IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF J.L.H.

ROXANNE D. AND EDWARD D.,
Appellants,
vs.
HARMONY H., N/K/A HARMONY C.,
Respondent.

No. 47628

FILED

JUN 08 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order terminating a guardianship, changing a child custody arrangement, and denying grandparent visitation. Sixth Judicial District Court, Lander County; John M. Iroz, Judge.

Appellants are the paternal grandparents of the four-year-old child who is the subject of the present custody dispute. Respondent is the child's natural mother. When respondent and the child's father were contemplating divorce, they agreed to name appellants as the child's sole legal and physical custodians. The custody agreement was adopted and incorporated into the divorce decree. According to respondent, the custody arrangement was intended to be temporary pending respondent getting her life in order. Respondent regularly exercised visitation with the child.

Not long after the divorce decree was entered, appellants obtained a guardianship over the child.[1] Approximately one year after the

[1]According to respondent, she failed to attend the guardianship proceeding because appellants assured respondent that the hearing only concerned obtaining insurance coverage for the child.

07-12553

divorce decree was entered, respondent moved the district court to terminate the guardianship. Respondent contended that she is a fit parent and that it is in the child's best interest to be in her custody. Subsequently, respondent filed a motion to change the child custody arrangement. Appellants opposed both motions and filed a countermotion for visitation.

The district court granted respondent's motions and terminated the guardianship, awarded respondent sole legal and physical custody of the child, and denied appellants' motion for visitation. Appellants have appealed.

The district court has broad discretionary powers to determine questions of child custody, and this court will uphold the district court's determination absent a clear abuse of discretion.[2] In reviewing these determinations, we must be satisfied that the district court made its decision for the appropriate reasons.[3]

On appeal, appellants contend that the district court erred when it failed to apply the two-prong Murphy[4] test, as required under Hudson v. Jones.[5] Indeed, in Hudson, this court concluded that the two-

---

[2]See Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

[3]Id.; see also Culbertson v. Culbertson, 91 Nev. 230, 533 P.2d 768 (1975).

[4]See Murphy v. Murphy 84 Nev. 710, 711, 447 P.2d 664, 665 (1968) (providing that the district court may consider changing primary physical custody if the parents' circumstances have been materially altered, and the child's welfare would be substantially enhanced by the change).

[5]122 Nev. ___, ___, 138 P.3d 429, 431 (2006). We note that the Hudson opinion was entered on July 13, 2006, and here, the district court

continued on next page . . .

prong analysis announced in Murphy applies to custody modifications between a parent and a nonparent.[6] In their opposition to the district court motion to change custody, appellants argued that the applicable legal standard for a change of primary physical custody is the Murphy test.

When determining whether to terminate the guardianship and change the child custody arrangement, the district court considered the parental preference doctrine,[7] and without citing to the Murphy test, considered whether changed circumstances warranted changing the custody arrangement and whether the change would benefit the child. Thus, while the district court did not express apply the Murphy test, it did so implicitly.

The court found that respondent intended for the custody arrangement to be temporary. The court also observed that respondent has maintained constant contact with the child, has remarried and had

---

. . . continued
entered its final written order on May 30, 2006, before the Hudson opinion was entered.

[6]Id.

[7]See NRS 159.061(1) (providing that "[t]he parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor"); see also NRS 125.500(1); Locklin v. Duka, 112 Nev. 1489, 929 P.2d 930 (1996); Litz v. Bennum, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995) (noting that the parental preference presumption "must be overcome either by a showing that the parent is unfit or other extraordinary circumstances").

another child, and that respondent has been drug-free for a significant period of time. Moreover, the court noted that respondent is not required to work and can devote her time to raising the children. The court also considered appellants' allegations of physical abuse by respondent against the child and did not find any evidence of abuse.[8] Ultimately, the district court determined that it was in the child's best interest to live with her mother.

As for appellants' motion for visitation, under NRS 125C.050(3), "[a] party may seek a reasonable right to visit the child during his minority . . . only if a parent of the child has denied or unreasonably restricted visits with the child." According to the fast track statement and response, and the appellate record, respondent did not deny or unreasonably restrict appellants' visitation with the child. Moreover, the record shows that the district court encouraged the parties to amicably arrange for some type of visitation between the child and appellants. After the parties were unable to reach an agreement regarding visitation, the court concluded that it was not in the child's best interest to have visitation with the appellants and denied their motion. Substantial evidence supports the district court's determination not to award appellants visitation.[9]

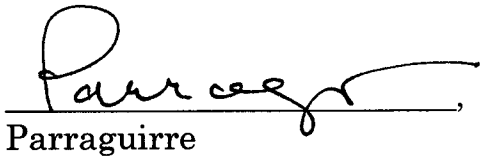
---

[8]See Greeson v. Barnes, 111 Nev. 1198, 900 P.2d 943 (1995) (holding that determining the credibility of a witness is within the sole province of the trier of fact), superseded on other grounds by statute as stated in Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).

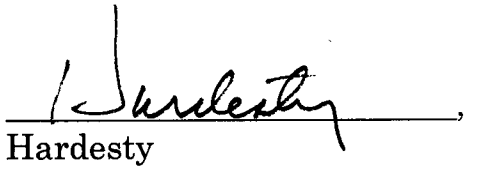
[9]See Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998) (noting that if the district court's determinations are supported by substantial evidence, we will not disturb them on appeal).

Having considered the parties' fast track statement and response, and the record, we conclude that the district court did not abuse its discretion when it terminated the guardianship, awarded respondent custody of the child, and denied appellants' motion for visitation. Thus, we affirm the district court's order.

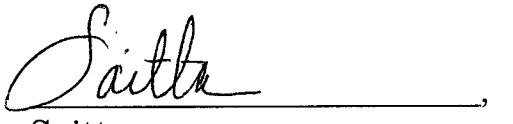
It is so ORDERED.[10]



_____, J.
Parraguirre



_____, J.
Hardesty



_____, J.
Saitta

cc: Hon. John M. Iroz, District Judge
Carolyn Worrell, Settlement Judge
Jack T. Bullock II
Hillewaert Law Firm
Lander County Clerk

---

[10]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.