

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCOS ALCALA,
Appellant,
vs.
CRISTINA BELLO AND JACOB
BELLO,
Respondents.

No. 89694-COA

FILED

OCT - 8 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Elizabeth A. Brown
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marcos Alcala appeals from a district court order regarding grandparent visitation. Eighth Judicial District Court, Family Division, Clark County; Frank P. Sullivan, Senior Judge.

Marcos was married to Esmeralda Alcala and they share three minor children in common. In 2019, the children were taken into the custody of Child Protective Services (CPS) following Marcos' arrest for several criminal offenses and substance abuse issues involving both parents. The children were placed with respondents Cristina Bello and Jacob Bello (the Bellos), the children's maternal grandparents.

Marcos and Esmeralda later divorced and Esmeralda relinquished her parental rights to the children. However, Marcos eventually completed his case plan and the children were removed from respondents and returned to Marcos' custody in 2023.

The Bellos subsequently petitioned for grandparent visitation pursuant to NRS 125C.050. The Bellos contended that the children had

resided with them, they formed meaningful relationships with the children, and Marcos denied or unreasonably restricted their visits with the children. Marcos opposed the motion, contending that the Bellos had previously interfered with his relationship with the children and that there were potential safety risks associated with the Bellos.

The district court subsequently conducted an evidentiary hearing concerning the Bellos' request for grandparent visitation. The Bellos, Marcos, and several additional witnesses testified at this hearing.

The district court later issued a written order in which it determined that the Bellos met their burden to demonstrate grandparent visitation was in the children's best interests. The court found that the children had previously resided with the Bellos and had established meaningful relationships with them and that Marcos had denied or unreasonably restricted the Bellos from visiting them. *See* NRS 125C.050(2), (3). The court noted that Marcos had a due process right in the care, custody, and control of his children and that, because he was a fit parent, there was a rebuttable presumption it was not in the best interests of the children to award the Bellos with grandparent visitation. *See* NRS 125C.050(4). However, the court determined that the Bellos presented clear and convincing evidence sufficient to rebut that presumption and that it was in the best interests of the children to grant the Bellos' request for visitation. In so determining, the court evaluated NRS 125C.050(6)'s factors and found that those factors favored the Bellos' request for visitation. The district court accordingly awarded the Bellos with visitation

each month on the third Friday, beginning at 5:00 p.m. and lasting until 12:00 p.m. on Sunday.

The district court also noted that Marcos' main objection to the Bellos' request for grandparent visitation was his concern that they would allow Esmeralda and her new husband to have contact with the children. In light of that concern, the district court ordered the Bellos to not allow Esmeralda or her husband to have contact with the children when they exercised their grandparent visitation. This appeal followed.

On appeal, Marcos argues that the district court abused its discretion by granting the Bellos' request for grandparent visitation. Marcos contends the court failed to properly consider the rebuttable presumption that he acted in the children's best interests by declining to allow the Bellos to visit the children. Marcos also asserts the district court failed to properly evaluate and weigh the evidence presented at the evidentiary hearing, as he argues the Bellos did not present clear and convincing evidence that it was in the children's best interests to grant grandparent visitation. In addition, Marcos contends the district court violated his due process rights by interfering with his decisions concerning the care of his children without a compelling reason.

A district court decision regarding visitation rights is reviewed for an abuse of discretion. *Ramos v. Franklin*, 139 Nev. 54, 60, 525 P.3d 1227, 1232 (2023). However, "[w]hether the district court applied the correct legal standard and whether such standard infringes on a fundamental right are questions of law we review de novo." *Kelley v. Kelley*, 139 Nev. 359, 361, 535 P.3d 1147, 1150 (2023). "We uphold the district

court's factual findings if they are supported by substantial evidence and not clearly erroneous." *Ramos*, 139 Nev. at 60, 525 P.3d at 1232. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). "It is presumed that a trial court has properly exercised its discretion in determining a child's best interest." *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

Grandparents or other persons who have resided with a child and established a meaningful relationship may petition the court for reasonable visitation if the parents of the child have unreasonably denied visitation. NRS 125C.050(1)-(3). However, if a parent has denied visitation with the child, there is a rebuttable presumption that granting visitation to the petitioners is not in the child's best interests. NRS 125C.050(4). To rebut this presumption, the petitioners must demonstrate by clear and convincing evidence that it is in the best interests of the child to grant visitation. *Id.* When determining whether the petitioners have rebutted the presumption, the district court shall consider the factors enumerated in NRS 125C.050(6).

