

IN THE SUPREME COURT OF THE STATE OF NEVADA

CYNTHIA LOPEZ,

No. 35730

Appellant,

vs.

DONALD DAVIDSON,

Respondent.

FILED

JUL 11 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *S. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a final judgment establishing custody of the parties' minor child. On appeal, appellant contends that the district court erred by (1) denying her motion to dismiss respondent's complaint for want of subject matter jurisdiction under the Uniform Child Custody Jurisdiction Act ("UCCJA") as codified in NRS Chapter 125A; (2) exercising jurisdiction under the UCCJA; and (3) awarding respondent joint legal and physical custody of the child.

First, appellant Cynthia Lopez contends that Nevada does not have subject matter jurisdiction to address the issues of custody and visitation. Specifically, she contends that Nevada is not the child's home state; and assuming that Nevada is technically considered the child's home state, the significant connections Lopez and the child have with North Carolina outweigh the importance of the home state in determining jurisdiction. We disagree.

NRS 125A.050(1)(a) authorizes jurisdiction of a Nevada court to make an initial or modifying decree regarding child custody if Nevada

1. [i]s the home state of the child at the time of commencement of the proceeding; or
2. Had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other

reasons, and a parent or person acting as a parent continues to live in this state

(Emphasis added.) NRS 125A.040(5) defines "home state" for a child less than six months old as "the state in which the child lived from birth with any of the persons mentioned [parent or contestant]."

When respondent Donald Davidson commenced this action on March 25, 1998, by filing a complaint in Nevada district court seeking to establish paternity and custody, the child had been living in North Carolina with Lopez for approximately one month. Thus, Nevada does not have jurisdiction pursuant to NRS 125A.050(1)(a)(1).

However, we conclude that NRS 125A.050(1)(a)(2) grants Nevada jurisdiction over this proceeding. Nevada was the child's home state, as defined by NRS 125A.040(5), within six months before commencement of this proceeding and prior to his removal to North Carolina by Lopez. Specifically, the child was born and lived in Las Vegas with both his parents before being moved to North Carolina when he was approximately eight weeks old. Further, the child was taken to North Carolina one month before Davidson filed his initial complaint. The record also reflects that Davidson continues to live in Nevada. Therefore, we conclude that because the child's home state is Nevada, under NRS 125A.050(1)(a)(2), the district court properly exercised subject matter jurisdiction to make an initial decree regarding child custody.

Second, Lopez contends that the district court erred in exercising jurisdiction under the UCCJA. Specifically, Lopez argues that the district court improperly held the September 14, 1999, evidentiary hearing to evaluate Lopez's claims of physical abuse by Davidson and his alleged drug use

because the North Carolina court had assumed jurisdiction. We disagree.

NRS 125A.070(1) provides that a court that has jurisdiction to make a custody decree may decline to exercise its jurisdiction if it finds that it is an inappropriate forum to make a custody determination and that a court of another state is the more appropriate forum. "In determining whether it is an inappropriate forum, the court shall consider if it is in the best interest of the child that another state assume jurisdiction."¹ The court may consider the following factors:

- a. Whether another state is or recently was the child's home state;
- b. Whether another state has a closer connection with the child and his family or with the child and one or more of the contestants;
- c. Whether substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another state;
- d. Whether the parties have agreed on another forum which is no less appropriate; and
- e. Whether the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in NRS 125A.020.²

Here, on May 28, 1999, a North Carolina court declared that because allegations of abuse were made regarding the child, an emergency existed and it was therefore in the child's best interest that he not be removed from North Carolina pending a resolution of the subject matter jurisdiction issue by the Nevada Supreme Court.

However, at the September 14, 1999, evidentiary hearing, the district court found that the evidence failed to substantiate Lopez's abuse claims. The evidence indicated

¹NRS 125A.070(3).

²Id.

that Davidson had used cocaine and marijuana in the past but had quit shortly after the child's birth. Other evidence was presented that Lopez herself used drugs. Further, the record reflects that Davidson tested negative for controlled substances.

Although Lopez has immediate family living in North Carolina, as she asserts repeatedly, the record reflects that she also has family living in Las Vegas, as does Davidson. We conclude that the child has no closer a connection with North Carolina than it does with Nevada. Therefore, because Nevada properly obtained jurisdiction when Davidson filed his complaint, we conclude that jurisdiction is appropriate in Nevada.

Third, Lopez contends that the district court erred in awarding Davidson joint legal and physical custody of the child. Specifically, Lopez argues that Davidson's pleadings failed to conform to the procedural jurisdiction requirements imposed by NRS 125A.120(1)(a)-(c). Lopez also asserts that the district court abused its discretion in awarding Davidson joint legal and physical custody because evidence indicated that Davidson was commonly under the influence of drugs while around the child and that Davidson physically and mentally abused both Lopez and the child. We disagree.

We conclude that Davidson's pleading provided the district court with sufficient information for it to determine whether it had jurisdiction. One of the stated purposes of NRS Chapter 125A is to "[a]void jurisdictional competition and conflict with courts of other states."³ Because the district court had before it enough evidence to determine jurisdiction, we conclude that although Davidson's pleading was technically

³NRS 125A.020(1).

defective, the district court had subject matter jurisdiction to render a decision.⁴

A district court's determination of custody will not be disturbed unless there has been a clear abuse of discretion.⁵ However, this court must also be satisfied that the district court's determination was made for the appropriate reasons.⁶ Further, this court will not set aside the district court's factual determinations if they are supported by substantial evidence.⁷ Substantial evidence is that which "'a reasonable mind might accept as adequate to support a conclusion.'"⁸

Here, the record reflects that Davidson undertook a paternity test to conclusively establish that he is the child's father. Davidson also responded to accusations made by Lopez that he abused drugs and physically abused both Lopez and the child. Testimony given at the hearing as determined by the district court, however, failed to substantiate Lopez's abuse claims. Other evidence indicated that Davidson had used cocaine and marijuana in the past but had quit shortly after the child's birth. The record reflects that Lopez took the child to North Carolina without either informing Davidson or obtaining his consent. The record also reflects that the

⁴In response to Lopez's contention that Davidson was not in compliance with the jurisdictional requirements, the record reflects that the district court judge responded, "I had enough information where -- I mean, as far as the jurisdictional issue is concerned, that's final. I have jurisdiction."

⁵See Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993).

⁶See Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

⁷See Primm, 109 Nev. at 506, 853 P.2d at 105.

⁸Hermanson v. Hermanson, 110 Nev. 1400, 1405, 887 P.2d 1241, 1245 (1994) (quoting State Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

district court required Davidson to submit to a controlled substance test that he subsequently passed. In sum, the district court found that Davidson was fit to exercise joint legal and physical custody of the child. Because the custody determination was supported by substantial evidence, we conclude that the district court did not abuse its discretion in awarding Davidson joint legal and physical custody.

Having considered each of Lopez's assignments of error and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Young J.
Young

Leavitt J.
Leavitt

Becker J.
Becker

cc: Hon. Cynthia Dianne Steel, District Judge,
Family Court Division
Delanoy Schuetze & McGaha
Rands South & Gardner
Clark County Clerk