



IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN J. DE VINCENZI,
Appellant,
vs.
JENNIFER M. REEVES,
Respondent.

No. 90884

ORDER OF AFFIRMANCE

This is an appeal from a district court order establishing child custody. Eighth Judicial District Court, Family Division, Clark County; Heidi Almase, Judge.

Appellant Kevin De Vincenzi and respondent Jennifer Reeves entered into a domestic partnership in Nevada in November 2018 and have two children together. In August 2021, Reeves took the children to visit her sister in Midland, Texas. While Reeves was in Texas with the children, De Vincenzi informed Reeves he had begun a romantic relationship with the children's nanny and ended his relationship with Reeves. In September 2021, De Vincenzi filed a petition to terminate the domestic partnership, as well as a temporary protective order barring Reeves from their shared residence in Las Vegas, which was granted. While Reeves had not initially planned to remain in Texas, Reeves decided to stay as Reeves and the children had no return airline tickets, Reeves was unemployed and financially dependent on De Vincenzi, and De Vincenzi was unresponsive to Reeves' messages about returning to Las Vegas with the children. Reeves eventually decided to permanently relocate to Midland and obtained a job and a house. After lengthy litigation and a trial, at which both De Vincenzi and Reeves testified and presented evidence, the district court entered a

written order granting primary physical custody to Reeves in Texas. De Vincenzi appeals.

This court will not disturb a district court's child custody determination absent a clear abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). "An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). The district court's legal conclusions are subject to de novo review. *In re Parental Rts. as to A.L.*, 130 Nev. 914, 918, 337 P.3d 758, 761 (2014). The district court's factual findings are given deference on appeal. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). This court does not reweigh evidence or witness credibility. *Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). And "where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party." *Quintero*, 116 Nev. at 1183, 14 P.3d at 523 (quoting *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998)).

First, De Vincenzi argues the district court abused its discretion when it found Reeves did not wrongfully relocate the children from Nevada to Texas. De Vincenzi argues Reeves did not first obtain the proper consent required under NRS 125C.0065(1). Where joint physical custody has been established by "an order, judgment or decree of a court," NRS 125C.0065(1) provides that a parent intending to relocate outside Nevada with the children must try to obtain the other parent's written consent to relocate or petition the court for primary custody before relocating. That statute is inapplicable here. No "order, judgment or decree of a court" establishing

custody of the children existed, either when Reeves first went to Texas with the children or when Reeves decided to remain in Texas permanently. Accordingly, De Vincenzi's argument fails.

The district court also considered the issue of wrongful removal of the children under NRS 200.359(2). Under that statute, "a parent who has joint legal and physical custody of a child pursuant to NRS 125C.0015 shall not willfully conceal or remove the child from the [other parent's] custody . . . with the specific intent to frustrate the [other parent's] efforts . . . to establish or maintain a meaningful relationship with the child." That statute applies here because there was no court order addressing custody, and therefore the parents had joint legal and physical custody under NRS 125C.0015.

The district court found that Reeves did not violate NRS 200.359(2). The district court found Reeves traveled to Texas for a short visit, intending to later meet De Vincenzi with the children on the east coast. The district court also found Reeves maintained on-going communications with De Vincenzi about returning to Las Vegas with the children after he abruptly ended their relationship and obtained a temporary protective order prohibiting her from returning to their home, to which De Vincenzi was unresponsive. The district court thus denied De Vincenzi's request for a finding of wrongful removal or parental abduction. This determination is supported by substantial evidence in the record and is not clearly erroneous, and therefore, the district court did not abuse its discretion. Moreover, as the district court appropriately concluded no abduction occurred, the district court did not abuse its discretion in finding the statutory rebuttable custody presumption did not apply. NRS 125C.0035(7) (providing there is a rebuttable presumption against

awarding sole or joint physical custody to a parent who has committed an act of child abduction); NRS 125C.240(1) (same).

Second, De Vincenzi argues the district court improperly considered the issue of relocation because Reeves did not file a petition for relocation. Again, De Vincenzi bases his argument on NRS 125C.0065(1), which is not applicable here. And De Vincenzi stipulated to a custody evaluation that included the question of relocation early in the litigation process, as well as the admission of the relocation assessment at trial. Thus, De Vincenzi had notice relocation would be an issue for the district court to decide regardless of whether a formal petition was filed.

Finally, we turn to De Vincenzi's challenge to the district court's best interests determination. The district court concluded awarding primary physical custody to Reeves was in the children's best interests, and De Vincenzi argues this conclusion was not supported by the record. We disagree. "We presume that the district court properly exercised its discretion in determining the best interests of the child." *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004). Here, the district court conducted a thorough analysis of the NRS 125C.0035(4) best interest factors before determining that placing the children in Reeves' primary physical custody was in the children's best interest. De Vincenzi's contentions largely amount to disagreements with the district court's findings regarding the NRS 125C.0035(4) factors. He essentially asks this court to reweigh the evidence considered by the district court to support its findings. This court does not do so. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009); *Roggen v. Roggen*, 96 Nev. 687, 689, 615 P.2d 250, 251 (1980) (noting "[i]t is not the duty of a reviewing court to instruct the

trier of facts as to which witnesses, and what portions of their testimony, are to be believed"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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Herndon, C.J.

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Bell, J.

A handwritten signature in black ink, appearing to be 'J. Stiglich', with a cursive 'Stiglich'.

Stiglich, J.

cc: Hon. Heidi Almase, District Judge, Family Division
Ford & Friedman, LLC
The Jimmerson Law Firm, P.C
Eighth District Court Clerk