IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BELINDA DOUGHTY,
Appellant,
vs.
JOSEPH LAQUITARA,
Respondent.

No. 81683-COA

FILED

AUG 19 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Belinda Doughty appeals from a district court order denying her motion to relocate and modify child custody, and granting Joseph Laquitara's countermotion for primary physical custody. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Doughty and Laquitara were married in Nevada and had one child together, A.L.D.[1] The parties later divorced and each remarried. The divorce decree provided for joint legal and physical custody. This shared custody arrangement continued for the next 11 years without any change. After Doughty's spouse accepted employment in the Seattle area, she filed a motion for primary physical custody for the purpose of relocating to Snohomish, Washington, with A.L.D. Laquitara opposed her motion and filed a countermotion for primary physical custody. The district court conducted an evidentiary hearing that included testimony from Doughty, Laquitara, A.L.D., who was 15 years old at the time of the hearing, and Laquitara's spouse. The court subsequently denied Doughty's petition for primary custody and to relocate with A.L.D., and granted Laquitara's countermotion, awarding him primary physical custody of A.L.D. Further,

[1]We do not recount the facts except as necessary to our disposition.

the court ordered a parenting time schedule for Doughty, who would become the noncustodial parent due to her move, and also ordered her to pay child support to Laquitara. This appeal followed.

On appeal, Doughty argues the district court erred by: (1) finding that Doughty did not have a good faith reason for the move in that her move was intended to deprive Laquitara of parenting time; (2) failing to give due weight to A.L.D.'s preference to move to Washington; (3) failing to properly conduct an analysis regarding the relative merits of each parent as primary custodian; (4) failing to consider the circumstances and Doughty's well-being as a factor in analyzing A.L.D.'s best interest; (5) failing to focus on the availability of adequate, alternative visitation for Laquitara; and (6) failing to consider public policy considerations in forcing Doughty to choose between her husband and her child.[2]

We review child custody matters for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006). The district court's findings must be supported by substantial evidence. *Id.* Substantial evidence is evidence that a reasonable person may accept as adequate to support the judgment. *Id.* "[A] modification of primary physical custody is warranted only when (1) there has been a substantial change in

---

[2]We have reviewed Doughty's public policy argument, but respectfully decline to address it on the merits as she raises it for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007). "[T]he party seeking a modification of custody bears the burden of satisfying both prongs." *Id.* at 151, 161 P.3d at 242-43. However, a party seeking modification of custody when the parties share joint physical custody need only meet the second prong of *Ellis*. *Id.* at 151-52, 161 P.3d at 243.

When parents share joint physical custody and one parent desires to relocate with the child to another state, and the other parent does not consent, the relocating parent must petition the court for primary physical custody for the purpose of relocating pursuant to NRS 125C.0065. When considering a petition to relocate pursuant to NRS 125C.0065, "the district court must issue specific findings for each of the NRS 125C.007(1) [threshold] factors." *Pelkola v. Pelkola,* 137 Nev., Adv. Op. 24, 487 P.3d 807, 810 (2021) (citing *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015)). Further, "[a] parent who desires to relocate with a child pursuant to . . . NRS 125C.0065 has the burden of proving that relocating with the child is in the best interest of the child." NRS 125C.007(3).

With respect to the threshold factors of NRS 125C.007(1), a parent seeking to relocate with a child must first demonstrate the following: "(a) [t]here exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent . . . of parenting time," "(b)[t]he best interests of the child are served by allowing the relocating parent to relocate with the child," and "(c) [t]he child and the relocating parent will benefit from an actual advantage as a result of relocation." Only where the relocating parent satisfies *all* three of the threshold factors of NRS 125C.007(1), is the court then required to weigh the additional factors

set forth in NRS 125C.007(2) in deciding a relocation motion. *Pelkola*, 137 Nev., Adv. Op. 24, 487 P.3d at 808. In this case, the district court found that Doughty failed to satisfy one or more of the threshold factors of NRS 125C.007(1)(a)-(c) in denying Doughty's motion.[3]

We address each of the above threshold factors in relation to Doughty's arguments on appeal. With respect to NRS 125C.007(1)(a), Doughty argues that she presented a good faith reason for relocating to Washington, and that her move was not intended to deprive Laquitara of parenting time. The district court found that "Doughty was sincere in her desire to live in Washington State, but that her decision to move there is self-serving and calculated to deprive . . . Laquitara of his active role as a joint physical custodian." The court concluded in its order that it was in A.L.D.'s best interest for Doughty and Laquitara to share joint physical custody, as they had been successfully doing so for 11 years.[4] And, by living outside of Nevada, Doughty would necessarily deprive Laquitara of co-equal parenting time.

