled by a post-judgment** 13 **motion (NRCP 50(b), 52(b), or 59)**

14 (a) Specify the type of motion, the date and method of service of the motion, and
15 the date of filing.

16 NRCP 50(b)

17 NRCP 52(b)

18 NRCP 59

19 Date of filing

20 Date of filing

21 Date of filing

22 Not applicable.

23 **NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or**
24 **reconsideration may toll the time for filing a notice of appeal. See AA *Primo***
25 ***Builders v. Washington*, 126 Nev. ____, 245 P.3d 1190 (2010).**

26 (b) Date of entry of written order resolving tolling motion

1 (c) Date written notice of entry of order resolving tolling motion was served

2 Was service by:

3 Delivery

4 Mail

5 Not applicable.

6 **19. Date notice of appeal filed**

7 The Notice of Appeal was filed on September 21, 2021.

8
9 **20. Specify statute or rule governing the time limit for filing the notice of appeal,**
10 ***e.g.*, NRAP 4(a) or other**

11 NRAP 4(a).

12
13 **SUBSTANTIVE APPEALABILITY**

14
15 **21. Specify the statute or other authority granting this court jurisdiction to**
16 **review the judgment or order appealed from:**

17 (a)

18 NRAP 3A(b)(1)

19 NRAP 3A(b)(2)

20 NRAP 3A(b)(3)

21 Other (specify)

22 NRS 38.205

23 NRS 233B.150

24 NRS 703.376

25 NRAP 3A(b)(1).

26 (b) Explain how each authority provides a basis for appeal from the judgment or
27 order:

28 The appeal may be taken from a final judgment entered in an action in which the action
was commenced. These proceedings, including the Decree of Divorce were in the

1 Eighth Judicial District Court. Accordingly, this Court has jurisdiction pursuant to
2 NRAP 3A(b)(1).

3 **22. List all parties involved in the action or consolidated actions in the district**
4 **court:**

5 (a) Parties: Caleb Haskin (Plaintiff) and Lisa Myers (Defendant)

6
7 (b) If all parties in the district court are not parties to this appeal, explain in detail
8 why those parties are not involved in this appeal, *e.g.*, formally dismissed, not
9 served, or other:

10 Not applicable.

11 **23. Give a brief description (3 to 5 words) of each party's separate claims,**
12 **counterclaims, cross-claims, or third-party claims and the date of formal**
13 **disposition of each claim.**

14 This appeal arises from post-divorce litigation, specifically, a request by
15 Defendant/Appellant that custody be modified and the Court's denial of an
16 evidentiary hearing.

17 **24. Did the judgment or order appealed from adjudicate ALL the claims alleged**
18 **below and the rights and liabilities of ALL the parties to the action or**
19 **consolidated actions below?**

20 Yes.

21 **25. If you answered "No" to question 24, complete the following:**

22 (a) Specify the claims remaining pending below:

23 (b) Specify the parties remaining below:

24 (c) Did the district court certify the judgment or order appealed from as a final
25 judgment pursuant to NRCP 54(b)?

26 (d) Did the district court make an express determination, pursuant to NRCP 54(b),
27 that there is no just reason for delay and an express direction for the entry of
28 judgment?

Not applicable.

1 **26. If you answered "No" to any part of question 25, explain the basis for**
2 **seeking appellate review (e.g., order is independently appealable under NRAP**
3 **3A(b)):**

4 **27. Attach file-stamped copies of the following documents:**

- 5 ☐ ☐ The latest-filed complaint, counterclaims, cross-claims, and third-party claims
6 ☐ ☐ Any tolling motion(s) and order(s) resolving tolling motion(s)
7 ☐ ☐ Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims,
8 crossclaims and/or third-party claims asserted in the action or consolidated action
below, even if not at issue on appeal
9 ☐ ☐ Any other order challenged on appeal
10 ☐ ☐ Notices of entry for each attached order

11 Attached is a copy of the Court's August 31, 2021 Decision and Order.
12

13 **VERIFICATION**

14 **I declare under penalty of perjury that I have read this docketing**
15 **statement, that the information provided in this docketing statement is true and**
16 **complete to the best of my knowledge, information and belief, and that I have**
17 **attached all required documents to this docketing statement.**
18

19
20 Name of appellant
21 State and county where signed
22 Name of counsel of record
23 Date

Lisa Myers
Clark County, Nevada
Patricia A. Marr, Esq.
November 22, 2021

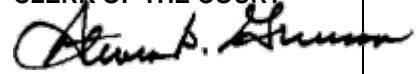
24 /s/Patricia A. Marr, Esq.
25 Patricia A. Marr, Esq.
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Caleb Haskin
340 N. 16th Lane
Philomath, Oregon 97370

/s/Patricia A. Marr, Esq.

