

IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHRYN L. JUND,
Appellant,
vs.
BRIAN J. JUND,
Respondent.

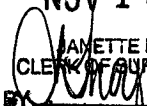
No. 49242

KATHRYN L. JUND,
Appellant,
vs.
JAMES E. JUND AND BONITA JUND,
Respondents.

No. 49243

FILED

NOV 13 2007

JAMETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

These consolidated proper person appeals are from a district court order establishing child custody. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

The underlying proceedings involve a child custody dispute between appellant, the child's mother, and respondents, the child's father and paternal grandparents.

In 2005, respondent Brian Jund filed a complaint for divorce from appellant Kathryn Jund. At the time, Brian also sought an ex parte order for temporary custody of the parties' minor child. Kathryn filed an answer and a countermotion for custody. Both Brian and Kathryn accused the other of drug and/or alcohol abuse and domestic violence. The district court entered a temporary custody order awarding Brian primary physical custody of the child.

At a subsequent hearing to address various motions filed by the parties, the district court determined that it was in the child's best interest to live with respondents James and Bonita Junds, the child's paternal grandparents, pending resolution of the proceedings, and thus,

the court awarded the Junds temporary custody of the child. Subsequently, the Junds filed a petition for permanent guardianship under a different district court docket number, and the cases were consolidated.

After a three-day hearing, during which Kathryn, Brian, and Bonita testified, among others, the district court entered an order awarding custody of the child to the Junds, with Brian and Kathryn having visitation. In reaching its decision, the district court considered, among other things, conflicting testimony concerning Kathryn's and Brian's substance abuse problems, concerning domestic violence by Kathryn and Brian against each other, and concerning Kathryn's and Brian's veracity. The court also explained that it considered which party would more likely provide the child with a stable home environment. Kathryn 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

In the present matter, the district court recognized that NRS 125.480(1)-(3) creates a preference that a child be placed in the joint physical custody of his or her parents, or with either parent, unless the facts of the case show otherwise, in which case the child should be placed

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).

in the custody of a person “in whose home the child has been living and where the child has had a wholesome and stable environment.”⁴

Moreover, NRS 125.480(4)(k) 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 both parents have committed domestic violence, the court must then determine which person was the primary physical aggressor.⁵ There is a rebuttable presumption that “sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child.”⁶

Here, the court found that both Kathryn and Brian have consistent problems with substance abuse, even though Kathryn has made recent strides in improving her life. Still, the court found Brian more credible than Kathryn regarding the substance abuse testimony.⁷ And with regard to domestic violence, the court found that both parents have been the aggressor at different times, and thus, it is not in the child’s best

⁴NRS 125.480(3)(b).

⁵NRS 125.480(6).

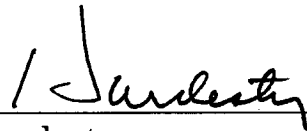
⁶NRS 125.480(5).

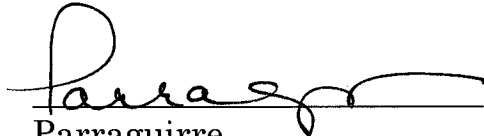
⁷Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (recognizing that it is the role of the fact finder to determine the credibility of witnesses and weighing the evidence of witness credibility); DeLee v. Roggen, 111 Nev. 1453, 907 P.2d 168 (1995) (noting that a district court’s findings 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).

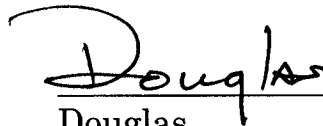
interest to be in the custody of either parent. Ultimately, the court found that since September 2005, the Junds have provided the child with a wholesome and stable environment.

Having reviewed the record and appellant's proper person civil appeal statement, we conclude that the district court did not abuse its discretion when it found that both parties had committed domestic violence and when it awarded the Junds custody of the child. Accordingly, we conclude that the district court did not abuse its discretion in determining what was in the child's best interest, and thus, we affirm the district court's child custody determination.

It is so ORDERED.⁸


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. J. Michael Memeo, District Judge
Kathryn L. Jund
Hillewaert Law Firm
David D. Loreman
Elko County Clerk

⁸In light of this order, we deny as moot respondent's July 6, 2007 motion to dismiss.