

IN THE SUPREME COURT OF THE STATE OF NEVADA

GIAMARIE SINOPOLI,  
Appellant,  
vs.  
DINESH KUMAR GUPTA,  
Respondent.

No. 44138

**FILED**

SEP 28 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order modifying a child custody arrangement. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

Appellant Giamarie Sinopoli and respondent Dinesh Gupta were married in 1991. The parties have one child from the marriage, R.G., who is approximately 14 years old. After the parties separated in 1999, Giamarie and R.G. left North Carolina and relocated to Las Vegas, while divorce proceedings were pending in North Carolina. In 2000, Giamarie filed for divorce in Nevada and obtained a default divorce decree. Dinesh denies that he was personally served with the summons and complaint. The district court awarded her sole legal and physical custody of R.G. The district court did not award Dinesh visitation because of Giamarie's allegations of domestic violence and child sexual abuse.

After learning of Giamarie's whereabouts, Dinesh moved the district court for visitation. The court granted visitation. Dinesh subsequently filed a motion to modify custody. Following a three-day evidentiary hearing, the district court entered an order modifying custody, with the parties having joint legal custody, and Dinesh having primary physical custody and Giamarie having supervised visitation.

We conclude that the district court did not abuse its discretion by granting Dinesh's motion to modify custody. The district court enjoys broad discretionary powers in determining child custody issues, and this court will not disturb the district court's judgment absent a clear abuse of discretion.<sup>1</sup> When a party moves the district court to modify primary physical custody, the district court applies the two-part Murphy v. Murphy<sup>2</sup> test to determine whether to grant the motion. Under the Murphy test, "[a] change of custody is warranted only when: (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change."<sup>3</sup>

A custodial parent's substantial or pervasive interference with the noncustodial parent's right to visitation constitutes changed circumstances

Giamarie argues that the district court did not review the case for a change of circumstances since the 2000 default divorce decree. We disagree.

We have previously noted that "a custodial parent's substantial or pervasive interference with a noncustodial parent's visitation may constitute changed circumstances."<sup>4</sup> Substantial evidence supports the district court's finding that Giamarie's interference with

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<sup>1</sup>Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993).

<sup>2</sup>84 Nev. 710, 447 P.2d 664 (1968).

<sup>3</sup>Id. at 711, 447 P.2d at 665.

<sup>4</sup>Martin v. Martin, 120 Nev. 342, 345, 90 P.3d 981, 983 (2004) (noting that "[o]ther courts that have examined the issue have concluded that the custodial parent's substantial or pervasive interference may constitute changed circumstances").

Dinesh's visitation rights was pervasive and substantial enough to amount to a change in circumstances. After Giamarie opposed Dinesh's motion for visitation, the district court warned her that if her allegations of domestic violence and child sexual abuse proved to be unfounded, the court could have grounds to modify custody. Subsequently, the district court found that Giamarie's allegations of Dinesh's child sexual abuse were unfounded, that Giamarie repeatedly coached R.G. to voice his unhappiness, that she spoke negatively about Dinesh to the child, and that her uncooperative behavior was a method to stall the reunification of R.G. with his father. Although the district court may not modify custody in order to punish a parent,<sup>5</sup> there is substantial evidence in the record to suggest that the order modifying custody was not entered by the court to punish Giamarie. We conclude that the district court's extensive findings regarding Giamarie's past and current interference with Dinesh's custodial rights were sufficient grounds to warrant a modification of custody.<sup>6</sup>

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<sup>5</sup>See Gepford v. Gepford, 116 Nev. 1033, 1038, 13 P.3d 47, 50 (2000) (reasoning that "the district court appears to have been more concerned with punishing [the father] for his conduct instead of sufficiently considering the best interests of the children and whether [the mother] satisfied the second prong of Murphy"); Sims v. Sims, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993) ("This court has made it clear that a court may not use changes of custody as a sword to punish parental misconduct; disobedience of court orders is punishable in other ways.").

<sup>6</sup>The court ordered the parties to submit to polygraph examinations regarding the allegations of sexual abuse. It is error for the court to mandate polygraph examinations. However, the error was harmless.

Substantial evidence supports the district court's conclusion that a modification of custody would be in R.G.'s best interest

We further conclude that the district court did not abuse its discretion by finding that R.G.'s welfare would be substantially enhanced by a modification in custody. A district court's determination will be upheld if supported by substantial evidence.<sup>7</sup> We have previously reversed a district court's decision to modify custody after the mother presented evidence that the father had left one of the children home alone to recover from an illness.<sup>8</sup> Although reasoning that it is "not advisable to leave a child home alone who is nearly recovered from an illness, [this court concluded] that this lone incident is an insufficient basis on which to premise a change of custody under the second prong of Murphy."<sup>9</sup>

Here, the district court expressed concern over Giamarie's decision to pull R.G. out of public school in favor of home schooling the child. In addition, the district court noted the unhealthy level of enmeshment between mother and son. R.G. enrolled in public school in North Carolina. Within a short time, R.G. was on the honor roll and reportedly adjusting well to his new environment. Based on this evidence, the district court properly concluded that R.G.'s best interest would be

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<sup>7</sup>Primm, 109 at 506, 853 P.2d at 105.

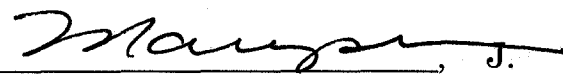
<sup>8</sup>Gepford, 116 Nev. at 1037, 13 P.3d at 49.

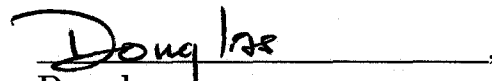
<sup>9</sup>Id.

served by continuing to live with his father in North Carolina.  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Jennifer Elliott, District Judge, Family Court Division  
Persi J. Mishel, Settlement Judge  
Warhola & Brooks, LLP  
Christensen & Sondgeroth, Chtd.  
Clark County Clerk