

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTHUR D'ANTONIO, III,  
Appellant,  
vs.  
LYDIA D'ANTONIO,  
Respondent.

No. 90516-COA

**FILED**

**FEB 02 2026**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY Melissa [Signature]  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Arthur D'Antonio, III, appeals from a district court decree of divorce. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

Arthur and respondent Lydia D'Antonio married in 2015 and share three minor children. In 2024, Arthur filed a complaint for divorce and sought joint legal and physical custody of the parties' children. Lydia filed an answer and counterclaim, seeking joint legal custody of the children but requesting an award of primary physical custody in her favor. In addition, Lydia requested an order permitting her to relocate to Minnesota with the children.

Arthur filed a motion seeking an order temporarily awarding him primary physical custody of the children. Arthur alleged that Lydia had problems stemming from the abuse of alcohol and her behavior while under the influence of alcohol put the safety of the children at risk. Arthur further explained that he did not believe it was appropriate for Lydia to have unsupervised parenting time with the children and requested an order directing Lydia to submit to alcohol monitoring. Lydia thereafter filed an opposition to Arthur's motion. Lydia argued that Arthur's contentions that

she was an unfit parent or abused alcohol lacked merit. However, Lydia agreed to submit to alcohol monitoring. The district court later entered an order in which it declined to grant Arthur's request for temporary primary physical custody and instead temporarily awarded the parties joint physical custody with an alternating weekly schedule. However, the court directed Lydia to participate in alcohol and substance abuse monitoring. The district court also directed the parties to attend a co-parenting class.

The district court subsequently conducted a trial concerning the outstanding custody issues. Arthur and Lydia testified at the trial concerning their care of the children and their interactions with each other. In particular, the parties testified as to whether Lydia abused alcohol and whether issues stemming from her consumption of alcohol impacted the children's wellbeing. Lydia also testified at length concerning her desire to relocate to Minnesota with the children and explained her belief that such a relocation was in the children's best interests.

The district court subsequently entered a written custody decree. The court specifically found that Arthur's allegations concerning Lydia's abuse of alcohol lacked merit. The court found Arthur's representations concerning Lydia's alcohol use were disingenuous and he had no serious concerns about the children's safety while they were with Lydia. The court also found that Arthur's testimony concerning his role in the children's care was not credible and he had caused stress and conflict with Lydia through various actions. The district court reviewed NRS 125C.0035(4)'s best interest factors and found, based on those factors, that it was in the children's best interest to award Lydia primary physical custody. The court also determined that the parties should share joint legal custody.

In addition, the district court reviewed Lydia's request to relocate to Minnesota with the children. The court found that the evidence demonstrated it was in the children's best interests to relocate to Minnesota with Lydia. The court further provided Arthur with parenting time and allowed him to have either video or phone calls with the children three days per week. The district court also issued a holiday timeshare and awarded Lydia child support. This appeal followed.

Arthur challenges the district court's decision to award Lydia primary physical custody and to grant her request to relocate to Minnesota with the children. This court reviews district court decisions concerning child custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence, "which is evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* at 149, 161 P.3d at 242.

Courts must consider a pending motion to relocate when making the initial permanent custody determination. *McGuinness v. McGuinness*, 114 Nev. 1431, 1435, 970 P.2d 1074, 1077 (1998). When resolving a request to relocate and making an initial permanent custody determination, "the district court must base its decision on the child's best interest." *Druckman v. Ruscitti*, 130 Nev. 468, 473, 327 P.3d 511, 515 (2014). "A court cannot adequately evaluate a child's best interest in the custody determination without considering the circumstances of the relocation request." *Id.* at 474, 327 P.3d at 515.

First, Arthur raises several arguments concerning the district court's determination that several of NRS 125C.0035(4)'s best interest factors favored awarding Lydia primary physical custody. Arthur contends

the court's findings concerning the NRS 125C.0035(4)'s best interest factors were not supported by substantial evidence, as he argues the evidence established that Lydia abuses alcohol and that he did not create the parties' conflicts. Arthur also argues the court abused its discretion by finding that he works long hours and is not available to spend time with the children due to his work commitments. Arthur further asserts the district court improperly favored Lydia's decisions concerning the children's religion and made erroneous findings as to whether he nominated Lydia as a guardian for the children.

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). The NRS 125C.0035(4) best interest factors are non-exhaustive and should be considered along with any other relevant information the district court deems significant. *See Ellis*, 123 Nev. at 152, 161 P.3d at 243. Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004). A court may award one parent primary physical custody if it determines that joint physical custody is not in the best interest of the child. NRS 125C.003(1).

