

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2023 ND 58

Jesse Bauer, Plaintiff and Appellee

v.

Ashley Bauer, Defendant and Appellant

No. 20220330

Appeal from the District Court of Morton County, South Central Judicial District, the Honorable Bonnie L. Storbakken, Judge.

AFFIRMED.

Opinion of the Court by Bahr, Justice.

Erica J. Shively, Bismarck, ND, for plaintiff and appellee.

William Woodworth, Bismarck, ND, for defendant and appellant.

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Bahr, Justice.

[¶1] Ashley Bauer appeals from a district court’s amended judgment denying her motion to modify residential responsibility and amending the parenting plan. We affirm.

[¶2] As a threshold matter, Jesse Bauer argues the appeal is untimely because it was not made within sixty days of the initial order denying modification of residential responsibility, which he claims is a final appealable order. The order denying modification of residential responsibility provided instruction for entry of an amended judgment consistent with its order, which included a forthcoming amendment to the parenting plan, and did not include a N.D.R.Civ.P. 54(b) certification. Therefore, the order was interlocutory and not immediately appealable. *See Eubanks v. Fisketjon*, 2021 ND 124, ¶ 4, 962 N.W.2d 427 (only judgments which constitute a final judgment of the rights of the parties or orders enumerated by statute unless certified under Rule 54(b) are appealable). Ashley Bauer’s appeal is timely because she filed her notice of appeal within sixty days of service of notice of entry of the amended judgment. *See* N.D.R.App.P. 4(a)(1). Having determined the appeal is timely, we turn to the merits.

[¶3] Ashley Bauer argues the district court erred in its finding no material change in circumstances exists, and in its determination of the best interest factors. Ashley Bauer essentially asks this Court to reweigh the evidence, which it will not do under the clearly erroneous standard of review. *Sherman v. Guillaume*, 2022 ND 26, ¶ 2, 969 N.W.2d 708; *Lessard v. Johnson*, 2019 ND 301, ¶ 12, 936 N.W.2d 528. Ashley Bauer also argues the amended judgment is not supported by sufficient findings. The amended judgment is supported by sufficient findings. We summarily affirm under N.D.R.App.P. 35.1(a)(2) and (7).

[¶4] Jon J. Jensen, C.J.
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte
Douglas A. Bahr