


IN THE SUPREME COURT OF THE STATE OF NEVADA

NANCY SHADLEY,  
Appellant,  
vs.  
JACK THACKER,  
Respondent.

No. 46361

**FILED**

MAR 09 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant, the maternal grandmother, visitation with the minor children. Third Judicial District Court, Lyon County; Robert E. Estes, Judge.

Holly Thacker and respondent Jack Thacker were divorced in 2001. They have two minor children from the marriage, ages ten and thirteen. Under the divorce decree, Holly was awarded primary physical custody of the children and Jack was awarded visitation.

In 2000, Holly was diagnosed with cancer. Appellant Nancy Shadley, Holly's mother and the children's grandmother, helped Holly with the children during her cancer treatment. Nancy also provided financial support for the family.

In 2004, when Holly was informed that she was terminally ill, she sent the children to live with Jack and his new wife. Holly died in September 2004.

The record shows that Jack and Nancy's relationship was strained. Jack denied Nancy visitation with the children. Jack also obtained a restraining order against Nancy and her husband, requiring them to refrain from contacting the children.

Nancy then moved the district court for visitation with the children, and Jack opposed the motion. Attached to Jack's motion was an affidavit executed by Holly. The affidavit stated Holly's concerns about Nancy having visitation with the children.

At a hearing on the visitation motion, Nancy objected to the admission of Holly's affidavit on the basis that it constituted hearsay and was not a dying declaration. The district court admitted the affidavit, but stated that it was "irrelevant" to the district court's decision whether to award Nancy visitation with the children. After the hearing, the district court entered an order denying Nancy's motion for visitation. Nancy appeals.

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> Under NRS 125C.050(4), if a parent of the child has denied a third party visits with the child, there is a rebuttable presumption that granting the third party a right to visitation is not in the child's best interest. NRS 125C.050(4)

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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).

provides that “[t]o rebut this presumption, the party seeking visitation must prove by clear and convincing evidence that it is in the best interests of the child to grant visitation.”

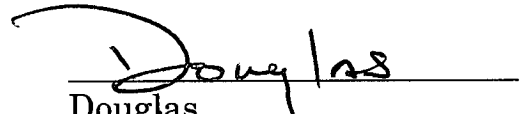
On appeal, Nancy contends that the district court abused its discretion when it denied her motion for visitation because she assisted the children during their mother’s illness and developed a close relationship with them and, thus, visitation is in their best interests. Moreover, Nancy contends, among other things, that the admission of Holly’s affidavit was “extremely prejudicial and requires reversal.”

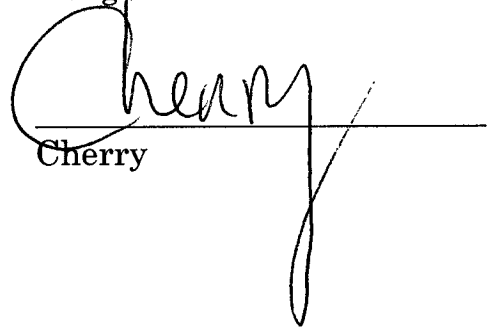
In its order denying Nancy’s visitation motion, the district court concluded that Nancy failed to rebut, by clear and convincing evidence, that visitation was in the children’s best interests. In particular, the court found it troubling that Nancy “consistently questioned and complained about [Jack] and his decisions on how to raise the children; both in front of the children and in the community at large.” The district court stated that Jack is a fit parent and should be free to raise the children as he deems best. Moreover, the court noted that while a bond existed between Nancy and the children, it questioned Nancy’s desire to raise the children as her “own,” rather than as grandchildren. With regard to Holly’s affidavit, the documents before this court show that the district court gave it little, if any, weight when deciding whether to award Nancy visitation. Even without the affidavit, the record supports the

district court's decision to deny Nancy visitation.<sup>3</sup> Thus, we conclude that the district court did not abuse its discretion when it denied Nancy's motion for visitation. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Robert E. Estes, District Judge  
Carolyn Worrell, Settlement Judge  
Law Offices of Roderic A. Carucci  
Steve E. Evenson  
Lyon County Clerk

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<sup>3</sup>See Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998) (providing that rulings supported by substantial evidence will not be disturbed on appeal).