As stated previously, the parties testified during the trial in this matter. Arthur testified concerning his observations of Lydia's consumption of alcohol and explained his belief that she consumed alcohol to excess. Moreover, Arthur introduced a video depicting Lydia in a state of intoxication. Arthur stated there were additional video recordings depicting Lydia while she was intoxicated but acknowledged he was not able to present the recordings to the district court.

Arthur also testified that he often participated in the care of the children but explained that he runs his own video game development company and works long hours. Arthur testified that, while he typically is able to work less time, he worked 14 to 16 hour days when a game was nearing publication and that he worked late when communicating with Europe-based contractors. Arthur further explained that he was working toward the development and publication of a new game. In addition, Arthur explained he traveled to Europe for work and personal reasons and left the children in Lydia's care during those trips.

Lydia also testified concerning her care of the children and testified she was the primary caregiver of the children. Lydia acknowledged that she consumed alcohol but stated she did not regularly consume it to excess. She further denied that she had a problem with alcohol or that her consumption of alcohol harmed the children. Lydia agreed that she was intoxicated in the video recording introduced by Arthur but explained that it was not a normal occurrence.

Lydia testified concerning the alcohol monitoring program and noted that she largely had no problems with the program. Lydia explained that she missed several tests due to falling asleep or confusion when she traveled to visit family. She also noted she had a few positive tests but explained the tests showed a very low alcohol level, stated she had not consumed alcohol, and offered her belief that the positive tests may have been triggered by her perfume or medication. In addition, Lydia testified that she discontinued the alcohol monitoring for a brief period based on a misunderstanding but later resumed the monitoring. Lydia further acknowledged that she had not completed a co-parenting class despite a prior order to do so.

Lydia also explained that Arthur had been monitoring her activities through electronic means, including through video cameras and microphones. Lydia further explained that, following the breakdown in their relationship, Arthur threatened to send information concerning their sexual activities to her parents or to a male friend in an effort to control her behavior. Lydia testified that Arthur locked her out of their marital residence and refused to provide her with access to a vehicle or the children's belongings. In addition, Lydia explained her desire to raise the children in the Catholic faith and that she believed the children would benefit from attending church. Lydia acknowledged that Arthur had a good relationship with the children and explained that she hoped the children would be able to spend time with him.

The district court thereafter reviewed the information submitted concerning Lydia's alcohol use and found that she did not have a problem with alcohol. Rather, the court found Arthur's representations concerning her alcohol use were disingenuous and that he made such representations with the intent to harass and intimidate Lydia. The district court also found that Arthur would not have left the children in Lydia's care while he traveled out of the country if he had serious concerns for the children's safety when they were with her.

The district court also evaluated NRS 125C.0035(4)'s best interest factors and found that several favored awarding Lydia primary physical custody. Specifically, the court compared Arthur's false allegations concerning Lydia's alcohol use and his attempts to restrict Lydia's time with the children stemming from those allegations with Lydia's desire for Arthur to spend substantial time with the children. The court found that information demonstrated that Lydia was the parent more likely to allow

the noncustodial parent to have a continuing relationship with the children. *See* NRS 125C.0035(4)(c). The court also found Arthur created conflict by monitoring and controlling Lydia through electronic means, controlled her financially, bullied her, and unnecessarily portrayed her as an alcoholic. The district court further found that Arthur's statements indicating his belief that Lydia conned him into marrying her and that she was toxic created additional conflict between the parties. In light of those findings, the district court determined that Arthur was the primary contributor to the parties' conflict. *See* NRS 125C.0035(4)(d).

Moreover, the district court found that Arthur's controlling behavior, in contrast to Lydia's attempts to work with him, demonstrated Lydia was best able to cooperate to meet the children's needs. *See* NRS 125C.0035(4)(e). In addition, the district court found that, despite Arthur's attempt to portray Lydia as having a substance abuse problem, both parties were physically and mentally healthy. *See* NRS 125C.0035(4)(f).

The district court also noted the evidence demonstrated that the children were particularly vulnerable and they required a parent to place their needs first. The court found that Arthur cares about the children but the evidence established he was unable to place their needs above his own. The court noted that Arthur's withholding of the children's belongings following the breakdown of the parties' relationship impacted the children and that he exhibited no concern for their wellbeing at that time. The court also found the parties had previously agreed to raise the children in the Catholic faith but that Arthur no longer wished to participate in such activities. However, the court determined that the children would benefit from spiritual guidance. In light of the foregoing, the district court found

Lydia was best able to meet the children's physical, developmental, and emotional needs. *See* NRS 125C.0035(4)(g).

