

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHANIE RUBIDOUX,
Appellant,
vs.
DANIEL RUBIDOUX,
Respondent.

No. 83628-COA

FILED

MAY 18 2022

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

ORDER OF AFFIRMANCE

Stephanie Rubidoux appeals from a decree of divorce awarding joint child custody.¹ Eighth Judicial District Court, Family Court Division, Clark County; Dawn Throne, Judge.

Daniel and Stephanie Rubidoux were married in 2014 and have one minor child, a daughter born in 2016.² The couple had a tumultuous relationship and separated and reconciled on multiple occasions, with their final separation occurring in November 2019. Stephanie ultimately filed for divorce in early 2020, citing several incidents involving alleged domestic violence.

One of those incidents occurred in early 2019 when Daniel and Stephanie were fighting in the garage of the marital home, in view of the family's surveillance video camera, as Stephanie attempted to leave the home. Daniel, who was intoxicated at the time, attempted to prevent Stephanie from leaving when he ripped items from her hand. At that point, Daniel pushed Stephanie against the garage door and advanced toward her. Against the door, Stephanie tried to push Daniel off her. At some point

¹We note that the only issue on appeal is the award of joint physical custody; thus, we do not address other portions of the divorce decree.

²We recount the facts only to extent necessary to our disposition.

during the struggle, she retrieved a nearby child's picnic table, holding it between her and Daniel to maintain some distance from him. According to Stephanie, Daniel's excessive alcohol consumption played a role in almost every fight.

Later, Stephanie showed the video of the garage fight to law enforcement. Daniel was charged with domestic violence in connection with the fight. Daniel agreed to a deferred adjudication.³ According to the register of actions from the justice court, he completed the necessary requirements, and the justice court dismissed the case. It was a couple months after the garage incident that Daniel and Stephanie separated. During this time, on occasion, Stephanie left the child with Daniel unsupervised. Later in the year, the two reconciled and moved back in together, only to permanently separate in November 2019 after allegations that Daniel committed another act of domestic violence. After the separation, Daniel's alcohol consumption allegedly decreased.

Stephanie then filed for divorce, and the couple participated in family mediation. They were unable to reach an agreement as to the child custody arrangement and some issues of asset division. In April 2020, the district court put into place a partial parenting agreement. Namely, this agreement outlined the custody of the parties' child over holidays and birthdays, alternating holidays between Daniel and Stephanie on a yearly

³The record is not clear on how Daniel accepted this adjudication, but its conditions were satisfied. The register of actions related to this prosecution indicate a plea of "guilty"; however, Daniel testified that he pleaded "no contest." The parties devoted significant argument to this point at trial. We note the disagreement below but conclude the difference is immaterial because even though Daniel was not formally convicted, the district court found by clear and convincing evidence that domestic violence occurred, and no party challenges that specific determination here.

basis. In May, the district court created a temporary parenting time schedule where Daniel would spend weekends with the child.

However, due to the COVID-19 pandemic, Stephanie extended her parenting time into the time allotted for Daniel, including his portion of Christmas 2020. Nevertheless, Daniel abided by the temporary parenting time schedule and the partial parenting agreement. When the two did meet to exchange the child, the interaction was peaceful. Moreover, the record shows no instance of violence or fighting during the 14 months that the couple was separated and maintaining a custody sharing arrangement.

During the two-day trial, Daniel and Stephanie both testified. Stephanie lodged numerous domestic violence allegations against Daniel, including the incident in the garage. Building on that, Stephanie expressed concerns regarding the child's safety around Daniel if she were not present. Daniel responded by offering context to many of the altercations. He testified Stephanie was an active participant in the fighting, often antagonizing Daniel by calling him profane names. Daniel offered evidence showing that Stephanie was not afraid of him; his evidence suggested she mutually engaged in the fights. However, Stephanie also testified that Daniel never physically harmed their child and acknowledged that the child loves Daniel.

The district court addressed the allegations of domestic violence. Generally, it found that Stephanie was not afraid of Daniel; instead, it found she participated and antagonized Daniel in many cases, resulting in the escalation of conflict. However, the court also found that the fight in the garage with the child's picnic table rose to the level of domestic violence, and that no antagonistic remark could justify the way Daniel physically handled Stephanie. Having found an instance of domestic

violence perpetrated by Daniel, the district court applied the NRS 125C.0035(5) presumption against Daniel, meaning that, presumptively, joint or sole physical custody by Daniel was not in the child's best interest.

