

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONALD DAVID HARRIS,
Appellant,
vs.
JENNIFFER FIGUEROA,
Respondent.

No. 81746-COA

FILED

NOV 05 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

ORDER REVERSING IN PART AND REMANDING

BY: *S. Yosev*
DEPUTY CLERK

Ronald David Harris appeals from a child custody decree. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Harris was once married to Jenniffer Figueroa, who moved to Nevada and obtained a divorce in 2017.¹ Harris subsequently pleaded guilty to sexually abusing Figueroa's daughter from a previous marriage—the half-sister to Harris's own four children with Figueroa.

Figueroa brought the underlying child custody action in April 2020. Figueroa filed a complaint pro se, requesting sole legal and sole physical custody of all four children plus child support. Regarding custody, Figueroa asserted in the complaint that the district court should consider that “[d]efendant is in prison as a sex offender. Pled guilty to B-felonies—30 years in prison.” She also asserted, “I would like the children have no contact w/ their father as the person he sexually abused for 3 years was the defendants [sic] step daughter, the childrens [sic] half-sister, who was 12 when abuse started.”

Figueroa served Harris by sending that complaint via certified mail, plus exhibits and a summons, to Harris at the PO Box for his prison in Tennessee. Harris timely filed a 12-page answer pro se, admitting he was incarcerated, but contesting Figueroa's request for sole legal custody. In his

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

answer, Harris expressed an unwavering desire to be part of the children's lives. And he indicated that he should have joint legal custody because he had never made inappropriate remarks to *these* children or spoke ill of Figueroa in their presence.

In May 2020, the district court's judicial executive assistant signed an order and notice to appear for an NRCP 16.205 case management conference, and sent it to Harris (the certificate of mailing contains a box that is checked indicating electronic service, fax or email). At the conference, Figueroa appeared by video, but Harris did not appear for unexplained reasons. The district court sua sponte granted sole legal and sole physical custody to Figueroa in Harris's absence. According to the hearing transcript, the court stated that it would be "impossible" for Harris to exercise his custodial rights because he will be serving a prison sentence in Tennessee for the foreseeable future. The district court did not grant child support because it concluded it had no jurisdiction to do so.² Following the hearing, the district court signed a form custody decree from the Clark County Family Law Self-Help Center, completed by Figueroa pro se. Harris now appeals the issue of legal custody only.³

²The child support issue is not part of this appeal; however, we note that this conclusion is likely incorrect. See NRS 125B.014. In a proceeding to establish a support order, a Nevada district court may exercise personal jurisdiction over a nonresident if the nonresident submits to the jurisdiction of this state by filing a responsive document, thereby waiving any contest to personal jurisdiction. NRS 130.201(1)(b). Harris waived personal jurisdiction when he filed his answer to the custody complaint without asserting personal jurisdiction as a defense. See NRCP 12(b)(2); see also NAC 425.115 (stating that once the court makes a custody determination, it also must determine the obligor's child support obligation).

³Neither party had counsel up to this point. However, both parties have been represented by counsel since the brief writing stage of this appeal.

Whether the district court violated Harris's due process rights

Harris argues that the district court violated his due process rights by awarding Figueroa sole legal custody of the parties' children without providing him proper notice or an opportunity to be heard. Figueroa counters that the NRCP 16.205 notice gave Harris sufficient notice and that Harris had an opportunity to be heard by way of the answer he filed with the court, given that Figueroa did not present any arguments regarding custody at the case management conference. We agree with Harris.

The district court has broad discretion in determining child custody. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009). However, substantial evidence must support the district court's findings. *Id.* Substantial evidence is "evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161, P.3d 239, 242 (2007)). Also, "a court may not use changes of custody as a sword to punish parental misconduct." *Wiese v. Granata*, 110 Nev. 1410, 1412, 887 P.2d 744, 746 (1994) (quoting *Dagher v. Dagher*, 103 Nev. 26, 28 n.3, 731 P.2d 1329, 1330 n.3 (1987)).

