


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER POSEY,
Appellant,
vs.
MARGARET WALKENHORST N/K/A
MARGARET BOND,
Respondent.

No. 89500-COA

FILED

JUL 03 2025

ELIZABETH A. BRONN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER AFFIRMING IN PART AND VACATING IN PART

Alexander Posey appeals from a district court order awarding respondent Margaret Bond sole legal custody regarding mental health treatment for their minor child. Second Judicial District Court, Family Division, Washoe County; Bridget E. Robb, Judge.

The parties, who were previously married, share a minor son, L.P. Pursuant to a stipulated custody order, the parties exercised joint legal custody with Bond having sole legal custody regarding L.P.'s religious upbringing. On June 18, 2024, Bond filed a "motion for sole legal custody for limited purpose of taking minor child to child psychiatrist." The motion explained that on April 6, 2024, L.P. made several concerning statements, including "I want to die and not go to heaven" and "I don't deserve to be alive." However, Bond indicated the next day L.P. stated he "wanted to live for a thousand years." Bond alleged she contacted L.P.'s prior therapist, who last treated L.P. approximately one year ago, and the therapist recommended taking L.P. to a child psychiatrist. Bond informed Posey of L.P.'s alleged statements and the therapist's recommendation. Posey stated that he agreed L.P. should see a mental health provider but that he believed L.P. should first see a new therapist and the new therapist should

determine if a child psychiatrist was necessary. The motion further alleged that L.P.'s teacher stated L.P. was struggling to stay focused in class, that the parties should discuss this with a doctor, and that she was able to make a child psychiatrist appointment for July 10. Finally, Bond alleged she spoke to L.P.'s pediatrician, who stated that taking L.P. to the child psychiatry appointment on July 10 may be the best option. Because the parties shared joint legal custody, Bond's motion requested the district court "break the tie" pursuant to *Kelley v. Kelley*, 139 Nev., Adv. Op. 39, 535 P.3d 1147 (2023) and determine which treatment plan was in L.P.'s best interest to address his mental health concerns.

Posey filed an opposition, which argued Bond was using her motion to limit his involvement in L.P.'s life because she was upset the parties were now sharing joint legal custody and L.P. enjoyed his parenting time with Posey. Further, Posey argued that because L.P. had not seen a therapist in over a year, he should first see a therapist to determine if a visit to a child psychiatrist was necessary. Posey stated that, should the new therapist recommend L.P. see a child psychiatrist, he would follow that recommendation.

Bond filed a reply arguing Posey misrepresented the "limited relief sought" and that Bond sought only an order which allowed her to take L.P. to a child psychiatrist. Further, Bond argued that she never sought to strip Posey of his right to be involved in L.P.'s mental health care. Bond characterized her requested relief as having the district court make the "legal custody decision on behalf of the parties" regarding which mental health provider L.P. should see or alternatively provide her sole legal custody for the specific purpose of taking L.P. to a child psychiatrist appointment and any recommended follow-up appointments.

On September 4, 2024, approximately three months after the initial motion was filed, Bond filed a notice of update to pending motion; notice of treatment provider. The notice stated that the parties had agreed to take L.P. to a therapist and that he had attended five treatment sessions, while the parties had attended three treatment sessions to focus on co-parenting issues. Attached to the notice were messages between the parties that demonstrate while the parties had temporarily agreed to take L.P. to a therapist, pending the district court's decision on Bond's motion, there remained an ongoing dispute regarding taking L.P. to a child psychiatrist. The notice did not indicate whether L.P.'s new therapist recommended he see a child psychiatrist.

Approximately one week later, the district court entered an order granting Bond's motion and awarded Bond sole legal custody over L.P.'s mental health, including taking L.P. to a child psychiatrist for evaluation and treatment. The district court found Posey failed to provide a clear reason why L.P. should not see a child psychiatrist and concluded it was in L.P.'s best interest to do so and for Bond to receive sole legal custody over L.P.'s mental health treatments. The district court further ordered that Posey could not make any decisions regarding L.P.'s mental health treatment or otherwise obstruct his treatment, as decided by Bond. Although the district court concluded this was in L.P.'s best interest, it did not specifically analyze the *Kelley* factors in reaching its decision. Posey now appeals.

Posey presents several arguments on appeal, including that the district court violated his due process rights by granting Bond sole legal custody regarding mental health treatment because it exceeded the relief Bond sought in the motion below. Posey further argues the district court

failed to apply the appropriate standard when modifying legal custody to broadly include all mental health care and failed to make sufficient factual findings to support its decision. Posey additionally argues the district court failed to make adequate findings when it granted Bond permission to take L.P. to a child psychiatrist and any recommended follow-up sessions. In response, Bond argues the substantive issue of who should determine L.P.'s mental health treatment, specifically whether she would be permitted to take L.P. to a child psychiatrist for evaluation, was briefed by the parties below and thus there was no due process violation. Bond argues the district court considered L.P.'s best interest when evaluating whether L.P. should see a child psychiatrist and the court was not required to make specific findings in support of its decision.

This court reviews district court decisions concerning legal custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007); *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 531 (2006) (reviewing a district court's decision to modify legal custody for an abuse of discretion). "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 v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022).