Nevertheless, the district court also found that Daniel successfully rebutted that presumption. To support its finding, the court agreed that the evidence tended to show Stephanie was an active participant in many of the fights, discrediting her allegations that Daniel was solely responsible for the ongoing conflict. The court also found that, for the most part, the parties successfully coparented their child during the 14 months of their separation when the temporary custody order was in place. In addition, the court noted the absence of violence between the parents since their separation. Ultimately, the district court granted joint physical custody to both Daniel and Stephanie over their minor child as well as an absolute decree of divorce. This appeal regarding the award of joint physical custody followed.

On appeal, Stephanie challenges the district court's award of joint physical custody both substantively and procedurally. Substantively, Stephanie argues that Daniel did not offer sufficient evidence to rebut the presumption against him as the perpetrator of domestic abuse under NRS 125C.0035(5). Procedurally, she argues the district court's order fails to make sufficiently specific factual findings to overcome the presumption that Daniel is not entitled to joint physical custody. We review child custody determinations for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). However, that deference does not extend to findings so conclusory they may mask legal error. *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano* 138 Nev., Adv. Op. 1, 501 P.3d 980, 985 (2022). Stephanie

additionally argues that the district court's order does not afford her or the minor child protection from domestic violence as required under NRS 125C.0035(5)(b).

We first consider Stephanie's challenge to the district court's determination that Daniel adequately rebutted the presumption of domestic violence under NRS 125C.0035(5). She argues that the evidence the district court relied upon was not relevant to the events that triggered the presumption; in other words, she contends Daniel's ability to coparent leading up to trial should not have been given the significant weight placed on it by the court. Instead, she argues that a spouse who has perpetrated domestic violence should first be required to show relevant evidence to ameliorate the finding of domestic violence—such as the completion of an anger management course or Alcoholics Anonymous 12-step program—before being allowed to rebut the presumption. We decline to adopt Stephanie's position, as Nevada, unlike California, does not require compliance with a condition precedent in order to challenge the rebuttable presumption of a finding of domestic violence.⁴ *Compare* NRS 125C.0035, *with* Cal. Family Code § 3044(2)(A)-(G) (requiring consideration of additional factors such as the perpetrator's completion of classes or rehabilitation programs). Nevertheless, we remain concerned to the extent the district court considered, or failed to consider, the act of domestic violence committed by Daniel as it relates to the best interest factors of the child.

⁴While our statute does not require conditions, such as completion of an anger management course or a 12-step program, to rebut the presumption, such circumstances would certainly be important.

A district court must consider the NRS 125C.0035(4) factors to determine the child's best interest when deciding child custody. In cases involving domestic violence, NRS 125C.0035(5) creates a rebuttal presumption that the child's best interest will not be served by an order of joint or sole physical custody in favor of the party that perpetrates domestic violence. The district courts enjoy broad discretion in child custody determinations so long as the reasoning is connected to the child's best interest. See *Davis v. Ewalefo*, 131 Nev. 445, 455, 352 P.3d 1139, 1145 (2015) (reversing for district court's failure to tie its consideration of one parent's foreign domicile to the child's best interest); *Rico v. Rodriguez*, 121 Nev. 695, 705, 120 P.3d 812, 818-19 (2005) (affirming a district court's consideration of a parent's immigration status because it tied that status to the child's best interest).

Here, the district court conducted a nearly complete analysis of the applicable factors under NRS 125C.0035(4), noting most factors were neutral and that the child enjoys a good relationship with both Daniel and Stephanie.⁵ We pause here to note the district court's order seems to conflate the NRS 125C.0035(4)(k) factor with NRS 125C.0035(5), a procedural rule providing for the rebuttable presumption. Under its factor (4)(k) analysis, the district court only analyzed NRS 125C.0035(5). It failed

⁵The district court concluded all the best interest factors under NRS 125C.0035(4) were neutral between Daniel and Stephanie except two. First, the district court concluded factor (c), the factor that asks which parent is more likely to allow a relationship between the child and the noncustodial parent, favored Daniel because of Stephanie's failure to perfectly abide by the pre-trial parenting order in 2020. Second, and as noted here, the district court's discussion under factor (k), the domestic violence factor, did not address the child's best interest, and it failed to conclude whether factor (k) was neutral or favored either parent.

to tie factor (4)(k) to the child's best interest, and given the finding that Daniel perpetrated domestic violence, factor (4)(k) may have favored Stephanie. Despite this omission, and considering our standard of review, we need not reverse on this basis. First, the presumption from NRS 125C.0035(5) presumes joint custody is *not* in the child's best interest; therefore, rebutting that presumption does connect the domestic violence to the child's best interest to some extent. Moreover, the violence here was not directed at the child, Stephanie was not injured, and the parties agree that the child enjoys a good relationship with both parents. Accordingly, under the facts of this case, the improved relationship between Daniel and Stephanie as well as Daniel's positive relationship with their child are the strongest links between the impact of the domestic violence incident and the child's best interest.