An employee of Patricia A. Marr, LLC



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6 **DISTRICT COURT**
7 **FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9 ***

10 CALEB OBADIAH HASKINS,

11 Plaintiff,

12 vs.

13 LISA MYERS,

14 Defendant.

CASE NO.: D-10-434495-D
DEPARTMENT H

15
16 **NOTICE OF ENTRY OF ORDER**

17 TO: ALL PARTIES AND/OR THEIR ATTORNEYS

18
19 Please take notice that the Order from the August 31, 2021 hearing was
20 prepared and filed by the court. A copy of the Order is attached hereto, and the
21 following is a true and correct copy thereof.
22

23 I hereby certify that on or about the file stamp date the foregoing Notice of
24 Entry of Order was:

25
26 ☒ E-Served pursuant to NEFCR 9; or mailed, via first-class mail, postage
27 fully prepaid to:
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Gary M. Zernich, Esq. for
PLAINTIFF

Patricia A. Marr, Esq. for
DEFENDANT

/s/ Katrina Rausch
Katrina Rausch
Judicial Executive Assistant
Department H

1 ORDER

2
3 **DISTRICT COURT**
4 **FAMILY DIVISION**
5 **CLARK COUNTY, NEVADA**
6

7
8 CALEB OBADIAH HASKINS,)

9)

10 Plaintiff,)

CASE NO. D-10-434495-D

11)

DEPT. NO. "H"

12 vs.)

13)

14 LISA MYERS,)

15)

DECISION AND ORDER

16 Defendant.)

Date of Hearing: 8/31/2021

17)

Time of Hearing: 10 AM

18 _____)
19
20 This decision and order concerns Lisa Myer's counter motion to modify
21 physical custody that was filed on October 12, 2020. The court considered the
22 papers and pleadings, and the arguments of counsel at the hearing on August 31,
23 2021. The court concludes that the motion should be denied, and the matter
24 should be closed. In support of this conclusion, the court finds:
25
26
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- 1 1. This court has custody jurisdiction and personal jurisdiction over the
2 parties to this case. This court has continuing exclusive custody
3 jurisdiction over post-judgment custody matters pursuant to the UCCJEA
4 as adopted in the Nevada Revised Statutes. Lisa Meyers resides in Clark
5 County, Nevada. Caleb Haskins and the parties' minor child reside in
6 Oregon.
7
8
- 9 2. Caleb Haskins filed a Complaint for Divorce on August 20, 2010, and Lisa
10 Myers' Answer and Counterclaim was filed on October 5, 2010. The
11 parties have one minor child, S.R.H., who was born on March 30, 2010.
12
13
- 14 3. The case was assigned to Department H on June 19, 2012. The court set a
15 trial date, and the matter was decided after a non-jury trial on October 18,
16 2012, and October 22, 2012. The Decree of Divorce was filed on
17 November 13, 2012.
18
19
- 20 4. Caleb Haskins has had primary physical custody of S.R.H., subject to Lisa
21 Myers' visitation since 2012.
22
- 23 5. Caleb Haskins' motion to relocate with the child to Oregon was granted
24 after an evidentiary hearing held on February 27, 2014.
25
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1 6. Caleb Haskins has had primary physical custody in Oregon since 2014, and
2 the child has travelled to Nevada to visit Lisa Myers.
3

4 7. Lisa Myers has filed ten (10) appeals to the Nevada Supreme Court before
5 and after the divorce. Specifically:
6

7 a. Lisa Myers filed a Notice of Appeal (1) on February 23, 2010.
8

9 b. Lisa Myers filed a Notice of Appeal (2) on April 28, 2011.
10

11 c. Lisa Myers filed a Notice of Appeal (3) on June 13, 2011.
12

13 d. Lisa Myers filed a Notice of Appeal (4) on June 13, 2011.
14

15 e. Lisa Myers filed a Notice of Appeal (5) on April 12, 2012.
16

17 f. Lisa Myers filed a Notice of Appeal (6) on June 11, 2012.
18

19 g. Lisa Myers filed a Notice of Appeal (7) on September 5, 2012.
20

21 h. Lisa Myers filed a Notice of Appeal (8) on December 17, 2012.
22

23 i. Lisa Myers filed a Notice of Appeal (9) on December 18, 2012.
24

25 j. Lisa Myers filed a Notice of Appeal (10) on April 21, 2014.
26

27 8. The appeals have been dismissed by the Nevada Supreme Court.
28 Specifically:

