

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENDRA FAIRBAIRN-WILLIAMS,
Appellant,
vs.
JASON WILLIAMS,
Respondent.

No. 72029

FILED

MAY 18 2018

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

ORDER OF REVERSAL AND REMAND

Kendra Fairbairn-Williams appeals from a district court decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Denise L. Gentile, Judge.

Following a three-day bench trial, appellant, Kendra Fairbairn-Williams, and respondent, Jason Williams, were divorced by way of decree of divorce. Although the decree included the division of community property, the only issues on appeal relate to the child custody determination. In the proceedings below, the parties stipulated to Kendra having primary physical custody of their two minor children; therefore, the only remaining issue was legal custody and the parties' time-share. Kendra sought sole legal custody and requested that Jason's parenting time be supervised until he underwent a psychological evaluation, at his own expense, and the result of that evaluation indicated that he was mentally fit to exercise unsupervised parenting time with the children. Following trial, the district court awarded Kendra primary physical custody, subject to Jason's unsupervised parenting time. This appeal followed.

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 child custody determinations 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 making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Moreover, the district court's order "must tie the child's best interest, as informed by specific, relevant findings respecting the [best interest factors] and any other relevant factors, to the custody determination made." *Davis*, 131 Nev. at 451, 352 P.3d at 1143. Without specific findings and an adequate explanation for the custody determination, this court cannot determine with assurance whether the custody determination was appropriate. *Id.* at 452, 352 P.3d at 1143.

On appeal, Kendra first asserts that the district court erred in denying her request for sole legal custody. "Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing." *Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009). "Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents." *Id.* As noted above, the district court has broad discretion in determining child custody. *Davis*, 131 Nev. at 450, 352 P.3d at 1142. And child custody determinations include legal custody, along with physical custody and visitation. *Id.*; NRS 125A.045.

Here, Kendra sought sole legal custody, while Jason sought joint legal custody of the minor children. We note that generally, parents in Nevada share joint legal custody prior to a custody determination by the district court. NRS 125C.0015. However, prior to trial in this case, the

district court awarded Kendra sole legal custody on a temporary basis. And the district court's decree, fails to make a final legal custody determination at all. The decree only orders that Kendra will be the "primary custodian," and addresses Jason's parenting time, which appears to indicate the physical custody award, but is silent as to the legal custody the parties will practice. Thus, this court cannot determine from the record what the district court's legal custody determination was and, likewise, we cannot say whether it was appropriate. *See Davis*, 131 Nev. at 452, 352 P.3d at 1143. Accordingly, this matter must be reversed and remanded to the district court for a determination of the legal custody issue with appropriate findings and legal conclusions setting forth the basis for that decision. *Id.*

Next, Kendra argues that the district court erred in allowing Jason to exercise his parenting time unsupervised without first having to undergo a psychological evaluation. Specifically, Kendra argues that the uncontroverted evidence at trial showed Jason had an incident in 2015 resulting in his admission to the emergency room; that he was previously prescribed two mental health medications; and he testified at trial that he stopped taking his prescribed mental health medication, unbeknownst to his physicians, and did not follow up with his physicians as he was directed to do following his release from the emergency room. Although the district court has broad discretion in determining child custody, "the district court must have reached its conclusions for the appropriate reasons." *Ellis*, 123 Nev. at 149, 161 P.3d at 241-42.

We recognize that the district court's order made numerous factual findings relating to the best interest of the children pursuant to NRS 125C.0035(4). Additionally, the district court specifically found that, while Jason did experience an incident in 2015 resulting in his admission to the

emergency room, nothing in the record indicated Jason had any similar incidents since that time and that Jason did not appear to be suffering from any mental health issues during the time he appeared before the court. However, the district court's findings relating to Jason's mental health were only based on the one incident in 2015.

Although Jason was released from the emergency room shortly after that one incident, contrary to the district court's conclusion, the uncontroverted evidence indicates that Jason was diagnosed with a mental health disorder and nothing in the record suggests that the diagnosis was not part of an ongoing issue. Indeed, the evidence indicates that Jason was prescribed the medication at issue prior to the incident in 2015, as it was his misuse of that prescribed medication along with other things that led to the 2015 emergency room visit, indicating that a diagnosis and need for treatment began prior to that incident. Additionally, the record suggests that Jason's underlying condition has gone untreated since that time despite Jason being directed to follow up with his physician and a recommended psychiatrist following his release from the emergency room.

Here, the district court failed to make any findings as to Jason's underlying diagnosis; there are no findings as to Jason's testimony that he stopped taking his prescribed medication; and there are no findings relating to Jason's testimony that he has not since been to a doctor to follow up on his condition or his need for medication. And while the district court noted that Kendra did not provide a report from an independent medical exam of Jason, as noted above, the uncontroverted evidence indicated that Jason did have a mental health diagnosis requiring prescription medication, which went unaddressed by the district court. Additionally, regardless of whether Kendra requested an independent medical examination, the district court


may order an independent psychological exam of the parties on its own initiative. See EDCR 5.12(b) (allowing the district court to appoint a neutral expert to conduct a psychological evaluation at the parties' expense).¹ Based on the foregoing, we cannot say that the district court provided specific findings as to all of the relevant best interest factors, based on substantial evidence, and an adequate explanation for the custody determination, such that we can say with assurance the determination was appropriate. See *Davis*, 131 Nev. at 452, 352 P.3d at 1143.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²



_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

¹We note that EDCR 5.12 was repealed effective January 27, 2017, but this action has no bearing on our decision here as this matter was decided prior to the rule's repeal. Additionally, the district court is still permitted to order a psychiatric or psychological evaluation on its own initiative pursuant to EDCR 5.305.

²Kendra also requests that this matter be reassigned to a different judge on remand. Based on our review of the record, we are not convinced that the district court cannot fairly deal with this matter and, therefore, deny her request for reassignment to another judge. See *Wickliffe v. Sunrise Hosp., Inc.*, 104 Nev. 777, 783, 766 P.2d 1322, 1326-27 (1988); NRS 3.025(3) (requiring family cases be kept with the same judge unless reassignment is required by another rule or is deemed necessary by the Chief Judge of the district court).

cc: Hon. Denise L. Gentile, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Law Offices of F. Peter James, Esq.
Jason Williams
Eighth District Court Clerk