

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDI ELIZABETH KIM-ELLIOTT,
Appellant,
vs.
DANIEL XYON KIM,
Respondent.

No. 80771-COA

FILED

AUG 23 2021

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

ORDER OF REVERSAL AND REMAND

Brandi Elizabeth Kim-Elliott appeals from a post-decree of divorce order regarding child custody. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

In the proceedings below, the parties were divorced by way of a stipulated decree of divorce entered in 2016. Pursuant to the terms of the decree, the parties shared joint legal custody, Brandi was awarded primary physical custody of the parties' three minor children, and respondent Daniel Kim was ordered to pay child support and spousal support to Brandi. In 2019, Brandi moved for permission to relocate with the minor children to the state of Washington, asserting that Daniel failed to timely pay child support and spousal support pursuant to the terms of the decree, causing her to nearly be evicted on more than one occasion. Thus, Brandi sought to relocate with the children to Washington, where her family would be able to assist in watching the children while Brandi worked and would provide housing at a reduced cost, such that Brandi would not have to worry about her financial situation. Daniel opposed the motion, asserting that he stopped paying support because he was wrongfully terminated from his job, but had since regained his employment and began paying again. He also

argued that Brandi only sought relocation to try to punish him for his failure to pay support.

The district court held an evidentiary hearing and, after Brandi rested her case, denied her motion to relocate. The court concluded that Brandi failed to meet her burden of proof to demonstrate a sensible, good-faith reason for the move. In particular, the district court found that Brandi's motivation for seeking relocation "appeared to be" retaliatory because of Daniel's failure to pay child support and that Brandi "appear[ed] to be" punishing Daniel for various actions that Brandi described as creating chaos for the children. This appeal followed.

As an initial matter, we note that Daniel has failed to file a responsive brief in this matter, despite the Nevada Supreme Court's order to file the same. Accordingly, this court could construe Daniel's failure to respond as a confession of error, and reverse and remand this matter on that basis alone. NRAP 31(d)(2). Nonetheless, we need not do so because reversal and remand is likewise warranted on the merits, as discussed below.

On appeal, Brandi challenges the district court's denial of her motion to relocate, asserting that the district court abused its discretion in concluding that Brandi did not have a sensible, good-faith reason for requesting relocation. This court reviews a district court's decision resolving a motion for relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). "Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v.*

Ewalefo, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted).

When considering whether to allow a parent to relocate with a minor child, the district court must determine that the relocating parent has a good-faith, sensible reason for relocating; that the move is not intended to deprive the non-relocating parent of parenting time; that the best interests of the child are served by allowing the relocation; and that the relocation will result in an actual advantage to the benefit of the child and relocating parent. NRS 125C.007(1). If this threshold standard is met, the district court must then consider the additional factors enumerated in NRS 125C.007(2).

Here, the district court found that Brandi did not have a sensible, good-faith reason for seeking relocation. Brandi argued below, as she does on appeal, that she sought relocation to gain financial stability in Washington and that because Daniel stopped paying child support, she faced eviction on more than one occasion, causing undue stress to her and the children. She likewise offered evidence that she could obtain a job in Washington and that her cost of living would be lower there. Generally, such a reason may constitute a sensible, good-faith reason for seeking relocation. *See Cook v. Cook*, 111 Nev. 822, 828, 898 P.2d 702, 706 (1995) (explaining that a parent's desire to obtain a higher standard of living is a sensible, good-faith reason for relocation). But here, Daniel argued that Brandi only sought relocation to punish him, and that the issue that had impacted his ability to pay support was no longer present, as he had been improperly terminated, but had since been reinstated to his position.

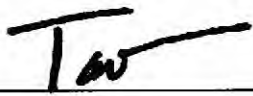
Despite this conflicting testimony, the district court failed to make specific findings of fact. Instead, the court summarily concluded that it "appeared" that Brandi's motive for seeking relocation was retaliatory and to punish Daniel. As our supreme court recently stated, in deciding

whether to grant relocation, the district court must make specific findings as to the factors enumerated in NRS 125C.007(1). *Pelkola v. Pelkola*, 137 Nev., Adv. Op. 24, 487 P.3d 807, 810 (2021). And given that the district court based its decision solely on this summary conclusion as to the appearance of Brandi's motivation, without the required specific factual findings, we cannot determine whether the district court properly found that Brandi did not have a good faith reason for seeking relocation. See *Davis*, 131 Nev. at 452, 352 P.3d at 1143 (explaining that without specific findings, the appellate courts cannot determine whether the district court's decision was made for appropriate legal reasons).

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Insofar as Brandi raises 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.

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. J
Nevada Family Law Group
Daniel Xyon Kim
Eighth District Court Clerk