At the evidentiary hearing, the Bellos testified at length concerning their relationship with the children. The Bellos testified concerning their care of the children between 2019 and 2023, explaining that they and the children were bonded. They also testified that they provided the children with their physical, emotional, and educational needs during that time. Moreover, the Bellos testified that they sought to teach the children right from wrong, they would have no problem caring for the

children despite the Bellos' ages, and they sought medical care for the children when appropriate and necessary. The Bellos further explained that they encouraged the children to love and respect Marcos and denied stating bad things to the children about Marcos.

In addition, the Bellos noted they had made a report concerning potential abuse of one child by Marcos as the child had indicated he touched her inappropriately. However, CPS later determined that the allegations were unsubstantiated. The Bellos also presented testimony from several additional witnesses, including the children's aunt, concerning their close relationship with the children and the care they provided to the children.

Marcos presented evidence of his concerns that the Bellos had attempted to alienate him from his children. He also presented evidence and questioned the Bellos as to whether they would permit Esmeralda and her new husband to visit the children. Marcos also presented evidence in support of his assertion that the Bellos did not properly care for the children when the children resided with them.

Marcos' sisters testified at the hearing regarding their experiences with the children, Marcos, and the Bellos, and expressed concern that the Bellos attempted to interfere with Marcos' relationship with the children. In addition, a caseworker testified regarding the reunification of the children with Marcos and explained that the reunification process caused trauma for the children and was therefore expedited. The caseworker also noted the parties experienced tension during that process and that the Bellos expressed their view that Marcos allowed the children to view scary movies and things of that nature.

However, the caseworker explained that the children seemed bonded to the Bellos and that they provided clothes and toys for the children when they were returned to Marcos' custody.

As stated previously, the district court found that the children resided with the Bellos and established meaningful relationships with them. *See* NRS 125C.050(2). The court also found that Marcos had denied or unreasonably restricted their visits with the children since he regained custody of them in 2023, noting that Marcos had one time offered to allow a two-hour supervised visitation at a library but otherwise had denied all visits. *See* NRS 125C.050(3). The court noted that Marcos had been determined to be a fit parent and he had a liberty interest in the care, custody and control of his children, and that there was a rebuttable presumption that it was not in the children's best interests to award the Bellos with grandparent visitation. *See* NRS 125C.050(4). However, the court further noted that the Bellos could overcome that presumption by proving by clear and convincing evidence that it was in the children's best interests to allow grandparent visitation. To that end, the district court reviewed the factors under NRS 125C.050(6) and made specific findings concerning those factors.

Specifically, the district court noted that the Bellos testified concerning their love, affection, and emotional ties to the children. The court further noted the Bellos submitted numerous photographs depicting them with the children, including at a Christmas party, a kindergarten graduation, and reading together. The court also noted the caseworker testified that the children were bonded to the Bellos. The district court

concluded the testimony and photographs demonstrated that love, affection, and emotional ties existed between the Bellos and the children. *See* NRS 125C.050(6)(a).

Next, the district court found that the testimony demonstrated that the Bellos gave the children love, affection, and guidance when the children resided with them. The court also found the Bellos provided the children with food, clothing, medical care, and other things necessary for their wellbeing. The district court further found that the Bellos were willing to provide the children with whatever healthcare was needed. *See* NRS 125C.050(6)(b), (h).

The district court also noted the nature of the Bellos' relationship with the children and found they celebrated holidays with the children and included the children in family gatherings and activities. *See* NRS 125C.050(6)(c). In addition, the district court found there were no issues concerning the Bellos' moral fitness or their mental and physical health. *See* NRS 125C.050(6)(d), (e). Moreover, the district court reviewed prior court matters and noted the children's attorney made it clear that the children wished to have contact with the Bellos, although the court also found that the children were not of sufficient maturity to express a preference. *See* NRS 125C.050(6)(f).

