

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ASSAYIE TESHOME,
Appellant,
vs.
MERON JIRU,
Respondent.

No. 87228-COA

FILED

JUN 21 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Assayie Teshome appeals from a district court order modifying child custody and granting Meron Jiru permission to relocate. First Judicial District Court, Carson City; James Todd Russell, Judge.

Teshome and Jiru were never married but share one minor child, A.N.T., born in March 2021.¹ In August 2022, the district court entered an initial child custody decree establishing that the parties would share joint legal and physical custody over A.N.T. on a week on/week off basis.

Prior to entry of this decree, Teshome had filed a motion for primary physical custody and permission to relocate to Atlanta, Georgia, where he had a house and family. At the hearing on Teshome's motion, both parties expressed an intent to relocate from Nevada. In the decree, the district court denied Teshome's motion for primary physical custody for purposes of relocation because, after considering the best interest factors in NRS 125C.0035(4), the court determined that it was in A.N.T.'s best interest for the parties to share joint legal and physical custody. In reaching this conclusion, the court observed that "there has not been sufficient evidence by either party" to rebut the "presumption of joint legal and preference for

¹We recount the facts only as necessary for our disposition.

joint physical custody.” Nevertheless, the decree stated that if Teshome relocated to Georgia, Jiru “will be granted primary physical custody of [A.N.T.], subject to Mr. Teshome’s substantial visitation, which is in the best interest of [A.N.T.]” The decree also stated that Jiru could not relocate without Teshome’s permission or further order of the court.

Following the entry of the decree, Teshome informed Jiru that he would no longer relocate to Georgia because he did not want to give up joint physical custody of A.N.T. The parties abided by the week on/week off custody arrangement for approximately seven months.

In March 2023, Jiru filed a motion to modify child custody, visitation, and support, and for permission to relocate. She requested the district court to award her primary physical custody and permit her to relocate with A.N.T. to Virginia. Teshome opposed, and the district court held an evidentiary hearing on Jiru’s motion. Jiru testified that she wanted to move to Richmond, Virginia, because she lived there for two years before coming to Las Vegas and had friends and a godmother there, whereas she had no friends or family in Nevada. Jiru believed that she and A.N.T. would have access to a support network in Virginia, and A.N.T. would have an opportunity to learn about his Ethiopian heritage.

Following the hearing, the district court entered an order awarding Jiru primary physical custody and granting her permission to relocate with A.N.T. to Virginia. In the order, the court recited the factual and procedural history of the case and addressed the standard for relocation set forth in NRS 125C.007. The district court first considered the three threshold relocation factors in NRS 125C.007(1) and found that Jiru had a sensible, good faith reason for the move, specifically “to be with her family and to have a relationship with people from Ethiopia with whom she feels

comfortable with and can have a life with.” The court also found that Jiru’s desire to relocate was not intended to deprive Teshome of his parenting time. The district court then addressed whether relocation was in A.N.T.’s best interests and found that

[the] best interests of [A.N.T.] are served by allowing [Jiru] to relocate with him. The Court finds that [A.N.T.] will be fine regardless of where he resides and that both parents care about [A.N.T.]. However, [Jiru] will have a better life for herself in Virginia because she has no friends or a life here. The Court finds that what is best for [Jiru] is best for [A.N.T.]. If [Jiru] is happier in Virginia, then [A.N.T.] will be happier there as well.

Lastly, the district court found that Jiru and A.N.T. will benefit from an actual advantage as a result of the relocation because “[Jiru’s] mental health will improve due to the relocation to Virginia.” Then, after addressing the six relocation factors in NRS 125C.007(2), the court concluded that Jiru had “met her burden of proof with regard to her request for a change of custody and relocation.” Upon relocation, the district court ordered that Jiru would have parenting time for a three-month period and Teshome would have parenting time for a one-month period.

Teshome filed a motion to stay the court’s order pending appeal, which the district court denied. Teshome timely appealed and sought a stay from the Nevada Supreme Court, which was granted.

On appeal, Teshome contends that the district court abused its discretion when it found that Jiru met the threshold factors for relocation as set forth in NRS 125C.007(1). Teshome also contends that the district court’s analysis regarding relocation was not supported by specific findings of fact or an analysis of A.N.T.’s best interests.

NRS 125C.007(1) provides that before the district court may grant permission to relocate, the relocating parent must demonstrate that

(a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time;

(b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and

(c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

If the relocating parent meets this initial burden, the district court must then weigh the six relocation factors in NRS 125C.007(2).

“The district court must issue specific findings for each of the NRS 125C.007(1) factors.” *Pelkola v. Pelkola*, 137 Nev. 271, 274, 487 P.3d 807, 810 (2021) (citing *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015)). A district court’s decision regarding relocation is reviewed for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004).

