

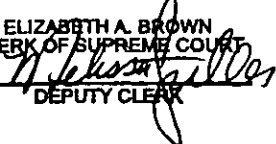
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW GROVES,
Appellant,
vs.
SARAH JOHNSON,
Respondent.

No. 89931-COA

FILED

NOV 18 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Matthew Groves appeals from a district court order modifying custody and granting respondent Sarah Johnson's motion to relocate. Second Judicial District Court, Family Division, Washoe County; Aimee Banales, Judge.

The parties were married in 2019 and share two minor children, born in 2018 and 2019, respectively. Groves filed for divorce in 2022, and the district court entered a decree of divorce in September 2023 awarding the parties joint legal and physical custody. In October 2023, the court awarded Johnson temporary primary physical custody because Groves was incarcerated from August to December 2023 but ordered the custody arrangement to revert back to joint custody pursuant to the decree after 30 days. The record demonstrates that Groves did not have much, if any, contact with the children following his release from incarceration and that the children resided with Johnson. Johnson subsequently relocated with the children to Iowa.

In March 2024, Johnson filed a motion to modify custody, seeking "full permanent custody" of the children, and a notice of change of address indicating that she had moved to Iowa. Johnson alleged Groves

had threatened her, sent her messages from jail stating it was best if he gave up his rights to the children, and that he had an extensive criminal history which included domestic violence against her. Groves opposed the motion and argued Johnson relocated without his consent.

The district court directed Johnson to file a motion to relocate and Groves to file a motion to modify custody if he wanted the children to be placed in his care. Both parties filed their respective motions, and the court set an evidentiary hearing to decide the various pending motions.

At the evidentiary hearing, both parties testified and presented evidence. Johnson testified about relocating to Iowa and her belief that she could relocate based on Groves' messages indicating he wished to give up his parental rights. She also testified that Groves threatened her and showed up at her home in Iowa, and she was forced to obtain a protection order against him. Johnson further testified that the children were thriving and had improved behaviorally in Iowa, and each had numerous medical diagnoses that were being treated and accommodated there. Finally, she testified about how she had benefitted from living in Iowa and how the best interest factors favored her.

Groves maintained the best interest factors favored him and testified that Johnson had a history of neglect with the children and had been investigated by Child Protective Services (CPS). Groves acknowledged he had used methamphetamine for 25 years and was not seeking medical assistance with that issue, was living in a weekly motel, and did not know the children's needs since he had not been around them in over a year.

Following the hearing, the district court entered a written order granting Johnson's motion to relocate and denying Groves' countermotion to modify custody. The court found it was in the children's best interest to

remain in Iowa with Johnson and for her to have primary physical custody and sole legal custody. The court awarded Groves one supervised video call per week for a year and determined that was the least restrictive parenting time available as Groves was not fit to have custody of the children.

In so deciding, the district court evaluated the statutory best interest factors and found that most favored Johnson and none favored Groves. Further, the court evaluated the NRS 125C.007 relocation factors and ultimately concluded that the children's best interests were served by remaining with Johnson in Iowa. While the court expressed concern that Johnson relocated without obtaining Groves' consent or a court order, it did not find her relocation rose to the level of an abduction based on Groves' messages to her. The court also found Johnson's testimony at the evidentiary hearing credible. It further concluded that Groves' criminal history, methamphetamine use, history of domestic violence against Johnson, recent release from incarceration, and residence in a weekly motel overall demonstrated that the children's best interests were served by remaining with Johnson. This appeal followed.

On appeal, Groves challenges the district court's order, arguing primarily that the court abused its discretion by allowing Johnson to relocate without permission and by failing to consider the best interest of the children.

This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). Similarly, we review a district court's decision to grant a motion for relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by

substantial evidence. *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn*, 120 Nev. at 440, 92 P.3d at 1226-27.

