

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT REEVAN MEDOFF; AND
MARY ANNE WILSON MEDOFF,
Appellants,
vs.
LAURA WILSON; TOMAS DELA CRUZ;
AND JOHN MICHAEL EATON,
Respondents.

No. 77842-COA

FILED

JAN 15 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Reevan Medoff and Mary Anne Wilson Medoff appeal a district court order denying a petition for visitation in a family matter. Eighth Judicial District Court, Clark County; Nancy A. Becker, Senior Judge.

Appellant Mary Anne Wilson Medoff is the biological grandmother of respondent Laura Wilson's three children, and appellant Robert Medoff is Mary Anne's husband. The parties do not dispute that appellants cared for the three minor children and that the children lived with appellants for some time. The parties' relationship deteriorated and respondents then denied appellants time with the subject children. Appellants later filed a petition for guardianship over the children, alleging that respondents were incapable of properly caring for them. After the guardianship petition was denied, appellants filed a petition for visitation, asserting the same facts alleged in the guardianship petition and that it was in the children's best interest to maintain visitation with appellants. The district court denied the petition for visitation, determining that an evidentiary hearing was not warranted, and 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 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). Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

Appellants challenge the district court's denial of their petition for visitation, primarily asserting that the district court improperly weighed the evidence, that the district court's factual findings were erroneous, and that the district court incorrectly relied on the findings made in the guardianship matter. Grandparents or other persons who have resided with a child and established a meaningful relationship may petition the court for reasonable visitation if the parents of the child have denied visitation. NRS 125C.050(1)-(3). However, if a parent has denied visitation with the child, there is a rebuttable presumption that granting visitation to the petitioners is not in the child's best interest. NRS 125C.050(4). And to rebut this presumption, the petitioners must demonstrate by clear and convincing evidence that it is in the best interests of the child to grant visitation. *Id.* When determining whether the petitioners have rebutted the presumption, the district court shall consider the factors enumerated in NRS 125C.050(6).

Here, the court found that although the appellants filed the instant action as a petition for visitation, it was clear that they were seeking to challenge the guardianship determination and were actually seeking custody of the children. The court found that this was particularly evidenced by the fact that appellants' petition for visitation simply reasserted all of the same allegations regarding respondents' parental fitness that were alleged in the guardianship petition. Additionally, appellants sought "visitation" Monday through Friday with the eldest child, so as to do homework, take the child to her extra-curricular activities, and to have dinner, which the district court found was effectively seeking to be the child's caregiver when not in school. Appellants also sought visitation with the two younger children for dinner on Monday, Wednesday, and Friday, and sought a substantial amount of time on Sunday with all three children. The district court went on to find that, even assuming appellants' assertions were true, their allegations were insufficient to rebut the presumption that visitation is not in the children's best interest under NRS 125C.050(4). Accordingly, the district court concluded that, under these circumstances, an evidentiary hearing was not warranted and that the petition should be dismissed.


Based on our review of the documents before us, nothing in the record demonstrates that appellants' petition for visitation was not merely duplicative of their petition for guardianship. And appellants do not assert that they made any additional arguments in support of their petition for visitation; rather, it appears that appellants filed the petition for visitation seeking alternative relief after their petition for guardianship was denied. Moreover, aside from reasserting their complaints about respondents' abilities as parents, appellants' petition for visitation largely challenges the

veracity of the guardianship decision, which they did not appeal. In light of the foregoing, we cannot conclude that the district court abused its discretion in denying the petition for visitation without an evidentiary hearing. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241; *cf. Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993) (concluding the district court has discretion to deny a motion to modify custody without an evidentiary hearing unless the moving party demonstrates adequate cause).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

Additionally, we have reviewed appellants' various documents filed on February 6, 2019, February 8, 2019, February 22, 2019, February 28, 2019, and October 17, 2019. Nothing in those filings affects our analysis of this appeal and we take no action on them. We likewise deny appellants' motions to supplement the record filed on November 13, 2019, and November 20, 2019. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981); NRAP 10(a)-(b).

cc: Chief Judge, Eighth Judicial District Court
Hon. Nancy A. Becker, Senior Judge
Mary Anne Wilson Medoff
Robert Reevan Medoff
John Michael Eaton
Laura Wilson
Tomas Dela Cruz
Eighth District Court Clerk