

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA MYERS,

Appellant,

vs.

CALEB HASKINS,

Respondent.

Supreme Court No. 83576
District Court Case No. D-10-434495-C
Electronically Filed
Dec 08 2021 03:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

FAST TRACK STATEMENT

ROUTING STATEMENT: This is an appeal of the District Court’s denial of Appellant’s request for an evidentiary hearing in a child custody matter and thus, presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(10).

1. Name of party filing this fast-track statement:

Lisa Myers.

2. Name, law firm, address, and telephone number of attorney submitting this fast-track statement:

Patricia A. Marr, Esq.; Patricia A. Marr, LLC; 2470 St. Rose Parkway, Ste. 110; Henderson, Nevada 89074; (702) 353-4225 (telephone).

3. Judicial district, county, and district court docket number of lower court proceedings:

Eighth Judicial District Court, Clark County, Case No. D-10-434495-D

4. Name of judge issuing judgment or order appealed from:

Honorable Judge Arthur T. Ritchie, Jr.

5. Length of trial. If this action proceeded to trial in the district court, how many days did the trial last?

The District Court case never proceeded to trial.

6. Written order or judgment appealed from:

The district court's August 31, 2021 Order, wherein it denied Appellant the ability to proceed to evidentiary hearing.

7. Date that written notice of the appealed written judgment or order's entry was served:

August 31, 2021.

8. If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4), (a) specify the type of motion, and the date and method of service of the motion, and date of filing: (b) date of entry of written order resolving tolling motion:

N/A.

9. Date notice of appeal was filed:

September 21, 2021.

10. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:

NRAP 4(a)(1).

11. Specify the statute, rule or other authority, which grants this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1).

12. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which involve the same or some of the same parties to this appeal.

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

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

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

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

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

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

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

viii. *Myers v. Haskins*; September 5, 2012; Supreme Court Case Nos. 60690 and 61046; Federal Case No. 2:12-cv-01035;

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

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

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

13.Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:

Counsel is unaware of any proceeding presently pending before this Court that raises the same legal issue raised in this appeal.

14.Procedural history. Briefly describe the procedural history of the case (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

On November 13, 2012, the parties were divorced by way of a Decree Divorce. [ROA, V1, pp. MEY00001-18]. Pursuant to the Decree, Respondent was awarded primary physical custody of the minor child, Sydney Rose Haskins, DOB: March 30, 2010. [Id., p. 1]

On September 21, 2020, Respondent filed a Motion to hold Appellant in contempt for the child remaining in Nevada subsequent to Appellant's visitation. [ROA, V1, pp. MEY000019-44].

On October 12, 2020, Appellant filed her response to the Motion, as well as a Countermotion for Child Interview; Change of Timeshare; Evidentiary Hearing; Award of Attorney's Fees and Costs; and Related Relief and Amendment thereto. [ROA, V1, pp. MEY00045-69 and

MEY000070-95]. Specifically, Appellant advised the Court that the minor child became physically sick, including having a panic attack at the prospect of returning to Plaintiff's house. [ROA, V1, pp. MEY000049-54].

Appellant further informed the Court that Plaintiff, who resides out of state, continues to obstruct her phone visitation with the child and that there are also concerns of medical/dental neglect. [ROA, V1, pp. MEY000055].

On October 14, 2020, the Court held a hearing for Respondent's Motion and Appellant's Countermotion. [ROA, V1, pp. MEY000096-118]. At the hearing the Court stated it would consider setting an evidentiary hearing after a brief discovery period. [ROA, V1, pp. MEY000015-16].

In fact, the Court determined there was adequate cause presented by Appellant to reopen for ninety (90) days. [ROA, V1, pp. MEY000120].

On January 13, 2021, the Court held a Case Management Conference and continued the matter briefly because Respondent had failed to respond to Appellant's discovery requests. [ROA, V1, pp. MEY000124-138]. On that basis the Court extended discovery to the next hearing date. [ROA, V1, pp. MEY000139-141].

On June 18, 2021, Appellant disclosed her witnesses and documents and included the identity of several key witnesses that would testify at to the lack of coparenting and neglectful/abusive lifestyle that the child is subject

to while residing with Respondent, including but not limited to, Charity Haskins, the former wife of Respondent, who resides in the same state as Respondent and whom seems the minor child in this case on a frequent basis because she also has a child with Respondent. [ROA, V1, pp. MEY000142-147].

On July 19, 2021, Appellant filed her Declaration regarding sufficiency of evidence. [ROA, V1, pp. MEY000148-153] wherein she informed the Court of the ongoing issues in Respondent's home, including the continued pathogenic parenting of Respondent and the medical/dental neglect of the child while in his care.

On August 17, 2021, Respondent filed his responsive declaration. [ROA, V1, pp. MEY000154-161]. Respondent also filed his Exhibit Appendix on that date. [ROA, V2, pp. MEY000181-270].

On August 18, 2021, the Court issued a Minute Order wherein it continued the matter to allow Appellant to respond to Respondent's untimely filing. [ROA, V2, pp. MEY000271-272].

On August 31, 2021, the Court held a hearing and the parties argued their positions. [ROA, V2, pp. MEY0000309-322].

On August 31, 2021, the Court entered its Decision and Order. [ROA, V2, pp. MEY000301-308].

On September 21, 2021, Appellant filed her Notice of Appeal. [ROA, V2, pp. MEY000323-324].