---

[3]The district court also made specific findings as to the factors delineated in NRS 125C.007(2) as required by *Pelkola*. *See* 137 Nev., Adv. Op. 24, 487 P.3d at 810. However, because there is substantial evidence in the record to support the court's finding that Doughty failed to satisfy one or more of the threshold factors of NRS 125C.007(1), we need not address the court's findings related to the factors set forth in NRS 125C.007(2). *See id.* ("If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh" the factors of NRS 125C.007(2).).

[4]"[I]t is in the best interests of a child to have a healthy and close relationship with both parents, as well as other family members." *Schwartz v. Schwartz*, 107 Nev. 378, 382, 812 P.2d 1268, 1270 (1991) (quoting *In re Marriage of Kutinac*, 538 N.E.2d 862, 865 (Ill. App. Ct. 1989)) (internal quotation marks omitted).

We express concern that the district court may have conflated Doughty's "self-serving" conduct with a lack of good faith, especially given the court's finding that she had a sincere desire to relocate. It does not follow that she acted in bad faith or in a "calculated" way to deprive Laquitara of his active role as a parent merely based on her request to relocate out-of-state with A.L.D. due to her current spouse's employment situation. Such a finding does not appear to be supported by substantial evidence. However, we need not resolve whether the district court misapplied NRS 125C.007(1)(a) because, as discussed below, the court's findings that Doughty failed to satisfy one or more of the other threshold factors is supported by substantial evidence.

We next consider whether the district court abused its discretion in determining that relocating to Washington was not in A.L.D.'s best interests pursuant to NRS 125.007(1)(b). As a preliminary matter, we will not substitute our judgment for that of the district court. *See Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004) ("[W]e will uphold the district court's determination if it is supported by substantial evidence."); *see also Egosi v. Egosi,* Docket No. 76144 (Order of Affirmance, April 24, 2020) (providing that an appellate court "will not substitute [its] judgment for that of the district court").

Doughty makes multiple arguments that the district court incorrectly analyzed this second threshold factor. Here, the district court concluded that "Doughty did not provide sufficient proof to support a finding that the relocation to Snohomish, Washington, would be in [A.L.D]'s best interest." In this case, the court analyzed A.L.D.'s best interests pursuant to NRS 125C.0035(4), which sets forth various factors the court can weigh in ascertaining the best interests of the child when deciding custody. *See*

Pelkola, 137 Nev., Adv. Op. 24, 487 P.3d at 810 (holding that the district court must issue specific findings when determining the best interest factors pursuant to NRS 125C.007(1)(b)).

Doughty objects to several of the district court's findings under this second threshold factor. First, Doughty claims that the court failed to properly weigh A.L.D.'s preference to move to Washington during the evidentiary hearing. NRS 125C.0035(4) provides that, "[i]n determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things: (a) [t]he wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody."

The record supports that A.L.D. was unclear about his living preferences when testifying. Specifically, the court determined that A.L.D. "was uncomfortable being in the middle of this custody dispute" and substantively had "very little to add about the reasons why he preferred one state or the other." A.L.D. testified that he had only been to Washington once in the last several years. Further, A.L.D. expressed different preferences about whether he wanted to stay in Nevada or move to Washington at different times. For example, A.L.D. texted his mother eight months before the hearing that he preferred to stay in Nevada. However, while testifying at the evidentiary hearing, A.L.D. stated that he wanted to live in Washington.