Further, the district court found Lydia was the primary caregiver and noted Arthur's testimony concerning his long work hours, which included working during his parenting time. The court further noted that Arthur missed one child's birthday while he was abroad and he failed to call or send her a card or gift. Based on that information, the district court concluded the children were more bonded with Lydia. *See* NRS 125C.0035(4)(h).

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. While Arthur challenges the district court findings and asserts the court should have focused on evidence that was favorable to him, this court is not at liberty to reweigh the evidence or the district court's credibility determinations. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 365-66, 212 P.3d 1068, 1080 (2009).

While Arthur contends the district court erroneously favored Lydia's decision to raise the children as Catholics, he does not demonstrate he is entitled to relief. When parties have joint decision-making authority concerning children's religious upbringing and they have a dispute as to that issue, a district court resolves that dispute by determining what is in the children's best interest. *Arcella v. Arcella*, 133 Nev. 868, 870, 407 P.3d 341, 344-45 (2017). A district court must maintain neutrality between religion and non-religion and violates the "principle of neutrality when it treats one parent's religious objection as dispositive." *Id.* at 870, 407 P.3d at 345. Here, the district court evaluated both parties' desires and noted they previously agreed to raise the children as Catholics. In consideration

of the children's developmental and emotional needs, which included their spiritual guidance, together with its determination that Lydia put the children's interests ahead of her own, the court found it was in the children's best interest for Lydia to continue as the children's primary caretaker. The district court's findings were based on the evidence presented by the parties and Arthur does not demonstrate the court violated the principle of neutrality or should have treated any objection he had to the children's participation in Catholic activities as dispositive. *See id.*

We also note the district court determined that, when Arthur traveled out of the country for work and personal reasons, he effectively nominated Lydia to act as guardian by leaving the children in her care during that time. *See* NRS 125C.0035(4)(b). The district court cited no authority providing that a parent's decision to leave children in the care of the other parent can constitute a nomination of the other parent as a guardian. However, even assuming, without deciding, that this constituted error, any error was harmless in light of the additional and extensive findings concerning the remaining NRS 125C.0035(4) best interest factors, none of which the district court found favored Arthur. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("When an error is harmless, reversal is not warranted."); *cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

Accordingly, we conclude Arthur fails to demonstrate the district court abused its discretion by determining that, based on the evidence presented at trial, the NRS 125C.0035(4) best interest factors favored Lydia. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. Therefore, we conclude Arthur is not entitled to relief based on this argument.

We next consider Arthur's contention that the district court abused its discretion by granting Lydia's request to relocate to Minnesota with the children. Arthur challenges the district court's finding that his opposition to the relocation was not honorable, as he asserts the court did not recognize that his prior agreement to allow Lydia to relocate was predicated upon both her financial situation and the children's protection from substance abuse issues. In addition, Arthur challenges the district court's findings regarding his working hours, as he contends he does not often work long hours. Arthur also contends that Lydia did not truthfully testify concerning the financial benefits she would experience by relocating to Minnesota.

As this court has recognized, "[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). When a district court has not issued a custodial order and both parents have equal custody rights to their children, "one parent may not relocate his or her child out of state over the other parent's objection without a judicial order authorizing the move." *Druckman*, 130 Nev. at 473, 327 P.3d at 515.<sup>1</sup> When evaluating a request to relocate to another state

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<sup>1</sup>As the district court correctly noted, NRS 125C.007 does not govern Lydia's request to relocate because there was no prior order determining custody entered in this case. *See Druckman*, 130 Nev. at 472-73, 327 P.3d at 514 (holding that NRS 125C.200, the predecessor to NRS 125C.007, applies only to instances where there is a prior custody determination). However, we further note the district court properly elected to utilize NRS 125C.007 to guide its evaluation of this issue. *See id.* at 473, 327 P.3d at 515 (explaining the statutory framework for relocation may be used "as a guide in instances where no custodial order exists and the parents dispute out-of-state relocation" (citing NRS 125C.200 (1999))).

“and determining the parents’ custodial rights, the court must decide whether it is in the best interest of the child to live with parent A in a different state or parent B in Nevada.” *Id.* at 474, 327 P.3d at 515 (internal quotation marks omitted).