First, due process requires that a district court give a parent notice before affecting custodial rights. *See id.* at 1412, 887 P.2d at 745-46. General notice that there will be a hearing is not enough. *See Dagher*, 103 Nev. at 28, 731 P.2d at 1330. Rather, the parent must have "prior specific notice" that, at the hearing, the court may make the custody determination that it ultimately does make. *See id.* (reversing a custody determination made at a hearing because a parent did not receive "prior specific notice" that the particular hearing might involve a change in custody); *see also Micone v. Micone*, 132 Nev. 156, 159, 368 P.3d 1195, 1197 (2016) (holding the court's award of custody to paternal grandparents violated due process where the parents had notice that custody was at issue, but did not have notice that the

court was considering that particular custody option).

Here, the district court issued a final custody decree immediately following the case management conference without either party requesting that the court take such action. Harris had notice that legal custody would be at issue in the case because Figueroa served him with her complaint seeking sole legal and sole physical custody. Also, the notice setting hearing is titled as a notice to appear for an NRCP 16.205 case management conference involving paternity or custody actions between unmarried persons. However, this notice did not advise the parties that a final custodial arrangement could be addressed and resolved at the case management conference, a point Figueroa conceded at oral argument. The NRCP 16.205 notice makes no reference to disposing of custody and the rule attached to the notice only indicates that the court may enter "interim" orders or orders setting the case for a settlement conference or trial. Therefore, we conclude that the district court did not provide Harris with prior specific notice sufficient to satisfy due process before entering a final custody decree.

Further, even if Harris received notice, due process requires more. *Wiese*, 110 Nev. at 1412-13, 887 P.2d at 746. "Litigants in a custody battle have the right to a full and fair hearing concerning the ultimate disposition of a child." *Id.* (quoting *Moser v. Moser*, 108 Nev. 572, 576, 836 P.2d 63, 66 (1992)). And a party "threatened with the loss of parental rights must be given the opportunity to disprove the evidence presented." *Id.* (quoting *Moser*, 108 Nev. at 577, 836 P.2d at 66).

Here, Harris did not attend the case management conference, there is no explanation on the record or in the decree as to why, and the district court never explained the impact of his non-appearance. And, even if he had attended, the hearing lasted less than six-minutes, and Figueroa presented no witnesses and no evidence on the custody issue at all. In fact,

the first action the district court took after its introductory comments was to grant Figueroa sole legal and physical custody. Figueroa had made no arguments regarding any subject at that point. She only had stated that she had received the answer to her complaint. Furthermore, Figueroa made virtually no statements about custody throughout the hearing. And in response to a question at the end of the hearing, the court told Figueroa that she could do whatever she wanted with the children because Harris now has no rights. As such, Harris had no opportunity to foresee the nature of the proceeding, challenge the court's legal determinations, or present or disprove evidence on the factual issues. Therefore, the district court deprived Harris of a full and fair hearing.

Additionally, “[a] district court may not elevate promptness and efficiency over fairness and due process by entering summary judgment before claims are properly before it for decision.” *See Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014) (internal quotations omitted). As such, the district court may not sua sponte enter summary judgment without “giving the losing party notice that it must defend its claim.” *See id.* (holding that the district court erred by granting summary judgment without briefing, argument, or notice).

Here, the district court's actions at the case management conference were tantamount to entering summary judgment sua sponte on the pleadings, similar to *Renown*. Neither Harris nor Figueroa filed motions or briefs asking the court to dispose of the custody issue—or any issue for that matter—at the case management conference. The court heard no arguments at the conference regarding custody. And, as stated above, the parties received no notice that the court could or would make a final custody determination without an evidentiary hearing. Yet the court disposed of the entire case at the conference. Therefore, we conclude that the district court

violated Harris's due process rights when it awarded Figueroa sole legal custody at the case management conference.

