

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON FUTTERER,
Appellant,
vs.
RACHEL FUTTERER,
Respondent.

No. 67412

FILED

FEB 04 2016

TRACIE K. LINDEMAN,
CLERK OF SUPREME COURT
BY *Williams*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Appeal from a district court order establishing child custody. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

In 2014, following an evidentiary hearing, the district court entered a final custody order establishing custody of Appellant Jason Futterer and Respondent Rachel Futterer's three minor children. At trial, Jason sought joint physical custody, and Rachel sought primary physical custody. At the time of the hearing, Jason was enrolled in college courses and working part-time, whereas Rachel was a stay-at-home mother. After considering the evidence and testimony of the parties, the district court made oral findings concerning the best interest of the child factors set forth in NRS 125.480(4) (2009)¹, concluded that joint physical custody was not in the best interest of the children, and awarded primary physical custody to Rachel with Jason to have visitation from Friday at 6:00 p.m.

¹We note that the Legislature subsequently repealed NRS 125.480 and amended NRS Chapter 125C to include similar provisions. See A.B. 263, § 8, 78th Leg. (Nev. 2015).

until Monday morning, except for the third week each month, plus two mid-week date nights per month. This appeal followed.²


The district court has broad discretion to determine child custody matters, and this court will not disturb the district court's custody determinations absent a clear abuse of discretion. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). But, substantial evidence must support the district court's determination; that is, the evidence must be such that a reasonable person could deem it adequate to support the decision. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009). Under NRS 125.480(1) (2009), "the sole consideration of the court is the best interest of the child." In determining the best interest of the child, the district court must consider and make specific findings concerning, among other things, the factors enumerated in NRS 125.480(4) (2009). Furthermore, the order "must tie the child's best interest, as informed by specific, relevant findings" on the best interest factors, "to the custody determination made." *See Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1143 (2015) (explaining that determining a child's best interest "is not achieved . . . simply by processing the case through the factors that NRS 125.480(4) identifies as potentially relevant to a child's best interest and announcing a ruling"). "If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application." NRS 125.480(3)(a) (2009).


²Because the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

Here, the district court made oral findings concerning the best interest of the child factors which seemed to favor joint physical custody, but the district court nevertheless went on to conclude that joint physical custody was not in the best interest of the children and awarded primary physical custody to Rachel. Because the district court failed to make specific, relevant findings tied to its conclusion that joint physical custody was not in the best interest of the children,³ we cannot conclude that the district court properly exercised its discretion in determining custody in this case. *See Davis*, 131 Nev. at ___, 352 P.3d at 1143.

We therefore,

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³In fact, the district court's written order does not contain any findings or analysis regarding the best interest of the child factors or its conclusion that joint physical custody was not in the best of the children.

cc: Hon. Charles J. Hoskin, Presiding District Judge, Family Division
Hon. Cynthia Dianne Steel, District Judge, Family Division
Eighth Judicial District Court, Family Division, Department B
Carolyn Worrell, Settlement Judge
McCoy Law Group
Roberts Stoffel Family Law Group
Eighth District Court Clerk