We conclude the district court did not abuse its discretion by awarding Bond sole legal custody for the limited purpose of taking L.P. to a child psychiatrist and recommended follow-up appointments as she requested in her motion. Generally, divorced parents who share joint legal custody are both responsible for making decisions regarding the child's health. *Kelley*, 139 Nev., Adv. Op. 39, 535 P.3d at 1151. When the parents

are unable to agree on a parenting decision involving health care, the parents can petition the district court to determine what is in the child's best interest. *Id.* The district court may then enter "an order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest." NRS 125C.0045(1)(a). Unlike physical custody determinations, district courts are not required to consider the NRS 125C.0035(4) factors when determining which proposed course of treatment is in the child's best interest. *Kelley*, 139 Nev., Adv. Op. 39, 535 P.3d at 1153. Recognizing that "tie-break" decisions are inherently individualized, the supreme court stressed "that district courts have discretion . . . [and] should consider any information that is relevant under the circumstances." *Id.*; see also *Arcella v. Arcella*, 133 Nev. 868, 873, 407 P.3d 341, 346-47 (2017) (emphasizing that the identified factors are "illustrative rather than exhaustive").

Here, the district court made several factual findings, which are supported by substantial evidence, that taking L.P. to a child psychiatrist was in his best interest. See *Ellis*, 123 Nev. at 149, 161 P.3d at 242 (2007); *Kelley*, 139 Nev., Adv. Op. 39, 535 P.3d at 1153. The district court found, and both parties appear to agree, that the statements L.P. allegedly made about his wellbeing were serious requiring medical intervention, which the court found would best be provided by a psychiatrist. Further, the record supports that both L.P.'s prior therapist and current pediatrician recommended that he see a child psychiatrist to address both his concerning statements and potential ADHD diagnosis. See *Kelley*, 139 Nev., Adv. Op. 39, 535 P.3d at 1154 (stating courts should consider any medical recommendation). Notably, Posey never disputed that L.P. required mental health care but was opposed to L.P. seeing a child psychiatrist and favored

an evaluation by a therapist. However, Posey failed to present evidence demonstrating why seeing a therapist, as opposed to a child psychiatrist, was in L.P.'s best interest in light of L.P.'s mental health and medical needs. Under these facts, we conclude the district court properly exercised its broad discretion by permitting Bond to take L.P. to a child psychiatrist and recommended follow-up appointments.

However, to the extent the district court's order granted Bond sole legal custody for *all* mental health decisions, it exceeded the relief requested by Bond. Contrary to Bond's broader argument on appeal, neither in her motion or reply below did Bond seek a modification of legal custody involving L.P.'s mental health beyond allowing Bond to take L.P. to a child psychiatrist. Rather, Bond's motion requested sole legal custody only "for the limited purpose of taking [L.P.] to see the next available child psychiatrist . . . and for any follow-up appointments as recommended by the professional." To this end, Bond's motion expressly requested that the district court apply *Kelley* to "break the tie" between the parents and determine whether L.P. should see a child psychiatrist or should first see a therapist. Bond acknowledged in her reply that she "*never* stated that [Posey] should be stripped of his right to be involved in [L.P.]'s care." Instead, she characterized her requested relief "as the Court making the 'legal custody decision on behalf of the parties' [regarding whether L.P. should see a therapist or psychiatrist] . . . or as a limited grant of sole legal custody" for the specific purpose of taking L.P. to a child psychiatrist. Plainly, Bond was not seeking a modification of legal custody regarding all mental health issues concerning L.P., but sought only to have the district court break the parties' tie on whether Bond could take L.P. to a child psychiatrist.

Thus, to the extent the district court's order exceeded the relief Bond requested by awarding Bond sole legal custody over L.P.'s mental health treatment without limitation, it effectively changed the parties' legal custody arrangement without giving Posey notice or an opportunity to be heard, thereby violating Posey's due process rights. "Due process protects certain substantial and fundamental rights, including the interest parents have in the custody of their children." *Gordon v. Geiger*, 133 Nev. 542, 545-46, 402 P.3d 671, 674 (2017). A district court errs when it modifies custody "without prior specific notice" to the parties that custody may be modified. *Dagher v. Dagher*, 103 Nev. 26, 28, 731 P.2d 1329, 1330 (1987); *see also Micone v. Micone*, 132 Nev. 156, 159, 368 P.3d 1195, 1197 (2016) (holding the court's "surprise" unilateral award of primary physical custody to the grandparents violated due process where the parties were unaware the court was considering that option); *Matthews v. Second Jud. Dist. Ct.*, 91 Nev. 96, 97-98, 531 P.2d 852, 853 (1975) (holding the lower court "manifestly acted without notice where notice was required" by sua sponte awarding custody to the father when the mother failed to timely submit a psychiatric report, thereby depriving the mother of her opportunity to be heard); *see also* NRS 125A.345(1) (requiring notice and an opportunity to be heard for child custody determinations).

Accordingly, we conclude the district court's order modifying the parties' legal custody arrangement and granting Bond sole legal custody regarding all mental health treatment was beyond the relief sought by Bond from the district court below and was arguably unintended based on the parties' arguments below. Because the unrequested relief granted by the court violated Posey's due process right by failing to provide specific notice that a broader modification to legal custody was under consideration, we

vacate the district court's order to the extent it awarded Bond sole legal custody over all mental health treatment.¹ However, as discussed above, we affirm that part of the court's order permitting Bond to take L.P. to a child psychiatrist for evaluation and any recommended follow-up visits.

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Bridget E. Robb, District Judge, Family Division
Bittner & Widdis Law
Viloria, Oliphant, Oster & Aman L.L.P.
Willick Law Group
Washoe District Court Clerk

¹We have considered the parties' additional arguments and conclude they do not merit relief.