Focusing on the district court's reasoning, it noted the violence between Daniel and Stephanie ceased after their physical separation. Further, the two successfully coparented without incident for the 14 months before this case went to trial. Additionally, the district court found that many incidents were two-way altercations and the parties' separation and limited contact during future exchanges minimized the threat of future violence. *See generally* NRS 125C.0035(6) (describing the procedure if both parties engaged in domestic violence). Without that likelihood of future injury, it found Daniel rebutted the presumption that joint custody was not in the child's best interest.

Accordingly, we discern no abuse of discretion in the district court's reasoning that the child's best interest was advanced by joint physical custody, as the tension between Daniel and Stephanie dissipated after their physical separation and the child enjoyed a strong relationship

with both parents who, by the time of trial, had demonstrated their ability to successfully coparent.

We turn now to Stephanie's argument that the district court's order is conclusory and internally contradictory. Daniel argues the district court's analysis is sufficient, and he provides context for the allegedly contradictory portions of the order. For similar reasons to those set forth above, we agree with Daniel.

District courts are required to "tie the child's best interest . . . to the custody determination made." *Davis*, 131 Nev. at 451, 352 P.3d at 1143. This requirement for "[s]pecific findings and an adequate explanation" operates to enable effective appellate review. *Id.* at 452, 352 P.3d at 1143.

The child's interest in this case is advanced by joint custody because both parties testified that the child enjoys time with both Stephanie and Daniel, loving each. Moreover, Stephanie admitted she left the child with Daniel, otherwise unsupervised, on occasions even after the incident of domestic violence adjudicated by the district court. And as noted above, the parties' physical separation minimized the tension between Stephanie and Daniel, with proximity being the primary dynamic resulting in discord in the family. Citing Daniel's success as a parent since separating from Stephanie and rebutting the presumption linked to the child's best interest, the district court sufficiently, albeit imperfectly, tied the child's best interest to its custody determination, and we defer to its discretion.⁶

⁶We have also considered Stephanie's argument that the district court's order is internally contradictory. However, the statements Stephanie cites as contradictory are distinguishable. The court found one serious fight amounting to domestic violence; in that context, it found Daniel's actions inexcusable. In altercations the district court deemed less serious, it found Stephanie aggravated the situation. Making that

Thus, the district court's order was adequately detailed and not contradictory; with our affirmance on its substantive decision above, we see no need to remand for more detailed findings.

Finally, we address Stephanie's argument that the district court's order failed to protect herself as the domestic violence victim and the child as required by NRS 125C.0035(5)(b). We disagree because the district court imposed certain protections in its order.

In child custody cases involving domestic violence, Nevada law requires "[f]indings that the custody or visitation arrangement ordered by the [district] court adequately protects the child and the parent." NRS 125C.0035(5)(b). The district court must make findings under NRS 125C.0035(5)(b). *Id.*

Here, the district court conducted the requisite analysis. The district court noted that the level of conflict between Daniel and Stephanie decreased after the two physically separated, and there were no further incidents of domestic violence. Using that observation, the district court stated that its order "minimize[d] the parties' contact with each other and the chances of further inappropriate verbal arguments or physical altercations, thereby protecting Stephanie and [the child]." That passage, particularly the language noting that the order protected "Stephanie and [the child]," is an explicit application of the requirement of NRS 125C.0035(5)(b) and maintains the custody exchanges in the same manner that provided for 14 months of safe interactions. True, the order could have gone farther; for example, it could have included a no-alcohol use clause or other conditions to further ensure peaceful interactions. In the end,

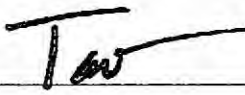
distinction, we conclude that there is no reversible error based on the analyses in the order.

however, it protects both the child and Stephanie by maintaining an exchange protocol like the pre-trial arrangement that enabled shared custody and amicable interactions.

Thus, the district court acted within its discretion because its order affords the adequate protection required under NRS 125C.0035(5)(b). It protects Stephanie by maintaining the separation between Daniel and Stephanie, and it protects the child because it maintains the exchange protocol that proved successful under the pre-trial parenting arrangement. Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Dawn Throne, District Judge, Family Court Division
Joan Hendricks, Settlement Officer
Alex B. Ghibaud, PC
Ghandi Deeter Blackham
Eighth District Court Clerk