

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF K.F.H., A MINOR
CHILD.

No. 50644

ALFREDO H.,
Appellant,
vs.
SHERRI J. S. AND SHELLI B.,
Respondents.

FILED

APR 08 2009
THAQI A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting respondents' petition for guardianship of the minor child. Second Judicial District Court, Family Court Division, Washoe County; Chuck Weller, Judge.

FACTS

The minor child in this matter was born in June 1996. His parents divorced in October 2000, and the divorce decree awarded sole legal and physical custody of the child to his mother. Appellant is the child's biological father. When the child's mother died in January 2006, his maternal grandmother, respondent Shelli B., moved to Reno to care for the child. On February 5, 2007, respondents, the child's maternal grandmother and aunt, petitioned for guardianship, including emergency temporary guardianship, of the child, arguing that appellant (1) had essentially abandoned the child, seeing him only about four times per year; (2) had failed to consistently pay the court-ordered \$100 per month in child support to the child's mother; (3) had not taken any interest in the child's education; (4) had seven other children, none of whom resided with

him; (5) had originally agreed to permit respondents a guardianship of the child, but, upon learning that the child would receive social security benefits, announced at a gathering following the mother's death, that he needed the social security death benefits to which the child is entitled in order to pay child support obligations for his other children. Respondents also asserted that the child had a strong relationship with respondents, wished to live with the aunt, and that he felt uncomfortable around appellant. Although not included in the appellate record, appellant also apparently filed a guardianship petition on February 9, 2007.

A hearing was held on February 13, 2007, on the competing requests for temporary guardianship, after which the court granted temporary guardianship of the child to respondents, with appellant to have visitation three out of four consecutive weekends. Following an evidentiary hearing in August 2007, the district court entered an order for permanent guardianship of the child in favor of respondents.

In support of its determination, the court found that (1) appellant had no contact with the child for 88 days following the entry of the temporary guardianship order; (2) the child, who was 11 years old at the time of the hearing, had expressed a preference to live with his aunt, respondent Sheri S., in Dallas, Texas; (3) the child's education would be hindered if he lived with appellant, who had shown no interest in the child's education or extracurricular activities; (4) appellant lived with a friend and had seven other children, none of whom lived with him; (5) appellant had no medical insurance for the child or any of his other children; (6) appellant's testimony indicating that he wished to have custody of the child was inconsistent with any attempts that appellant made to have a relationship with the child since the divorce in 2000, (7)

the child did not have a relationship with any of appellant's other children; (7) respondents had been involved in the child's life consistently, both before and after the mother's death; (9) respondents had demonstrated a commitment to enhancing the child's life and education; and (10) guardianship in favor of respondents would serve the child's best interest and guardianship in favor of appellant would be detrimental to the child. This appeal followed.

DISCUSSION

“The district court enjoys broad discretionary powers in determining questions of child custody.” Matter of Guardianship & Estate of D.R.G., 119 Nev. 32, 37, 62 P.3d 1127, 1130 (2003) (quoting Locklin v. Duka, 112 Nev. 1489, 1493, 929 P.2d 930, 933 (1996)). This court will not disturb a district court's custody determination absent an abuse of that discretion. Id.

A minor child's parent, if qualified and suitable, is given preference over all others for appointment as guardian for the minor. NRS 159.061. In accordance with that preference, NRS 125.500(1) requires the district court to “make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interest of the child” before awarding custody to a nonparent. Hudson v. Jones, 122 Nev. 708, 711, 138 P.3d 429, 431 (2006). Notwithstanding the parental preference, the overarching concern in matters involving child custody is the best interest of the child. Clark County Dist. Att'y v. Dist. Ct., 123 Nev. ___, 167 P.3d 922 (2007) (providing, in the context of an abuse and neglect proceeding, that the child's best interest necessarily is the main consideration for the district court when exercising its discretion concerning placement

notwithstanding any familial preference); Fisher v. Fisher, 99 Nev. 762, 670 P.2d 572 (1983) (explaining, in the context of evaluating a nonparent's guardianship petition, that in custody disputes between parents and nonparents, the primary emphasis is on the child's best interest). In that regard, this court, in reviewing a district court's decision denying a nonparent's petition for guardianship of a minor child, explained that "the welfare of the child is superior to the claim of the parent so that the right of the natural parent must yield where it clearly appears that the child's welfare requires that custody be granted to another." Fisher, 99 Nev. at 765, 670 P.2d at 573 (quoting Doe v. Doe, 399 N.Y.S.2d 977, 982 (N.Y. Sup. Ct. 1977)).

This court has set forth factors for district courts to use in determining when sufficiently compelling or extraordinary circumstances exist to overcome the parental presumption. Locklin v. Duka, 112 Nev. 1489, 1496-97, 929 P.2d 930, 934-35 (1996). Here, consistent with those factors, the district court, after a two-day evidentiary hearing, made findings concerning appellant's (1) unjustifiable absence of parental custody, (2) neglect in parental responsibilities, and (3) lack of demonstrated commitment to raising the child. The court also found that stability and security in the child's future with appellant appeared unlikely and that the child's right to an education would be impaired if a guardianship was entered in favor of appellant. On the other hand, the court determined that the child's physical, emotional and other needs were being met by respondents and had been substantially enhanced under respondents' care, and the child had a bonded relationship with respondents to the extent that it would cause significant emotional harm to remove the child from respondents' custody. These findings support the

district court's determination. Id. Accordingly, as we perceive no abuse of discretion in the district court's determination, we

ORDER the judgment of the district court AFFIRMED.¹

Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Hon. Chuck Weller, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Alfredo Herrera
Laub & Laub
Washoe District Court Clerk

¹On February 6, 2006, a district court order was filed in this matter, wherein the district court certified that it is inclined to grant respondents' motion, filed in the underlying matter, to modify the visitation schedule, based on respondents' undisputed contention that appellant failed to meet the child at the airport and exercise his scheduled visitation when, on two separate occasions the child flew from Dallas, Texas to Reno at respondents' expense for the purpose of visiting appellant. The district court's certification order was not accompanied by a corresponding motion for a remand under Huneycutt v. Huneycutt, 94 Nev. 79, 575 P.2d 585 (1978), but to the extent that respondents are requesting any relief from this court in the form of a remand, we deny the request as moot, since, in light of this order, the district court is vested with jurisdiction to modify its earlier custody determination.