

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADAM JONES,  
Appellant,  
vs.  
DARA JONES, N/K/A DARA HARRIS,  
Respondent.

No. 76693-COA

**FILED**

JAN 25 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Adam Jones appeals from a district court order modifying a child's educational placement. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Pursuant to the decree of divorce, the parties shared joint legal and physical custody of their minor child. As relevant here, per the decree, the child was to attend Jacks Valley Elementary School, the school the child was zoned for based on respondent Dara Jones' residence. After the entry of the decree, Dara moved to Minden and was no longer zoned for Jacks Valley, but was instead zoned for Minden Elementary School. After Jacks Valley denied Dara's request for a zone variance, Adam moved the district court to modify the custody order to allow the child to attend Double Diamond Elementary School in Reno, based on Adam's residence. Adam also moved the district court to find Dara in contempt for failing to keep the child at Jacks Valley, pursuant to the decree.

The district court found Dara in contempt, but denied Adam's request to require that the child attend Double Diamond, and instead ordered the child to attend Minden Elementary. As a sanction for Dara's contempt, the court indicated its intent to require Dara to reimburse

Adam's mileage for the additional distance from Jacks Valley to Minden Elementary. However, Adam advised he would prefer to accept Dara's previous offer to pick up and drop off the child at the Target store near Jacks Valley Elementary, thereby incurring the additional driving herself, rather than Adam driving to Minden Elementary. Based on Adam's representation that he preferred this arrangement, the court ordered the same. Adam now appeals.

This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.*

When parents sharing joint legal custody disagree as to a child's education, the district court should decide the matter based on what is in the child's best interest. *Arcella v. Arcella*, 133 Nev. \_\_\_, 407 P.3d 341, 344 (2017); NRS 125C.0045(1)(a). To determine what school is in the child's best interest, the district court should consider a variety of factors, including the child's educational needs, the curriculum at each school, the length of the commute and other logistical concerns, as well as whether changing the school would alienate either parent, amongst other things. *Arcella*, 133 Nev. at \_\_\_, 407 P.3d at 346. Importantly, these factors are not exhaustive and the district court should consider any other factors based on the particular facts in each case. *Id.* at \_\_\_, 407 P.3d at 346-47. When determining the best interest of the child, the district court is required to make specific findings and provide an adequate explanation for the custody determination, without which this court cannot determine whether the

district court made its determination for the appropriate reasons. *Davis v. Ewalefo*, 131 Nev. 445, 451-52, 352 P.3d 1139, 1143 (2015).

Here, the district court's order made specific findings as to the *Arcella* factors. Importantly, the court found that either school would serve the child well as both would meet the child's needs and that neither parent would be alienated based on the school choice. In addition to the enumerated *Arcella* factors, the district court specifically found that the parties are unable to co-parent, unable to communicate, and that this was a high-conflict divorce. Based on all of the relevant factors, including the history of this case, the district court concluded that it was in the child's best interest to attend Minden Elementary School, thereby allowing the parties to maintain the remainder of the custody schedule as delineated in the decree, to the extent possible.

On appeal, Adam argues that the district court abused its discretion in finding that both schools would meet the child's needs as there was only testimony presented regarding Double Diamond Elementary School. While it is true that the parties did not admit evidence as to the quality of Minden Elementary during the hearing, the record reflects that Adam conceded that Minden Elementary is also a good school. Indeed, the district court found that the parties conceded both schools are good. Moreover, the quality of the school is only one of many factors the court should consider when determining the child's best interest. *See Arcella*, 133 Nev. at \_\_\_, 407 P.3d at 346-47 (explaining that the enumerated factors are not exhaustive and the court should consider all relevant factors). And here, the district court made numerous findings as to all of the factors enumerated in *Arcella*, each of which indicated that both schools would meet the child's needs. Additionally, the district court made specific

findings as to the parties' inability to co-parent, inability to communicate, and the high conflict between them. It was based on these best interest findings that the court concluded attending Minden Elementary would allow the parties to maintain the remainder of their existing custody arrangement without modification, which was in the child's best interest.

Further, to the extent Adam contends that the district court based its decision on the incorrect conclusion that the parties' custody schedule would have to change if the child attended Double Diamond Elementary, this argument is without merit. In the proceedings below, Adam proposed that, should the child go to Double Diamond Elementary, the parties could simply switch their current custody schedule such that he would have the child on most school days, instead of Dara, and Dara could drive to Double Diamond Elementary to drop off and pick up the child, instead of Adam driving to Jacks Valley Elementary. Thus, although the parties could have maintained a joint custody arrangement, the custody schedule would have changed if the child attended Double Diamond Elementary. And the district court made clear that, based on the amount of conflict between the parties and the time it took the parties to obtain their current custody arrangement, the court believed maintaining the current custody schedule to the extent possible was in the child's best interest.


Adam also asserts that the district court abused its discretion in ordering the child to attend Minden Elementary and should have ordered the child to attend Double Diamond Elementary because the court found Dara in contempt for violating the decree, by moving and causing the school change after the issue was specifically litigated during the divorce proceeding. But to sanction Dara's contempt by changing the child's school would have been an improper use of the court's sanctioning power. In

making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis*, 131 Nev. at 451, 352 P.3d at 1143. The district court is not permitted to use custody determinations as a means of punishing a parent's misconduct. *See Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993). The district court may, as it did here, punish a parent's disobedience of the court's order in other ways that do not affect the child's best interest. *See id.*; *Abid v. Abid*, 133 Nev. \_\_\_, \_\_\_, 406 P.3d 476, 480 (2017).

Therefore, based on the district court's findings as to the child's best interest, each of which are supported by substantial evidence in the record, we cannot conclude that the district court's decision was made for inappropriate reasons or that the district court abused its discretion. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241-42. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, A.C.J.  
Douglas

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Nathan Tod Young, District Judge  
Allison W. Joffee  
Dara Jones  
Douglas County Clerk