

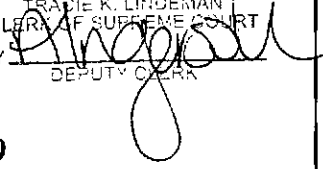
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN W. CARUSO,
Appellant,
vs.
AMANDA MAIZE,
Respondent.

No. 62470

FILED

JAN 21 2014

TRADIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a fast track child custody appeal from a district court child custody order. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

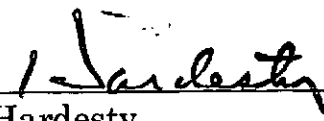
Appellant and respondent were never married and have two minor children together. Appellant filed a complaint for custody and the district court held an evidentiary hearing. The district court found that respondent had a domestic violence conviction for a battery against appellant's mother during the time the parties and the two children resided with appellant's mother. The district court, however, found that the domestic violence conviction was an aberration and that "the rebuttable presumption of domestic violence is not persuasive enough to give [appellant] sole legal and sole physical custody." The court further stated that it began its analysis with a presumption of joint physical custody and granted respondent primary physical custody based on the children's best interests.


Generally, child custody matters rest in the district court's sound discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). This court will not disturb the district court's custody decision absent an abuse of discretion. *Castle v. Simmons*, 120 Nev. 98, 101, 86 P.3d 1042, 1045 (2004). The district court's determination must be based on appropriate reasons. *Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993). When determining child custody, the district court's sole consideration is the children's best interests. See NRS 125.480(1). NRS 125C.230(1) sets forth a rebuttable presumption that it is not in the children's best interest to award custody to a parent who has engaged in an act of domestic violence against the children, the parent, or a person residing with the children. The district court must set forth written findings of fact established by clear and convincing evidence that the domestic violence act occurred, as well as a finding that the custody arrangement adequately protects the children and the other parent. NRS 125C.230.

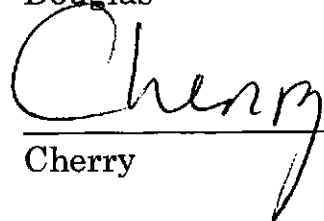
Here, the district court found that respondent had engaged in an act of domestic violence against the children's paternal grandmother when the grandmother was residing with the children. With this finding, a rebuttable presumption arose against respondent having custody. The district court, however, awarded respondent primary physical custody without setting forth any express findings that such a custody arrangement adequately protects the children under NRS 125C.230. Instead, the district court concluded that the presumption itself was not enough to award sole custody to appellant. As the district court failed to

properly apply the presumption and enter the required findings under NRS 125C.230, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings consistent with this order.¹


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division
Rocheleau Law Group/Right Lawyers
Sterling Law, LLC
Eighth District Court Clerk

¹In light of this order, we do not reach appellant's other arguments.