

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIFFANY J. WARD,
Appellant,
vs.
TIMOTHY J. WARD,
Respondent.

No. 38555

FILED

NOV 21 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a district court order and amended divorce decree concerning custody of the parties' minor child, visitation, and division of community property and debt. Following a bench trial, the district court entered a final divorce decree. After appellant Tiffany J. Ward first appealed, this court issued an order of reversal and remand on December 11, 2000.¹ The district court subsequently entered an amended divorce decree. On September 27, 2001, Tiffany appealed from the amended decree.

First, Tiffany argues that the district court abused its discretion when it awarded respondent Timothy J. Ward primary physical custody of the child. In this court's December 2000 order, we concluded that the district court abused its discretion by awarding Timothy primary physical custody of the child because the district court failed to consider and issue findings of fact regarding the allegations of domestic violence.² This court also concluded that the district court abused its discretion by failing to issue any findings of fact indicating the reasoning behind its

¹Ward v. Ward, Docket No. 33470 (December 11, 2000).

²Order, 2.

denial of Tiffany's application for joint physical custody.³ After remand, the district court concluded that there was not clear and convincing evidence that either party had engaged in an act of domestic violence against the other party and that domestic violence was not a consideration in its child custody decision. Furthermore, the district court concluded that both parties lacked sufficient financial resources to facilitate joint physical custody, and that moving the child between Nevada and Oregon was not in the child's best interest.

A district court enjoys broad discretionary powers in determining questions of child custody, and this court will not disturb the district court's determination absent a clear abuse of discretion.⁴ Furthermore, "in child custody matters, a presumption exists that the trial court properly exercised its discretion in deciding what constitutes a child's best interest."⁵ After carefully reviewing this matter, we conclude that the district court did not abuse its discretion in awarding Timothy primary physical custody.

Next, Tiffany argues that the district court abused its discretion when it awarded her supervised visitation with her child in Clark County. In this court's December 2000 order, we concluded that the district court abused its discretion by ordering supervised visitation within Clark County while criminal charges were pending against Tiffany.⁶ This

³Order, 3.

⁴See Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

⁵Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993).

⁶Order, 3.

court further concluded that the district court's decision was not supported by substantial evidence.⁷ On remand, no additional evidence was presented. However, the district court again ordered supervised visitation within Clark County.

The doctrine of law of the case is well established in Nevada law.⁸ “[W]here an issue has once been adjudicated by a first appeal, that adjudication is the law of that case in subsequent proceedings.”⁹ Further, where a determination made in an earlier appeal “went to the essence of the case,” this court has stated:

The decision is the law of the case, not only binding on the parties and their privies, but on the court below and on this court itself. A ruling of an appellate court upon a point distinctly made upon a previous appeal is, in all subsequent proceedings in the same case upon substantially the same facts, a final adjudication, from the consequences of which the court cannot depart.¹⁰

This court's December 2000 order, concluding that the district court's visitation order was not supported by substantial evidence, mandated that the district court either set reasonable visitation or hear additional evidence to support its prior visitation order. Specifically, this court stated that the district court must make findings concerning whether Tiffany was a flight risk and would abscond with the child or that

⁷Id.

⁸Andolino v. State of Nevada, 99 Nev. 346, 350, 662 P.2d 631, 633 (1983).

⁹Id.

¹⁰Id. (quoting Wright v. Carson Water Co., 22 Nev. 304, 308, 39 P. 872 (1895)).

she had violated a district court order. After carefully reviewing this matter, we conclude that the district court erred by failing to adhere to this court's order in issuing a visitation order identical to that in the original divorce decree where no additional evidence was presented. We therefore reverse the portion of the district court's order as it pertains to visitation and remand the matter to the district court for entry of a reasonable visitation schedule at Tiffany's residence in Oregon.

Lastly, Tiffany argues that the district court lacked jurisdiction to consider embezzlement allegations and abused its discretion by dividing the community property and debt unequally. In this court's order, we concluded that the district court had jurisdiction under NRS 125.150(1)(b) to consider the embezzlement allegations.¹¹ This court further concluded that substantial evidence supported the district court's division of community property and debt.¹² Nonetheless, we remanded the matter to the district court to enter specific findings of fact in support of its division of community property and debt and to articulate the compelling reasons for making an unequal disposition of community property and debt.¹³ On remand, the district court issued findings of fact that the only significant asset claimed by the parties was a business known as Desert Rock Sports, but that no existing community property interest in the asset remained to be divided.

As discussed previously, "[w]here an issue has once been adjudicated by a first appeal, that adjudication is the law of that case in

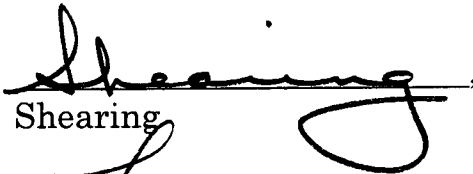
¹¹Order, 4-5.


¹²Id. at 5.

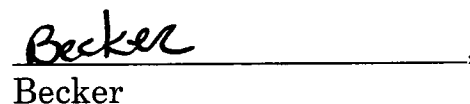
¹³Id. at 7.

subsequent proceedings.”¹⁴ The prior decision is the law of the case, not only binding on the parties and their privies, but on the court below and on this court itself.¹⁵ Thus, this court’s determination, in its December 2000 order, concluding that the district court had jurisdiction under NRS 125.150(1)(b) to consider the embezzlement allegations against Tiffany and that substantial evidence supported the district court’s division of community property and debt is the law of the case. On remand, the district court entered such findings. Thus, after carefully reviewing the record, we conclude the district court did not abuse its discretion in determining the division of community property and debt. Accordingly, we

ORDER the judgment of the district court AFFIRMED in part and REVERSED in part and REMAND this matter to the district court for proceedings consistent with this order.

 _____, J.
Shearing

 _____, J.
Leavitt

 _____, J.
Becker

cc: Hon. Steven E. Jones, District Judge, Family Court Division
Gayle F. Nathan
Wells & Herr
Clark County Clerk

¹⁴Andolino, 99 Nev. at 350, 662 P.2d at 633.

¹⁵Id.