

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH GERARD BANKS,

No. 35487

Appellant,

FILED

vs.

JEANETTE SUE BANKS,

OCT 12 2000

Respondent.

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting respondent's motion to change custody of the minor child.


The trial court enjoys broad discretionary powers in determining child custody issues and this court will not disturb the district court's judgment absent a clear abuse of discretion. See *Sims v. Sims*, 109 Nev. 1146, 865 P.2d 328 (1993). "A change of custody is warranted only when: (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change." *Murphy v. Murphy*, 84 Nev. 710, 711, 447 P.2d 664, 665 (1968). The moving party in a custody proceeding must show that circumstances have substantially changed since the most recent custodial order. See *McMonigle v. McMonigle*, 110 Nev. 1407, 1408, 887 P.2d 742, 743 (1994).

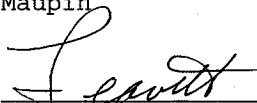
NRS 125.480 provides that, in determining the best interest of the child, the court must consider whether either of the parents has engaged in domestic violence. See NRS 125.480(4)(c). If the district court concludes that one of the parties has committed domestic violence, a rebuttable presumption arises that "sole or joint legal custody of the child by the perpetrator of the domestic violence is not in the best interest of the child." NRS 125.480(5). Moreover, where either party has engaged in domestic violence, the district court must determine which party is the "primary


physical aggressor." NRS 125.480(6). To determine the primary physical aggressor, the district court may consider prior acts of domestic violence by either party, the likelihood of future injury, and any other relevant factors. See NRS 125.480(6)(a)-(e).

Here, the district court considered the allegations of domestic violence by both parties. The district court found that it was in the best interest of the child to live with respondent. The court also noted that once appellant completed the domestic violence assessment and anger management classes the court would revisit the supervised visitation arrangement. Accordingly, we conclude that the district court did not abuse its discretion when it ordered the change in custody of the child from appellant to respondent. We therefore affirm the district court's order.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Gerald W. Hardcastle, District Judge,
Family Court Division
Dennis A. Kist & Associates
Jeanette Sue Banks
Clark County Clerk