The district court in its order noted that A.L.D. "would miss his dad and brother if he moved." The court also astutely recognized that A.L.D. would "equally miss his mother if he remained in Nevada." The court concluded that A.L.D.'s "lack of substance and reasons for a preference materially affected the weight the court gave A.L.D.'s testimony in

balancing the best interest factors." Thus, we conclude that the court properly considered A.L.D.'s preferences in making its determination.

Second, Doughty contends that the district court failed to undertake a comparative analysis of the relative merits of each parent being the primary physical custodian. However, the court in fact performed this analysis when it determined that both parents were equally qualified as primary physical custodians.[5] Because the district court concluded the move would not serve A.L.D.'s best interests, and Doughty planned to complete the move, granting Laquitara's countermotion for primary physical custody was not in error, particularly where the court recognized that A.L.D. was unsure as to whether he wanted to move from Nevada.[6]

Third, Doughty contends that the district court erred by failing to analyze options for alternative visitation for Laquitara as an alternative to denying her motion to relocate, "particularly in light of the fact that [Laquitara]'s perceived diminished role in [A.L.D.]'s life was the primary basis to deny [Doughty]'s request to relocate." The district court, however,

---

[5]The district court made various findings regarding both parents' qualifications, such as: "[b]oth parents monitor A.L.D.'s education and both have participated in years of IEP meetings"; "both parties are mentally and physically fit"; "both parents are equally likely to allow [A.L.D.] to have a frequent and continuing relationship with the other parent"; "[t]he parties have demonstrated the ability to cooperate to meet the needs of [A.L.D.]"; and A.L.D. has "a loving relationship with both parents." *See* NRS 125C.0035(4)(c), (e)-(h).

[6]*See Potter v. Potter*, 121 Nev. 613, 615, 119 P.3d 1246, 1247 (2005) (concluding that the district court must determine whether the best interest of the child is better served by living outside Nevada with the relocating parent as the primary physical custodian or living in Nevada with the nonmoving parent having primary physical custody).

was not required to consider alternative parenting time schedules as a relocation factor under NRS 125C.007(2)(e)[7] because Doughty did not meet all three of the threshold factors set forth in NRS 125C.007(1) as explained herein. Indeed, the district court thoroughly weighed and applied the best interest factors of NRS 125C.0035(4), and concluded that it was not in A.L.D.'s best interest to relocate to Washington with Doughty. Based on the record, Doughty has failed to establish that the district court's findings under NRS 125C.007(1)(b) were clearly erroneous.

Finally, in conjunction with the best interest factors, and in applying the final threshold factor of NRS 125C.007(1)(c), Doughty contends that the district court failed to consider how the benefits of the move for Doughty would also benefit A.L.D. in relocating to Washington. Here, the

---

[7] NRS 125C.007(2)(e) provides

> If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh the following factors and the impact of each on the child, the relocating parent and the non-relocating parent, including, without limitation, the extent to which the compelling interests of the child, the relocating parent and the non-relocating parent are accommodated:
>
> . . . .
>
> (e) Whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted.

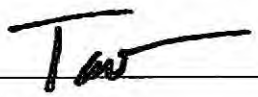
The district court determined that this statute was satisfied.

district court found that "Doughty would benefit from a move to Washington State" but she did not provide "sufficient proof that [A.L.D.] would benefit from the move." Specifically, the court found that the data offered by Doughty failed to prove that merely because the educational ratings might be better in Snohomish, Washington, than those in Henderson, Nevada, where Laquitara lived, she did not establish the nexus between ratings and A.L.D.'s likely school performance. The court noted that parental involvement and engagement, and teacher quality, were as important as school ratings. Likewise, that statistical data, standing alone, did not prove that A.L.D would be safer in Washington or that there would be any improvement in his living conditions over those in his current home with his father. Thus, we conclude that Doughty also failed to prove that the court's findings under NRS 125C.007(1)(c) were clearly erroneous.

Therefore, we

ORDER the judgment of the district court AFFIRMED.[8]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

[8]To the extent that the parties raise arguments not addressed in this order, we conclude that they either do not provide a basis for relief or need not be reached given our disposition.

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Nevada Defense Group
Ghandi Deeter Blackham
Eighth District Court Clerk