We first address Groves' argument that the district court abused its discretion by allowing Johnson to relocate to Iowa without first obtaining the proper consent. This court has recognized that "[r]elocation of children following the dissolution of the parents' relationship is one of the most difficult issues a court must resolve." *Monahan v. Hogan*, 138 Nev. 58, 58, 507 P.3d 588, 589 (Ct. App. 2022). NRS 125C.0065(1) governs relocation in this case and provides that, where joint physical custody has been established by an order, judgment or decree of a court, a parent intending to relocate outside Nevada with the children shall, prior to relocating, attempt to obtain written consent to relocate from the non-relocating parent, or petition the court for primary custody for the purpose of relocating. If a parent relocates without first obtaining a court order authorizing the relocation, that parent is subject to the provisions of NRS 200.359. NRS 125C.0065(3). NRS 200.359(4) is a criminal statute that prohibits a parent with joint physical custody pursuant to a court order from relocating with the child without the proper permission. However, NRS 200.359(2) provides that a parent will not be held criminally liable if the removal occurred with the intent to protect the child or themselves from domestic violence.

Here, it is undisputed that Johnson relocated with the children prior to seeking consent from Groves or an order from the district court allowing her to relocate outside the state with the children. However, the district court addressed this issue, concluding that the evidence presented at the evidentiary hearing demonstrated that Johnson did not intend to relocate without Groves' permission and did so out of fear for domestic violence. The district court also did not determine an act of abduction had been committed by clear and convincing evidence such that the rebuttable presumption under NRS 125C.0035(7)¹ should apply.

Specifically, the district court found that Johnson provided credible evidence that she believed she could relocate with the children based on Groves' written statement that he no longer wished to have contact with the children. The court noted that Johnson's belief was legally incorrect but that she credibly explained why she believed she had permission to relocate. The court additionally found that Johnson's testimony that she was fearful of Groves due to his pattern of abuse, for which he was convicted and incarcerated, was credible. *Cf.* NRS 200.359(2) (providing that a parent with joint custody shall not willfully remove a child from the other parent's custody with the "specific intent to frustrate" the other parent's efforts to maintain a meaningful relationship with the child and allowing for an abduction to be excused if a parent's actions were

¹"A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint physical custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child." NRS 125C.0035(7).

intended to protect the child or themselves from domestic violence). The district court's determination was supported by substantial evidence, and we therefore discern no abuse of discretion. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Next, we turn to Groves' overall challenge to the district court's relocation decision and his contention that it failed to consider the children's best interests. When a parent with joint physical custody seeks primary physical custody for the purposes of relocating, the district court must determine whether the relocating parent has a good faith, sensible reason for relocating; that the move is not intended to deprive the non-relocating parent of parenting time; that the best interests of the child are served by allowing the relocation; and that the relocation will result in an actual advantage to the benefit of the child and relocating parent. NRS 125C.007(1).

If that threshold standard is met, the district court must next consider: whether the move will likely improve the quality of life for the child and relocating parent; whether the relocating parent's motives are to frustrate the non-relocating parent's custodial time; whether the relocating parent will comply with visitation orders; whether the non-relocating parent's opposition to the move is honorable; and whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that preserves and fosters the non-relocating parent's relationship with the child. NRS 125C.007(2).

In this case, the district court considered the factors under NRS 125C.007(1) and found that Johnson had a good-faith reason to relocate; it was in the children's best interests to remain in Iowa; and there were various actual advantages, such as better job opportunities in Iowa, a more

reasonable cost of living, improved mental health, and a three-bedroom home. *See, e.g., Trent v. Trent*, 111 Nev. 309, 316, 890 P.2d 1309, 1313 (1995) (an improved economic situation creates an actual advantage). The court also considered the factors under NRS 125C.007(2) and the NRS 125C.0035(4) best interest factors and overall concluded that the children's best interests were served by remaining with Johnson in Iowa. Specifically, the court found Johnson testified the quality of her and the children's lives were improved in Iowa. This finding is supported by Johnson's testimony and the court's best interest findings that the children were thriving, had improved behaviorally, and were receiving school accommodations and medical treatment for various diagnoses. Further, Johnson's mental health had improved. The district court also found Johnson presented credible evidence that her motives in moving were honorable, she would comply with the court's orders, and she established she was a fit parent and was more aware of the children's significant needs.

By contrast, the district court found Groves' extensive and recent criminal history, issues with methamphetamine and failure to seek professional assistance, history of domestic violence, recent release from incarceration and residence in a weekly motel all weighed in favor of allowing Johnson to relocate and have primary physical custody of the children. Given Groves' history and the evidence presented, which demonstrated he was unfit to have custody of the children, the court ordered Groves to have weekly supervised video calls with the children, which it concluded was the least restrictive parenting time available. Because the district court's factual findings made in support of these determinations are supported by substantial evidence in the record, we conclude the district

court did not abuse its discretion in granting Johnson's motion to relocate. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241-42.