- 1 a. The Nevada Supreme Court filed a Judgment dismissing appeal
2 57825 on August 17, 2011.
3
4 b. The Nevada Supreme Court filed a Judgment dismissing appeal
5 59916 on March 16, 2012.
6
7 c. The Nevada Supreme Court filed a Judgment dismissing appeal
8 58306 on March 20, 2012.
9
10 d. The Nevada Supreme Court filed a Judgment dismissing appeal
11 59626 on May 15, 2012.
12
13 e. The Nevada Supreme Court filed a Judgment dismissing appeal
14 561046 on August 22, 2012.
15
16 f. The Nevada Supreme Court filed a Judgment dismissing appeal
17 60690 on September 5, 2012.
18
19 g. The Nevada Supreme Court filed a Judgment dismissing appeal
20 61664 on December 20, 2012.
21
22 h. The Nevada Supreme Court filed a Judgment dismissing appeal
23 62330 on May 8, 2013.
24
25 i. The Nevada Supreme Court filed a Judgment dismissing appeal
26 65518 on August 14, 2014.
27
28

- 1 9. This case was reopened by Caleb Haskins on September 21, 2020, when he
2 filed a motion to enforce the custody orders after Lisa Myers did not return
3 the child to him in August, 2020, after summer visitation in Nevada.
4
- 5 10. Lisa Myers filed an opposition and countermotion for a change in
6 physical custody on October 12, 2020.
7
- 8 11. The court heard this matter on October 14, 2020. The court ordered the
9 immediate return of the child to the custodial parent. The court filed a
10 Pick-Up Order on November 16, 2020, and the child was returned to Caleb
11 Haskins in Oregon.
12
- 13 12. The court allowed ninety days of post-judgment discovery to give the
14 parties an opportunity to persuade the court that there was adequate cause
15 to re-litigate physical custody. This period of limited discovery was
16 extended by the court, and by the parties' stipulation and order.
17
- 18 13. The court heard this matter on August 18, 2021. The court ordered final
19 briefing and set the matter for hearing on August 31, 2021. On that date,
20 the considered the papers on file, and the arguments of counsel. The matter
21 was taken under advisement.
22
- 23 14. Nevada statutes and case law provide that the district court has broad
24 discretion concerning child custody matters. *Rooney v. Rooney*, 109 Nev.
25 540, 853 P.2d 123 (1993).
26
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1 15. The Nevada Supreme Court discussed the principles of res judicata as it
2 relates to a post-judgment request to change child custody orders in *Castle*
3 *v. Simmons*, 120 Nev. 98 (2004), and in *Martin v. Martin*, 120 Nev. 342
4 (2004). The doctrine of res judicata as applied through the changed
5 circumstances doctrine promotes finality and stability in child custody
6 cases.
7

8
9 16. The Nevada Supreme Court adopted an “adequate cause” standard,
10 holding that the district court has discretion to deny a motion to modify
11 custody without holding a hearing if the affidavits do not show a prima
12 facie basis for a change in custody. To constitute a prima facie case it
13 must be shown that (1) the facts alleged in the affidavits are relevant to
14 grounds for modification; and (2) the evidence is not merely cumulative or
15 impeaching. *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993).
16

17
18 17. The Nevada Supreme Court applied and adopted the two-part test for
19 custody changes when one parent has primary physical custody. A
20 modification of primary physical custody is warranted only when (1) there
21 has been a substantial change in circumstances affecting the welfare of the
22 child, and (2) the child’s best interest is served by the modification. The
23 party seeking a modification of custody bears the burden of satisfying both
24 prongs. *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007).
25
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1 18. The court concludes that the countermotion filed by Lisa Myers and her
2 supporting filings do not state facts that would support a substantial change
3 in circumstances affecting the welfare of the child, and that the child's best
4 interest is served by the modification. The countermotion lacks merit and
5 should be denied.
6

7 Therefore,

8
9 **IT IS HEREBY ORDERED** that Lisa Myers' countermotion that was
10 filed on October 12, 2020, is denied.
11

12 **IT IS FURTHER ORDERED** that the matter is closed upon the entry of
13 this order.
14
15

16 Dated this 31st day of August, 2021

17 
18

19 248 C7E 1BB4 B829
20 T. Arthur Ritchie
21 District Court Judge
22
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Caleb Obadiah Haskins, Plaintiff CASE NO: D-10-434495-D
7 vs. DEPT. NO. Department H
8 Lisa Myers, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/31/2021

15 Patricia Marr	patricia@marrlawlv.com
16 Caleb Haskins	calebhaskins1290@gmail.com
17 Robert Kurth, Jr.	robert.kurthlawoffice@gmail.com
18 Jessica Adams	jessica@marrlawlv.com
19 Katie Wegner	katie.kurthlawoffice@gmail.com
20 Gary Zernich, Esq.	efile@lvfamilylaw.com
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