Here, the district court made specific findings that Jiru had a sensible, good-faith reason for the move in order to have a relationship with people from Ethiopia and that Jiru’s desire to relocate was not intended to deprive Teshome of his parenting time. These findings are supported by substantial evidence in the record. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007) (providing that a district court’s factual findings will be upheld so long as “they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment” (footnote omitted)).

However, the district court abused its discretion in evaluating whether relocation was in A.N.T.'s best interests. *See* NRS 125C.007(1)(b). As this court recognized in *Monahan v. Hogan*, 138 Nev. 58, 67, 507 P.3d 588, 595 (2022), when evaluating a child's best interests for purposes of NRS 125C.007(1)(b), "the district court should consider the best interest custody factors [from NRS 125C.0035(4)] and any other factors the court deems relevant." The court "must then make specific findings as to any of the factors it deems applicable." *Id.* Finally, the court must "take its specific findings as to the applicable factors and tie them to its conclusion regarding the child's best interests." *Id.* at 68, 507 P.3d at 596.

Here, the court found that A.N.T. "will be fine regardless of where he resides" and "what is best for [Jiru] is best for [A.N.T.]," but these conclusory statements are insufficient to establish that the relocation is in A.N.T.'s best interests, particularly where the district court did not otherwise evaluate any of the best interest factors in NRS 125C.0035(4). *See Druckman v. Ruscitti*, 130 Nev. 468, 473, 327 P.3d 511, 515 (2014) (holding the child's best interest must form the ultimate basis of a court's decision regarding relocation); *see also Davis*, 131 Nev. at 451, 352 P.3d at 1143 (holding that the district court must make specific findings when making a best interest determination).

We note that in its original joint custody order, the district court determined that Teshome was more likely to allow A.N.T. to have frequent associations and a continuing relationship with Jiru, and that "each parent" was bonded with A.N.T.; yet, the court failed to address these factors in its relocation analysis. *Cf. Monahan*, 138 Nev. at 67, 507 P.3d at 595 (recognizing that if a child is bonded to both parents, custody factor (h) may be relevant to the relocation analysis such that relocation is not in the child's

best interests). Further, Jiru testified at the evidentiary hearing that housing in Virginia would cost approximately \$450 more per month than her current rent and that in Virginia she would have to pay state income tax. She also did not have a daycare for A.N.T. in Virginia. Although she was currently working at a Starbucks roasting plant making \$21.82 per hour, if she transferred to Virginia, she would work as a barista with different pay. Despite this testimony, the court failed to evaluate how Jiru's ability to provide for A.N.T might be affected by her move to Virginia. *Cf. id.* at 67-68, 507 P.3d at 595-96 (recognizing that economic factors, such as a parent's ability to provide for a child in the new location, may impact the child's best interests in relocation).

The district court also failed to evaluate whether A.N.T. would benefit from an actual advantage due to the relocation. *See* NRS 125C.007(1)(c). The court found that *Jiru* would benefit from improved mental health, but the court made no findings that *A.N.T.* would benefit from an actual advantage. *Cf. Pelkola*, 137 Nev. at 274, 487 P.3d at 810. We note that in her motion requesting permission to relocate, Jiru stated that her mental health struggles did not impact her ability to parent A.N.T. As a result, *her* actual advantage from relocation is not automatically an actual advantage for A.N.T.

Therefore, because the district court did not properly analyze whether relocation was in A.N.T.'s best interests or would provide A.N.T. an actual benefit, we conclude that the district court also abused its discretion in evaluating whether Jiru demonstrated the threshold factors

for relocation.² *See Flynn*, 120 Nev. at 440, 92 P.3d at 1227. Accordingly, we

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


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. James Todd Russell, District Judge
Bittner & Widdis Law
Foley Law Center
Carson City Clerk

²Teshome contends that the district court's conclusory analysis of the six relocation factors in NRS 125C.007(2) was also an abuse of discretion. However, because we conclude that the district court abused its discretion in analyzing the threshold factors that must be met before the court may consider the factors in NRS 125C.007(2), we need not reach this issue. *See* NRS 125C.007(2); *see also Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 112, 1118-19 & n.26 (2008) (explaining that the appellate court need not address issues that are unnecessary to resolve the case at bar).

Teshome further argues that this case should be reassigned to a different judge on remand. Judges are presumed to be impartial, and the burden is on the party asserting bias to show otherwise. *See Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011); *see also Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 291 (Ct. App. 2023). We conclude that Teshome failed to establish that the judge was biased or that reassignment is necessary. Insofar as the parties have raised other issues 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.