The district court also made findings concerning whether the Bellos were willing and had the ability to facilitate and encourage a close relationship between the children and Marcos. The court noted the testimony presented concerning the CPS report and that it had been determined to be unsubstantiated. The court also noted the caseworker

observed rising tensions between the Bellos and Marcos during the reunification process. However, the court noted the Bellos testified that they encouraged the children to love and respect Marcos and that they allowed contact between the children and Marcos when they cared for the children. The district court ultimately found that the Bellos stated they would not do anything to alienate the children from Marcos or undermine their relationship with him. *See* NRS 125C.050(6)(g). Further, the court found that the Bellos contributed to the financial support of the children. The district court found they provided the children with food, clothing, toys, and paid for the children's activities. *See* NRS 125C.050(6)(i).

Finally, the district court found there were several other issues that arose solely from the facts and circumstances in this matter. *See* NRS 125C.050(6)(j). The court noted that there was tension between Marcos and the Bellos but that Marcos was mainly concerned the Bellos would allow Esmeralda and her new husband to contact the children. However, the court found that the Bellos' request for grandparent visitation stemmed from their desire to maintain a meaningful relationship with the children. The district court also noted that Clark County Family Services had placed the children's half-sibling with the Bellos and allowing them to have visitation with the children would help the children to establish and/or maintain a relationship with their half-sibling.

In light of the foregoing, the district court concluded that the Bellos rebutted the presumption against granting their request for grandparent visitation by clear and convincing evidence. The district court

accordingly found that granting the Bellos' request for visitation was in the children's best interests. *See* NRS 125C.050(4).

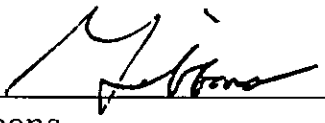
Our review of the district court's order demonstrates it appropriately applied NRS 125C.050(4)'s rebuttable presumption and also understood that the Bellos had the burden to rebut that presumption by clear and convicting evidence. *See Kelley*, 139 Nev. at 361, 535 P.3d at 1150. While Marcos contends the court failed to properly evaluate and weigh the evidence, the court's factual findings made in support of its determinations are supported by substantial evidence in the record. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. This court will not second guess a district court's resolution of factual issues involving conflicting evidence or reconsider its credibility findings. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). Accordingly, we discern no abuse of discretion by the district court in granting the Bellos' request for grandparent visitation. *See Ramos*, 139 Nev. at 60, 525 P.3d at 1232.

Moreover, Marcos does not demonstrate the district court violated his right to due process by awarding the Bellos with grandparent visitation. We note that "[p]arents have a fundamental right to manage the 'care, custody, and control of their children.'" *Kelley*, 139 Nev. at 361, 535 P.3d at 1151 (2023) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Before a parent's right to manage the care, custody, and control of his or her children is affected, due process requires notice and an opportunity to challenge the evidence presented at a full and fair hearing. *Gordon v. Geiger*, 133 Nev. 542, 546, 402 P.3d 671, 674 (2017); *Moser v. Moser*, 108 Nev. 572, 576, 836 P.2d 63, 66 (1992).

Here, the record demonstrates Marcos had advance notice of both the Bellos' request for grandparent visitation and of the evidentiary hearing concerning that issue. Marcos also appeared at the hearing, questioned the Bellos and their witnesses, and presented evidence in support of his opposition to their request for grandparent visitation. In light of the aforementioned findings under NRS 125C.050 concerning the children's best interests, *see Ramos*, 139 Nev. at 59, 525 P.3d at 1231-32 (noting that "NRS 125C.050(3), along with the presumption in NRS 125C.050(4), were added [in the 2001 amendments to NRS 125.050] to strengthen the constitutionality of NRS 125C.050 by protecting the parents' fundamental interests"), together with the notice provided to Marcos and the evidentiary hearing, we conclude Marcos fails to demonstrate the district court violated his right to due process. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹

 C.J.
Bulla

 J.
Gibbons

 J.
Westbrook

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we conclude that they either do not present a basis for relief, need not be addressed, or are improperly raised for the first time on appeal.

cc: Chief Judge, Eighth Judicial District Court
Hon. Frank P. Sullivan, Senior Judge
Marcos Iram Alcala
Cristina Bello
Jacob Bello
Eighth District Court Clerk