

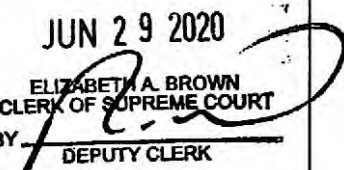
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GIANO AMADO,
Appellant,
vs.
JENNIFER MARTINEZ,
Respondent.

No. 79122-COA

FILED

JUN 29 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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

Amado and Jennifer Martinez had one child together in December 2008.¹ The parties ended their relationship before the child was born and Amado had little contact with the child until June 2012, when he filed his petition to establish paternity. A DNA test confirmed his paternity and he began a court-ordered reunification program with the child. A year later, the district court awarded Amado and Martinez joint legal and joint physical custody. By May 2016, Martinez began abusing drugs and she was arrested for drug possession. Upon recommendation of the parenting coordinator, the district court awarded Amado sole legal and sole physical custody.

After several motions to modify custody, Martinez was granted two hours per week of supervised parenting time in February 2018. By August 2018, the district court awarded the parties joint legal and joint physical custody, apparently due to pandering and drug dealing charges

¹We do not recount the facts except as necessary for our disposition.

being filed against Amado and Martinez's rehabilitation. A few days after the August order, Martinez filed another motion to modify custody alleging that Amado was abusing their child. The district court scheduled a hearing for early September. On the day of the hearing, Amado did not appear. The district court telephonically called Amado and discovered that Amado was then appearing in another court as a defendant in a child abuse case. The district court decided to postpone the temporary custody hearing for the following day. At that hearing, the district court granted temporary sole custody to Martinez and ordered the parenting coordinator to interview the child and the parties.

Two weeks later, on September 19, the district court conducted a status check hearing. The parenting coordinator prepared a report that both parties reviewed on the hearing date; that report is not included in the record. However, per the transcript of the hearing, Amado became upset about the material the report contained and claimed that the parenting coordinator had been duped and he wanted to prove to the court that Martinez fabricated the child abuse allegations. The district court stated that Amado could provide evidence at an evidentiary hearing and offered to schedule the hearing "for the first of next year." Amado apparently became frustrated because the court would not consider any of his evidence and the hearing would be scheduled that far in the future. Amado then stated that he wanted to relinquish his parental rights. The district court canceled any future hearings and told Martinez to file a petition to terminate parental rights and to do so quickly. The district court, without making any findings, changed custody, awarded Martinez sole legal and sole physical custody, and memorialized its ruling in a minute order. All parenting time for Amado was effectively eliminated.

Martinez filed her petition to terminate Amado's parental rights in March 2019, and by the next month, Amado had changed his mind about relinquishing his rights and contested the termination petition. In May 2019, the district court filed its written order from the September 2018 hearing modifying custody, and Amado appealed. Amado also filed for reconsideration and a stay of the May 2019 order, which was denied by the district court. This court also denied Amado's motion for a stay pending appeal.²

On appeal, Amado argues that the district court (1) denied him a full and fair hearing before changing custody,³ and (2) abused its discretion when it did not conduct a best-interest analysis and made no findings before awarding Martinez sole legal and sole physical custody. Amado also argues that upon reversal and remand, this case should be assigned to a different district court judge due to judicial bias.

The district court abused its discretion by not making specific findings pertaining to the child's best interest

Amado argues that the district court abused its discretion by not making specific findings as to the child's best interest before changing

²*Amado v. Martinez*, Docket No. 79122-COA (Order Denying Stay, December 31, 2019).

³To the extent Amado argues that he was denied a full and fair hearing before the district court modified custody, we disagree. The record clearly indicates the district court's intent to have an evidentiary hearing regarding the child abuse allegations before making a final custody decision. However, the September 2018 status check hearing led to a permanent change in custody only after Amado became frustrated and asked to have his own parental rights terminated. Thus, Amado's argument that he was not given the opportunity for a full and fair hearing is unpersuasive.

custody. Martinez argues Amado stipulated to the change of custody.⁴ We agree with Amado.

The district court has broad discretion to determine child custody, including parenting time. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015). Appellate courts give deference to the district court's discretionary determinations. *Id.* However, appellate courts give no deference to conclusory findings that potentially mask legal error. *Id.* NRS 125C.0035(4) requires a district court to "set forth its specific findings" regarding the best-interest factors. The supreme court has required "[s]pecific findings and an adequate explanation of the reasons for the custody determination [because they] 'are crucial to enforce or modify a

⁴Martinez argues that best-interest findings were not necessary as the parties stipulated to the custody arrangement at the September 2018 hearing. We disagree. The hearing transcript does not indicate a stipulation occurred as Amado only expressed frustration about the delay in holding an evidentiary hearing and said he would relinquish his parental rights. Furthermore, the district court did not memorialize a stipulation in its minute order or final order as required by the Eighth District Court Rules. See EDCR 7.50 ("No agreement or stipulation between the parties . . . will be effective unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same is in writing subscribed by the party against whom the same shall be alleged . . ."). However, even if we were to assume a stipulation occurred, awarding Martinez sole legal and physical custody in a final order without best-interest findings is not sufficient for the reasons stated in this order. See NRS 125C.0045(1)(a) (stating that the district court may make any "order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest" during any stage of the proceeding); NRS 125C.0035(1) (stating that when determining physical custody, "the sole consideration of the court is the best interest of the child"). At oral argument, Martinez also argued that Amado abandoned the child after the September hearing. However, the district court made no findings in its minute or written orders concluding that Amado abandoned the child, nor does the record appear to support that conclusion.

