

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE DENNIS ROBINSON,
Appellant,
vs.
VICTORIA EMILY ROBINSON,
Respondent.

No. 49983

FILED

MAR 10 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order modifying a child custody arrangement. Third Judicial District Court, Lyon County; David A. Huff, Judge.

Appellant Jesse Dennis Robinson and respondent Victoria Emily Robinson were divorced in 1999, with the district court entering a default divorce decree. Finding that Jesse had absconded with and concealed from Victoria the couple's two minor children for approximately two years, the district court's divorce decree awarded sole legal and physical custody of the children to Victoria. Jesse was not awarded any visitation or contact rights with the children in the divorce decree.

Thereafter, Jesse and Victoria signed a stipulation to, among other things, share joint legal custody of the children. The parties also agreed that Victoria would retain primary physical custody. This stipulation eventually was accepted by the district court and incorporated into an order in December 2003.

In 2004, Jesse filed a motion in the district court seeking primary physical custody of the children. In this motion, Jesse alleged that since the December 2003 order, the children's grades and attendance at school had deteriorated to the point that they might have to repeat their current year of schooling, that Victoria was frequently relocating her

residence and showed signs of alcoholism, and that when he picked up the children for Christmas vacation, there was no heat or hot water at Victoria and the children's residence. Victoria did not oppose the motion, and the district court entered an order awarding primary physical custody of the two children to Jesse. An order granting Victoria's motion for makeup visitation was granted by the district court on January 6, 2006.

Thereafter, in November 2006, Victoria filed a motion to modify primary physical custody, based on changed circumstances. A hearing subsequently was held, and on July 23, 2007, the district court entered an order granting Victoria's motion in part and modifying the custody arrangement so that Victoria had primary physical custody of the youngest of the two children. Jesse appealed.

On appeal, Jesse argues that it is in the children's best interests to remain together and, therefore, the district court abused its discretion by modifying the custody arrangement so that the two children would be separated. Jesse also asserts that the district court abused its discretion in determining that there was a change of circumstances warranting a custody modification, and that the district court committed reversible error by allowing and considering evidence concerning events that took place before the last custody determination.

We have repeatedly recognized the district court's broad discretionary powers to determine child custody matters, and we will not disturb the district court's custody determinations absent a clear abuse of that discretion.¹ Further, we will not set aside the district court's factual

¹Rico v. Rodriguez, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005) (citing Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993)).

findings if supported by substantial evidence, which is “evidence that a reasonable person may accept as adequate to sustain a judgment.”²

In Nevada, when a district court determines the custody of a minor child, “the sole consideration of the court is the best interest of the child.”³ When the district court determines a child’s best interests, we presume that the district court has properly exercised its discretion.⁴ However, the district court must have reached its conclusions for the appropriate reasons.⁵ While the parties may apply at any time to modify or vacate a previous custody order, the district court may modify the primary physical custody of a child “only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child’s best interest is served by the modification.”⁶

Here, with regard to changed circumstances necessary to support modification, the district court found that Victoria had improved both her living situation and her employment situation, and we conclude that substantial evidence in the record supports these findings by the district court. Further, the court could reasonably conclude that these advancements by Victoria in her living and employment situations benefit

²Ellis v. Carucci, 123 Nev. __, __, 161 P.3d 239, 242 (2007).

³NRS 125.480(1).

⁴Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

⁵Rico, 121 Nev. at 701, 120 P.3d at 816; Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

⁶Ellis, 123 Nev. at __, 161 P.3d at 242.

the youngest child's welfare.⁷ Finally, the district court noted that it had considered evidence that the child's grades and performance at school had recently been cause for concern.

With respect to the youngest child's best interest, the district court concluded that a change in primary physical custody was warranted, notwithstanding the separation from a sibling. In particular, the district court specifically found that the separation of the children would not be "as devastating as the testimony of the father would indicate."⁸ In reaching its conclusion that it was in the youngest child's best interest for Victoria to have primary physical custody, the court considered documentary evidence and testimony from multiple witnesses. For example, there was testimony given demonstrating that the youngest child had a closer and healthier relationship with Victoria than with Jesse, evidence presented regarding instances of Jesse denying Victoria court-awarded visitation rights, and testimony given regarding Victoria's ability to meet the particular emotional and developmental needs of the youngest child. Accordingly, the record shows that in the underlying matter, the district court evaluated the circumstances and observed the parties in determining the best interests of the child, and we perceive no abuse of discretion.


Having reviewed the fast track statement, the response, appendices, and the parties' supporting documents, we conclude that the

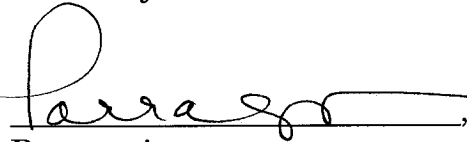
⁷Ellis, 123 Nev. at __, 161 P.3d at 243 (indicating that changed circumstances should be evaluated from the child's or the family unit's perspective).

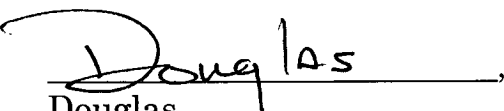
⁸See NRS 125.480(4)(i) (requiring the district court to consider whether a child would be able to maintain any sibling relationship).

district court did not abuse its discretion when it modified the custody arrangement, and thus, we affirm the district court's modification order.⁹

It is so ORDERED.¹⁰


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. David A. Huff, District Judge
Carolyn Worrell, Settlement Judge
Wayne A. Pederson
Day R. Williams
Lyon County Clerk

⁹We have considered Jesse's argument that the district court committed reversible error by allowing and considering evidence of events that took place before the previous custody determination, and in light of the other substantial evidence supporting the district court's decision, we conclude that his argument lacks merit and thus does not warrant reversal. See McMonigle v. McMonigle, 110 Nev. 1407, 1409, 887 P.2d 742, 744 (1994) (stating that "[i]t is harmless error if a court incorrectly admits evidence which does not affect the substantial rights of the parties," and that a court, sitting without a jury, will be presumed to have disregarded improper evidence when there exists other substantial evidence upon which the court based its findings).

¹⁰In light of this order, we vacate the stay imposed by our October 16, 2007 order.

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