

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMIE HENMAN,
Appellant,
vs.
SEAN HENMAN,
Respondent.

No. 48386

FILED

JUL 03 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Terrance P. Marren, Senior Judge.

After four years of marriage, appellant Jamie Henman filed a complaint for divorce from respondent Sean Henman. In the complaint, Jamie sought primary physical custody of the parties' minor child. Jamie contended that Sean was not taking care of his diabetes, was drinking excessive alcohol, and that his alleged behavior placed the child in danger. The record shows that Jamie previously sought restraining orders against Sean for alleged domestic violence. Sean filed an answer and a counter-motion for primary physical custody. The matter was scheduled for an evidentiary hearing.

At the hearing, a number of witnesses testified as to issues concerning, among other things, whether Sean was properly caring for his diabetes and if his diabetes was interfering with his ability to care for the child. Jamie and Sean also testified extensively about the alleged domestic violence perpetrated by Sean against Jamie. The record further reveals that at some point, Jamie hired an investigator to follow Sean for

the purpose of establishing whether Sean was purchasing and/or drinking alcohol. The investigator testified that on one occasion Sean stopped at a liquor store and made a purchase, but the investigator was unable to tell whether the purchase was alcohol.

Before entering the divorce decree, the district court entered findings of facts and conclusions of law in which the court found that the evidence failed to establish that Sean does not manage his diabetes and that the child is at risk when in Sean's care. The court did not find Jamie credible and was not persuaded by her domestic violence allegations, and the court stated that Sean's testimony with regard to the alleged domestic violence was "more accurate than [Jamie's] version." The divorce decree was subsequently entered, and the court awarded the parties shared joint legal and physical custody of the child. Jamie has appealed.

Matters of custody, including visitation, rest in the district court's sound discretion.¹ This court will not disturb the district court's custody decision absent a clear abuse of discretion.² In determining child custody, the court's sole consideration is the child's best interest.³ Here, the district court found that it is in the child's best interest that the parties share joint legal and physical custody. Moreover, the court considered conflicting testimony and found that the evidence did not establish that Sean does not manage his diabetes, that the child is at risk

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

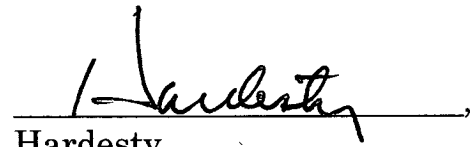
²Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).

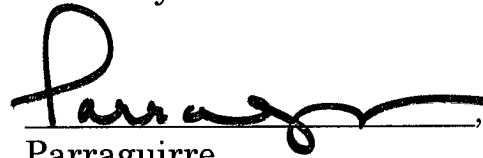
³NRS 125.480(1).

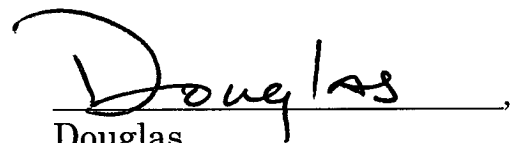
while in Sean's care, or that there was domestic violence perpetrated by Sean against Jamie.⁴

Having reviewed the fast track statement and response and the appellate record, we conclude that the district court did not abuse its discretion when it awarded the parties joint legal and physical custody and, thus, we affirm the district court's child custody determination.

It is so ORDERED.⁵


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁴Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (recognizing that it is the role of the fact finder to determine the credibility of witnesses and weighing the evidence witness credibility); DeLee v. Roggen, 111 Nev. 1453, 907 P.2d 168 (1995) (noting that a district court's findings will not be disturbed unless they are clearly erroneous and not based on substantial evidence); Kobinski v. State, 103 Nev. 293, 738 P.2d 895 (1987) (providing that this court will not substitute its own evaluation of the evidence for that of the district court when the district court had an opportunity to hear the witnesses and judge their demeanor).

⁵Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal. In addition, we deny appellant's April 27, 2007 motion for an order allowing transmission of original exhibits.

cc: Chief Judge, Eighth Judicial District
Hon. Terrance P. Marren, Senior Judge, Family Court Division
Persi J. Mishel, Settlement Judge
Graves & Leavitt
Lynn Conant
Eighth District Court Clerk