custody order and for appellate review.” *Davis*, 131 Nev. at 452, 352 P.3d at 1143 (quoting *Rivero v. Rivero*, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009)). Without those findings, appellate courts “cannot say with assurance that the custody determination was made for appropriate legal reasons.” *Id.*

Here, the district court’s one-page May 2019 order contained no best-interest findings when it changed custody and awarded Martinez sole legal and physical custody. Furthermore, the transcript and the minute order also did not reveal any consideration of the best interest of the child. The district court should have made specific findings as required by law especially considering that Martinez had recently lost custody due to drug abuse.

It is certainly understandable that the district court would make significant changes to Amado’s parenting time in light of his stated desire to relinquish his rights. However, even though termination proceedings should be resolved within six months of the filing of the petition, *see* NRS 128.055, the process can be lengthy and the situation can change as has happened here.⁵ *In re Parental Rights as to S.L.*, 134 Nev. 490, 493, 422 P.3d 1253, 1257 (2018) (calling an order terminating parental rights tantamount to “a civil death penalty”). In fact, Amado contested the termination of parental rights petition before the written order modifying custody was even filed. Therefore, the basis for changing custody was no longer present, and the district court still denied a subsequent motion for reconsideration that revealed the flaws in the order modifying custody.

⁵Martinez filed the petition to terminate Amado’s rights in March 2019 and as of June 2020, Amado’s rights have yet to be adjudicated and he apparently still has no parenting time.

Thus, the district court abused its discretion when it did not make specific best-interest-of-the-child findings before changing custody.

Amado has not shown the district judge was biased

Amado also argues that the district judge was biased and the case should be assigned to a different judge on remand. Martinez argues the district judge did not exhibit bias. We agree with Martinez.

“A judge is presumed to be unbiased” *Rivero*, 125 Nev. at 439, 216 P.3d at 233. “[D]isqualification for personal bias requires ‘an extreme showing of bias [that] would permit manipulation of the court and significantly impede the judicial process and the administration of justice.’” *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254-55, 148 P.3d 694, 701 (2006) (second alteration in original) (quoting *Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 632, 636, 940 P.2d 127, 129 (1997)). Further, “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Whitehead v. Nev. Comm’n on Judicial Discipline*, 110 Nev. 380, 427, 873 P.2d 946, 975 (1994) (emphasis omitted) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned” NCJC 2.11. “The standard for assessing judicial bias is whether a reasonable person, knowing all the facts, would harbor reasonable doubts about a judge’s impartiality.” *In re Varain*, 114 Nev. 1271, 1278, 969 P.2d 305, 310 (1998) (internal quotations omitted).

Here, the history of this case shows that the district judge did not favor one party over the other. Amado had little to do with the child for years until he filed to confirm his paternity. Thereafter, the district judge ordered a reunification plan and upon completion granted Amado joint legal

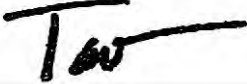
and joint physical custody even though Amado had barely been in the child's life until the reunification. Furthermore, the district judge then granted him sole legal and sole physical custody due to Martinez's drug abuse. Additionally, during the period when Amado had sole custody, Martinez filed several motions to modify custody, all of which were denied by the district judge without Amado having to file a response or attend a hearing. Finally, after the district court decided to award Martinez temporary custody due to the child abuse allegations and the parenting coordinator's report, the court offered to hold an evidentiary hearing to determine the veracity of the allegations. At that point, Amado's own frustration regarding the hearing's timing and resulting delay of his opportunity to refute the allegations, got the better of him: he offered to relinquish his own rights instead of having an evidentiary hearing. Amado did not request to have another hearing until after Martinez filed the petition to terminate his rights.

Thus, from our review of the record as a whole, Amado has not made a sufficient showing that the district judge displayed bias against him that would significantly impede the judicial process and the administration of justice.⁶ Therefore, upon remand, we do not direct the assignment of this case to a different judge. Nevertheless, we direct the district court to expeditiously conduct a hearing to determine the best interest of the child and enter such temporary orders as are needed. Accordingly, we

⁶We do note that some of the district judge's comments and actions may appear in a different light in the termination of parental rights proceeding, which is not before us. Thus, a different result could be reached in that case. *See In re Parental Rights as to S.L.*, 134 Nev. at 493, 422 P.3d at 1257 (recognizing an order terminating parental rights has severe consequences and is subject to close scrutiny on appeal).

ORDER the district court order REVERSED and REMAND this case for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mathew Harter, District Judge
Holland & Hart LLP/Las Vegas
Cavanaugh-Bill Law Offices, LLC
Eighth District Court Clerk