Next, Groves challenges the district court's decision to modify the custody arrangement.² To establish that a custodial modification is appropriate, the moving party must show that "(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Romano v. Romano*, 138 Nev. 1, 5, 501 P.3d 980, 983 (2022) (internal quotation marks omitted), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023). The party requesting modification bears the burden to satisfy both prongs. *Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43. Groves does not challenge the substantial change in circumstances prong and only contends that the district court made its determination without considering the children's best interest. He also challenges the district court decision concerning parenting time, asserting it awarded him too little time with the children.

Here, contrary to Groves' contention, the district court evaluated the NRS 125C.0035(4) statutory best interest factors in making its custody determination. The court found that most factors weighed in

²To the extent Groves challenges the district court's legal custody decision, we conclude he is not entitled to relief. The district court found awarding Johnson sole legal custody was in the children's best interest because of the parties' inability to communicate civilly and cooperatively to meet the children's needs, Groves' history with domestic violence against Johnson, his long-term history of serious drug use, and the children's significant medical needs. The court expressed concern that the children's needs would not be timely met if the parties were required to agree on issues. This finding was supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242.

favor of awarding Johnson primary physical custody. Specifically, the court found that Johnson had attempted to encourage the children to visit with Groves and had demonstrated that she repeatedly attempted to contact Groves, but his phone was disconnected, and she was not given a new number. *See* NRS 125C.0035(4)(c). Further, the court found that the parties could not cooperate, and Groves fueled conflict by threatening and belittling Johnson. *See* NRS 125C.0035(4)(d), (e).

Additionally, the district court found that Groves resided in a weekly room with an on-and-off girlfriend, had issues with drugs for 25 years and was not seeking professional assistance, and made statements about not wanting the children while he was not in a good state of mind. In contrast, the court found Johnson's mental health had improved with distance from Groves and diminished her fear that he would threaten her. *See* NRS 125C.0035(4)(f). The court also found that Groves did not know the children's needs, but that they were thriving with Johnson and their behavioral and medical issues were being addressed in Iowa. *See* NRS 125C.0035(4)(g). Although the court acknowledged that Groves engaged in activities with the children when he was with them, Johnson had established a relationship with them and they did not know Groves because he was incarcerated for a majority of their lives. *See* NRS 125C.0035(4)(h). Moreover, the district court found that the children have a half-sibling that resides with Johnson and they had weekly video visits with another sibling while in her care. *See* NRS 125C.0035(4)(i).

The district court also focused on Groves' criminal history, which was largely comprised of domestic violence against Johnson and a recent weapons-related misdemeanor conviction. *See* NRS 125C.0035(4)(k); *see also Castle v. Simmons*, 120 Nev. 98, 105, 86 P.3d 1042, 1047 (2004)

("The court must hear *all* information regarding domestic violence in order to determine the child's best interests."). In making that finding, the court noted that Johnson testified about Groves' physically, mentally, and emotionally abusive behavior throughout their relationship, that she obtained a protective order against him in Iowa after he went to her home and refused to leave, and that Johnson presented evidence of harassment and threats Groves sent her directly through text messages and indirectly through other individuals.

The aforementioned factual findings made in support of these determinations are supported by substantial evidence in the record, *see Ellis*, 123 Nev. at 149, 161 P.3d at 242, and this court will not second guess a district court's resolution of factual issues involving conflicting evidence or reweigh the district court's credibility determinations, *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 determining that awarding Johnson primary physical custody was in the children's best interest. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Moreover, in awarding Johnson primary physical custody, the court also awarded Groves supervised parenting time via video visits through the Family Peace Center one time per week, which it found was the least restrictive parenting time because Groves was not fit to have custody of the children. The court additionally allowed Groves to have in-person supervised parenting time in Iowa, at Johnson's discretion, provided he gives Johnson 30-days' notice concerning that issue. Given the district court's best interest findings regarding Groves' criminal and domestic violence history, his recent and long-time issues with drugs, and his lack of

a stable living situation, the parenting time designation was supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Aimee Banales, District Judge, Family Division
Matthew Scott Groves
Sarah Johnson
Washoe District Court Clerk

³Insofar as Groves raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.