

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINE ELLIOTT,  
Appellant,  
vs.  
NICHOLAS KIMAK, II,  
Respondent.

No. 43605

FILED

FEB 04 2005

ORDER OF AFFIRMANCE

JANETTE M BLOOM  
CLERK OF SUPREME COURT  
BY *J. B. Bloom*  
CHIEF DEPUTY CLERK

This is a proper person appeal from a divorce decree and a post-judgment order granting in part a motion to amend the decree. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

In November 2003, the district court entered written findings of facts, conclusions of law, and a judgment. The detailed decision addressed the child custody arrangement as well as property division. Thereafter, respondent moved the district court to modify the November 2003 order regarding the visitation exchanges. Moreover, respondent asked the court to set forth with specificity holiday visitation, and he sought attorney fees. Appellant filed an opposition to respondent's motion and a countermotion for sanctions because respondent's counsel failed to prepare the divorce decree as instructed in the November 2003 order. Appellant also asked the court to reinstate a prior order concerning respondent's visitation.

Ultimately, the district court drafted the divorce decree, which incorporated the November 2003 decision, and was filed on June 11, 2004. Thereafter, on June 14, 2004, the court entered an order that resolved the parties' post-trial motions. Specifically, the district court, among other things, directed the parties to enroll the child in day care and addressed

the custody exchange arrangement. The court also reiterated that once respondent completed the batterer's intervention program, his visitation would expand. In addition, the court created a specific holiday visitation schedule that apprised the parties of exactly when each parent would have the child during certain holidays. Finally, the court declined to reinstate the prior order that awarded respondent only limited, supervised visitation. This timely proper person appeal followed.

Matters of custody, including visitation, rest in the district court's sound discretion.<sup>1</sup> This court will not disturb the district court's custody decision absent a clear abuse of discretion.<sup>2</sup> In determining child custody, the court's sole consideration is the child's best interest.<sup>3</sup> NRS 125.480(4)(c) provides that, in determining the child's best interest, the court must consider whether either parent has engaged in domestic violence. If the district court concludes that one of the parties has committed domestic violence, a rebuttable presumption arises that "sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child."<sup>4</sup>

Here, the district court recognized that respondent was convicted of domestic violence against appellant. Accordingly, the court ordered that respondent be evaluated and observed with the child, to ensure the child's safety. Moreover, respondent was ordered to complete

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<sup>1</sup>Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).

<sup>2</sup>Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).

<sup>3</sup>NRS 125.480(1)

<sup>4</sup>NRS 125.480(5).

parenting classes, co-parenting counseling, and a batterer's intervention program, before he could have regular weekend visitation. We conclude that the district court did not abuse its discretion when it awarded appellant primary physical custody, with respondent having weekend visitation once he completes the required programs. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, C. J.  
Becker

Rose, J.  
Rose

Hardesty, J.  
Hardesty

cc: Hon. Jennifer Elliott, District Judge, Family Court Division  
Law Offices of Patricia L. Vaccarino  
Christine Elliott  
Clark County Clerk