Initially, a court must determine whether the moving parent established a “sensible, good faith reason for the move.” *Id.* at 473, 327 P.3d at 515. Should the moving party satisfy that initial hurdle, the court must consider:

(1) the extent to which the move is likely to improve the quality of life for both the child and the custodial parent; (2) whether the custodial parent’s motives are honorable, and not designed to frustrate or defeat visitation rights accorded to the noncustodial parent; (3) whether, if permission to remove is granted, the custodial parent will comply with any substitute visitation orders issued by the court; (4) whether the noncustodian’s motives are honorable in resisting the motion for permission to remove, or to what extent, if any, the opposition is intended to secure a financial advantage in the form of ongoing support obligations or otherwise; (5) whether, if removal is allowed, there will be a realistic opportunity for the noncustodial parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship with the noncustodial parent.

*Id.* at 474, 327 P.3d at 515 (internal brackets omitted); *see also Shahrokhi v. Burrow*, Nos. 81978, 82245, & 83726, 2022 WL 1509740, at \*3 (Nev. May 12, 2022) (Order of Affirmance (Docket Nos. 81978, 82245, & 83726) and Dismissing Appeal in Part (Docket No. 83726)) (explaining that the test for evaluating relocation requests set forth in *Druckman* applies in the absence of a court order finally establishing custody).

Lydia testified at length concerning her request to relocate to Minnesota with the children. Lydia explained that she worked remotely for a Minnesota-based company and had an opportunity for a promotion that required her to work at its Minnesota office. Lydia also explained that she has extensive family support in Minnesota and her family intended to provide childcare during her working hours. In addition, Lydia testified that she intended to reside with her parents while saving money for a new residence. Lydia explained that her family support would thus substantially reduce her costs of living. Lydia also testified she was on good terms with Arthur's mother and she would be able to take the children to visit Arthur's mother as she was not far from Minnesota. Moreover, Lydia explained that Arthur previously agreed to her request to relocate to Minnesota but no longer agreed.

In its order, the district court made detailed findings concerning Lydia's desire to relocate to Minnesota, the relocation factors, and whether relocation was in the children's best interests. Initially, the court determined that Lydia's testimony concerning her employment opportunity, her family support, and the lower costs she would face in Minnesota demonstrated she had a sensible, good-faith reason to move to that state. Based on that information, the court determined relocation to Minnesota would improve the quality of life for Lydia and the children and Lydia's request to relocate to Minnesota was not made with an intent to deprive Arthur of his parenting time.

In addition, the district court considered whether Lydia would comply with the district court's orders concerning parenting time. The court noted Lydia's attorney accepted responsibility for the miscommunication concerning her discontinuation of alcohol monitoring and that Lydia had

not completed a co-parenting class but found that neither issue demonstrated Lydia would disobey an order concerning Arthur's parenting time. The district court accordingly determined that Lydia would comply with its orders concerning Arthur's parenting time.

The district court next reviewed whether Arthur's motives in resisting Lydia's request to relocate were honorable. The court noted that Arthur had previously agreed to Lydia's request to relocate and that he had not sufficiently explained why he later elected to oppose the relocation despite all of the benefits and advantages the children would receive with the relocation. The court found, based on the evidence presented concerning the parties' relationship and their interactions since its breakdown, which included Arthur's attempt to paint Lydia as an unsafe alcoholic, that Arthur acted out of spite and to punish Lydia. The district court accordingly found that Arthur's motives were not honorable.

Finally, the district court considered whether Arthur would be able to foster and preserve his relationship with his children if they relocated to Minnesota. The court noted Arthur's testimony concerning his work schedule and that he would be working for an extensive period of time to ready a game for release. The court found, based on that testimony, that Arthur would have little bonding time with the children with the current weekly timeshare utilized by the parties. However, the district court determined that it could grant Arthur lengthy blocks of time throughout the year such that he would have the opportunity to increase the quality of the time spent with the children.

The record supports the district court's detailed findings regarding the appropriate relocation factors. *See Druckman*, 130 Nev. at 473, 327 P.3d at 515. Our review of the record demonstrates that the

district court's findings are supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. While Arthur challenges the district court's determination that Lydia's testimony was credible, this court is not at liberty to reevaluate the district court's credibility determinations. *See Grosjean*, 125 Nev. at 365-66, 212 P.3d at 1080. Accordingly, we discern no abuse of discretion by the district court in granting Lydia's relocation request. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.


Finally, Arthur argues that the district court was biased against him given its findings in favor of Lydia. Arthur also argues the court was biased as evidenced by its references to Arthur's extramarital relationship and his statements that Lydia was toxic and that she conned him into marriage. We conclude that relief is unwarranted on this point because Arthur has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to

establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 535 P.3d 1167 (2023). Therefore, we conclude that Arthur is not entitled to relief based on this argument.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Stacy Michelle Rocheleau, District Judge, Family Division  
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Eighth District Court Clerk