Whether the district court abused its discretion in awarding Figueroa sole custody

Harris also argues that the district court abused its discretion in issuing the custody decree because substantial evidence did not support the district court's conclusion that it would be impossible for Harris to exercise legal custodial rights from prison. Figueroa counters that, in issuing the custody decree, the district court acted within its broad discretion to decide what is in the best interest of the children. We address this issue because it will be presented to the district court again upon remand.

The district court has broad discretionary power to determine child custody, and we will not disturb custody determinations absent a clear abuse of discretion. *Ellis*, 123 Nev. at 149, 161 P.3d at 241. However, 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).

"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*, 125 Nev. at 420, 216 P.3d at 221. Joint legal custody is presumed to be in the children's best interest if certain conditions are met. NRS 125C.002. However, this presumption is overcome when the court finds that the parents are unable to communicate, cooperate, and compromise in the best interest of the children. *See Rivero*, 125 Nev. at 420, 216 P.3d at 221.⁴

⁴We have already interpreted *Rivero* to stand for this proposition in *Doucettperry v. Doucettperry*, No. 80114-COA, 2020 WL 6445845 (Nev. Ct.

Here, the district court signed a preprinted custody decree from the self-help center submitted by Figueroa, ordering that “[t]he plaintiff is granted sole legal custody of the minor children.” The decree recites, “this Court finds . . . [t]hat any custody and visitation orders made herein are in the best interest of the children.” But this decree does not address the NRS 125C.002 presumption or how Figueroa overcame the allegations in Harris’s answer that he never made inappropriate remarks to *these* children or spoke ill of Figueroa in their presence. The district court made no findings as to Harris and Figueroa’s ability, or lack thereof, to cooperate, communicate, or compromise in the best interest of their children. And there is otherwise no reference to the children’s best interest or the court’s findings or reasons for awarding Figueroa sole legal custody.

The district court therefore abused its discretion by failing to tie specific best interest findings to its conclusion that Figueroa should have sole legal custody in the decree.⁵ See *Davis*, 131 Nev. at 451, 352 P.3d at 1143 (“Crucially, the decree or order must tie the child’s best interest, as informed by specific, relevant findings . . . to the custody determination made.”); *Arcella v. Arcella*, 133 Nev. 868, 872, 407 P.3d 341, 346 (2017) (citing the *Davis* standard as applicable in the legal custody context). And while we normally defer to the district court’s ultimate custody determination, without specific findings in the decree, “this court cannot say with assurance that the

App. Nov. 2, 2020) (Order Affirming in Part, Reversing in Part, and Remanding).

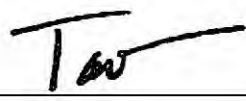
⁵The district court’s oral pronouncement that Figueroa was entitled to sole legal and sole physical custody based upon Harris’s crimes and length of incarceration is a compelling factor, but it does not rise to the level where no further findings are necessary as instructed in *Davis*. See *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987).

custody determination was made for appropriate legal reasons." *Davis*, 131 Nev. at 452, 352 P.3d at 1143.

Additionally, deciding which custody arrangement is in the children's best interest necessarily involves resolving disputed questions of fact in this case. Indeed, the parties clearly dispute whether Harris's behavior with his stepdaughter renders him unable to participate in important legal decisions for his four children. Therefore, the district court should have held an evidentiary hearing on the issue of legal custody. *See Nev. Power Co. v. Fluor Ill.*, 108 Nev. 638, 646, 837 P.2d 1354, 1360 (1992) (concluding that the district court abused its discretion in failing to hold an evidentiary hearing to determine disputed questions of fact). Accordingly, we

ORDER the judgment of the district court REVERSED in part, AND REMAND for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mathew Harter, District Judge
Lance J. Hendron, Attorney at Law, LLC
The Ramos Law Firm
Barbara Buckley
Snell & Wilmer/Kelly Dove
Anne Traum
Eighth District Court Clerk