IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ANDRE CONWAY,
Appellant,
vs.
STARA LYNN CONWAY N/K/A STARA ORIEN,
Respondent.

No. 70077

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Robert Andre Conway appeals from a district court order modifying child custody. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Pursuant to their divorce decree, Conway and respondent Stara Orien shared joint legal and physical custody of their minor child. Orien later moved for primary custody for the purpose of relocating to Texas. *See* NRS 125C.0065(1)(b) (providing that if joint physical custody has been established and the nonrelocating parent does not consent to the other parent relocating, the relocating parent must petition the court for primary physical custody for the purpose of relocation). Conway opposed the motion and counterpetitioned for primary physical custody.

During a hearing on a motion to continue the hearing on the opposing custody petitions, Orien asserted that Conway had orally stipulated to her relocation request. The district court then canvassed Conway regarding the stipulation and, during that exchange, Conway indicated that he had issues with certain other requests made by Orien, but that he consented to her relocation with the child. The court also

asked Conway during this exchange if he understood that there could not be a joint physical custody agreement when one parent was in Texas and the other was in Nevada, and Conway stated that he understood that. Ultimately, the district court recognized the stipulation in its minute order and told the parties to attempt to resolve the remaining issues outside of court and that, if they could not be resolved, an evidentiary hearing would be set. The parties remained in disagreement on these other points and a hearing was set.

At the start of the hearing, at which Conway was not present, his counsel informed the court that Conway had not returned numerous messages left for him regarding the hearing and other issues.[1] Based on the lack of communication, Conway's counsel requested to withdraw, which the district court granted. Thereafter, the district court summarily awarded Orien sole legal and primary physical custody of the child with Conway having visitation at Orien's discretion until Conway completed a substance abuse evaluation. The district court also later denied Conway's request for reconsideration, and this appeal followed.

On appeal, Conway challenges the district court's custody award and its refusal to revisit that award on reconsideration, arguing that, in making the award, the district court failed to apply the proper legal standards.

With regard to the physical custody award, we disagree with Conway's argument. The record before this court demonstrates that Conway, of his own volition, agreed to Orien's request to relocate on the

[1]Orien's counsel stated that Conway had responded to emails from Orien during the same period and that those messages were sent to the same address that Conway's counsel had been sending messages.

record and stated his understanding of the fact that relocation meant that a joint physical custody arrangement would no longer be feasible, and the court entered an order to that effect into the court minutes. Thus, Conway's stipulation to the relocation and the necessary change to the physical custody arrangement were effective. *See* EDCR 7.50 ("No . . . stipulation between the parties or their attorneys will be effective unless the same shall, by consent, be entered in the minutes in the form of an order . . . ."); *Grisham v. Grisham*, 128 Nev. 679, 683, 289 P.3d 230, 233 (2012) (analyzing a rule similar to EDCR 7.50 and concluding that it applies in family law cases).

Given that Conway stipulated to the relocation and the change to the physical custody arrangement, we reject his argument that the district court abused its discretion by making these decisions without addressing the NRS 125C.0035(4) best interest factors. *See Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 227 (2009) (recognizing that custodial agreements between parents are enforceable); *see also Mizrachi v. Mizrachi*, 132 Nev. ___, ___ n.11, 385 P.3d 982, 989 n.11 (Ct. App. 2016) (noting that a court's involvement with a custody agreement "should be exercised cautiously in light of the presumption that fit parents act in their children's best interests and the principle that the state generally may only limit parental authority when severe concerns, such as protecting a fundamental right or the safety of the parties' child, are at stake" (internal citations omitted)). Accordingly, we affirm the district court's grant of physical custody to Orien.

Turning to the legal custody award, we conclude that the decision to award sole legal custody to Orien must be reversed and remanded. Although a district court has "broad discretion in child custody

matters," *Rivero*, 125 Nev. at 428, 216 P.3d at 226, the Nevada Supreme Court has held that a district court errs when it modifies custody "without prior specific notice" to the parties that custody may be modified. *Dagher v. Dagher*, 103 Nev. 26, 28, 731 P.2d 1329, 1330 (1987); *see also Mosley v. Figliuzzi*, 113 Nev. 51, 57-58, 930 P.2d 1110, 1114 (1997) (citing *Dagher* with approval), *overruled in part on other grounds by Castle v. Simmons*, 120 Nev. 98, 105 n.20, 86 P.3d 1042, 1047 n.20 (2004). Here, while Orien's motion to modify custody for purposes of relocation generally requested that she be awarded primary custody, she relied on law addressing the change of physical, rather than legal, custody, such as *Druckman v. Ruscitti*, 130 Nev. ___, ___, 327 P.3d 511, 515 (2014) (providing that when the parties share custody and one party wants to relocate, "[t]he proper procedure is to file a motion for primary *physical* custody" (emphasis added)), and *Potter v. Potter*, 121 Nev. 613, 119 P.3d 1246 (2005) (addressing a request for relocation's effect on a physical custody award). As such, we conclude that Conway had no prior specific notice that legal custody may be modified as a result of Orien's motion. And because Conway had no prior specific notice that legal custody might be modified, we conclude that the district court erred in awarding sole legal custody to Orien and reverse that decision.[2] *See Dagher*, 103 Nev. at 28, 731 P.2d at 1330. Accordingly, we

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[2]To the extent Conway argues that the district court erred in deferring its custodial decisions to a parenting coordinator, we conclude that argument lacks merit. The district court did not defer its decision making to a parenting coordinator, but rather, stated that it would not order a visitation schedule until Conway complied with a previous order directing him to complete a substance abuse evaluation. We also reject as unpersuasive Conway's assertion that the court abused its discretion in

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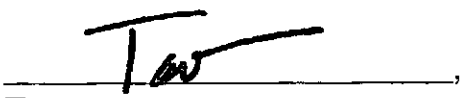
ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[3]


, C.J.
Silver


, J.
Tao


, J.
Gibbons

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sua sponte ordering him to submit to a substance abuse evaluation before a parenting time schedule would be set in its order denying reconsideration. Contrary to Conway's contentions, the record demonstrates that he had previously been ordered to complete this evaluation on several occasions, and his prior counsel acknowledged this directive at a hearing prior to the denial of reconsideration. Indeed, Conway's failure to complete this evaluation was an ongoing issue in the underlying case. As the custody modification and reconsideration orders make clear, Orien has discretion to allow supervised contact with the child until Conway completes the evaluation, and once he does so, he can move the district court to establish a parenting time schedule with the child. Further, Conway may informally request parenting time or electronic contact during this interim period from Orien, or Orien may initiate it.

[3]In light of our decisions herein, we need not address Conway's arguments regarding the withdrawal of his counsel. We caution the district court, however, to ensure that it complies with the relevant rules regarding attorney withdrawals, particularly attorneys representing clients in an unbundled capacity. *See* EDCR 5.209 (detailing how an attorney representing a client in an unbundled capacity may withdrawal from representation).

cc: Hon. Mathew Harter, District Judge
Carolyn Worrell, Settlement Judge
Malcolm P LaVergne & Associates
Stara Lynn Conway
Eighth District Court Clerk