15. Statement of facts. Briefly set forth the facts material to the issues on appeal (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

The docket in this case is lengthy, however, notably, the bulk of Appellant's prior appeals, (eight (8) out of eleven (11) were filed prior to the entry of the Decree of Divorce on November 13, 2012. (ROA, V1, pp. MEY000001-18].

Nonetheless, Appellant submits that she presented evidence for a prima facie case, albeit much of the evidence was by way of testimony from witnesses disclosed by Appellant, including but not limited to, a former spouse of Respondent who has intimate knowledge of Respondent's household by way of what she has observed during child exchanges with their child; a counselor at the child's school in Oregon, a police officer that responded to a welfare check and is otherwise familiar with the numerous calls to Respondent's house; and further, disturbing videos of the child in a state of panic at the prospect of returning to Respondent's house. [ROA, V1, pp. MEY000142-147; MEY0000148-153 (*151)(*152)]. Yet further, the child's maternal grandmother was a named witness that could testify to

her observations of the pain the child is in when eating and the fact that she is underweight given her limitation to eat. [ROA, V1, pp. MEY000148-153]. Moreover, the child's school counselor was named as a witness by Appellant and an offer of proof was made that the counselor would testify to the extreme stress and precarious emotional state of the child as a consequence of Respondent's continued pathogenic parenting and domestic violence issues in his house. [ROA, V1, pp. MEY000150-151].

On August 27, 2021, Appellant filed her responsive Declaration and averred to the Court that many of the assertions in Respondent's Declaration were patently false and that she continued to be denied communication/visitation the child; that there are ongoing issues of drug use and domestic violence in Respondent's house; that it is painful for the child to eat and reiterated that the child is suffering from extreme stress while living in Respondent's household. [ROA, V2, pp. MEY000285-298].

Again, Appellant was able to provide evidence of the same via her witnesses and physical documentation, including but not limited to a very disturbing video of the child in extreme mental anguish at the prospect of returning to Respondent's house to the extent she became physically ill and unable to function. [ROA, V2, pp. MEY000285-298].

Albeit the Court stated on August 18, 2021, that it is a “close call,” the Court denied Appellant an evidentiary hearing. [ROA, V2, pp. MEY000278]. If it’s a close call – why not err on the side of caution when it comes to a child? Accordingly, Appellant respectfully submits that she made a prima facie case and that an evidentiary hearing should have been granted for the best interest of the child.

16. Issues on appeal. State concisely the principal issue(s) in this appeal:

The issue on appeal is whether the district court erred in its denial of an evidentiary hearing requested by Appellant regarding a request to modify custody of the minor child.

17. Legal argument, including authorities:

The Standard

Pursuant to *Rooney v. Rooney*, 109 Nev. 540 (1993), the Nevada Supreme Court held that the district court has discretion to deny a request to modify custody without holding a hearing unless the moving party demonstrates “adequate cause” for holding the hearing. *Id.* at 124. Adequate cause that warrants a hearing for a motion to modify custody requires something more than allegations, which if, proven, might permit inferences sufficient to establish grounds for a change in custody; it arises when a moving party establishes a prima facie case for modification, showing that the facts

alleged in the affidavit are relevant to grounds for modification and that the evidence is not merely cumulative or impeaching. *Id.* at 125; NRS 125.510.

In this case, Appellant submits that there was adequate cause for the district court to hold an evidentiary hearing because she presented a prima facie case to the trial court. Specifically, Appellant made offers of proof as to what her witnesses would testify to, including but not limited to, the child's school counselor who can testify to the child seeking counseling at school related to the ongoing drug and dv issues in Respondent's household; the responding police officer that performed a welfare check on the child upon her return to Respondent's house; the child's grandmother who witnessed the fact the child is in physical pain when eating and the former spouse of Respondent, who can verify the ongoing issues of dv and police intervention in Respondent's house.

Most telling however, is the video of the child that the Court did not see because it would not grant an evidentiary hearing. An old adage proclaims that "a picture is worth a thousand words."¹ Appellant submits that the video of the child at the airport is powerful evidence as to the unfathomable stress she is subjected to while at Respondent's household and

¹ This adage is from the 20th Century and attributed to Frederick R. Barnard.

very telling as to what is being hidden behind closed doors. Accordingly, Appellant respectfully requests that the trial court's decision be reversed and that an evidentiary hearing be granted – for the best interest of the child.

18. Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest:

This appeal does not present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest.

VERIFICATION

1. I hereby certify that this fast-track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This fast-track statement has been prepared in a proportionally spaced typeface using Microsoft Word; Version 2019 in Times New Roman size 14 font; or

This fast-track statement has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this fast-track statement complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is either:

Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

Does not exceed 16 pages.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement or failing to raise material issues or arguments in the fast-track statement or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast-track statement is true and complete to the best of my knowledge, information, and belief.

Dated this 6th day of December, 2021.

(Signature of Attorney)	/s/Patricia A. Marr, Esq.
(Nevada Bar Identification No.)	008846
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CERTIFICATE OF SERVICE

I certify that on the day of 8th day of December, 2021, I served a copy of this completed Fast Track Statement upon all counsel of record by mailing it by first class mail with sufficient postage prepaid to the following address(es):

Caleb Haskin
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Gary M. Zernich, Esq. (courtesy copy)
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/s/Patricia A. Marr

An employee of Patricia A. Marr, LLC