

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL ERIC HERRERA, A/K/A ROJAS,  
A/K/A NICEWONGER,  
Appellant,  
vs.  
JAMES NORRIS; JACQUELINE  
NORRIS; FRED HERRERA; AND  
SANDI HERRERA,  
Respondents.

No. 41144

FILED

JUN 07 2004

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order awarding custody of the minor children to the maternal grandparents.

Under the Uniform Child Custody Jurisdiction Act, a district court may assume "emergency jurisdiction" when a child has been subjected to or threatened with mistreatment or abuse by a parent, and it is necessary to protect the child's best interest and exercise jurisdiction.<sup>1</sup> Here, the district court assumed emergency jurisdiction based on the children's claims that appellant physically and verbally abused them. The record supports the district court's determination that emergency jurisdiction was warranted. Accordingly, the district court had subject matter jurisdiction to decide the child custody issue.

With respect to a child custody contest between a child's natural parent and a third party, it is well settled in Nevada that the

---

<sup>1</sup>See NRS 125A.050(1)(c)(2)(I) (2001).

parental preference doctrine applies.<sup>2</sup> Nevada's parental preference doctrine provides that before a district court makes a child custody award to someone other than a parent, it must determine whether the parent is unfit or whether extraordinary circumstances warrant placing the child with a nonparent.<sup>3</sup> Here, the district court found that appellant's living conditions were not a sufficient reason to change the custody arrangement. However, the court considered the children's physical and verbal abuse assertions against appellant, and the children's improved academic performance since living with the maternal grandparents. The court also took into account appellant's testimony admitting to his drug use in the children's presence, subjecting the children to verbal abuse, pulling one child's hair, and "tapping" the children on their faces as discipline. Based upon this evidence, the district court determined that it was in the children's best interest to live with the maternal grandparents. Finally, the district court granted appellant visitation with children. Specifically, the district court's order provides that appellant must give seven days' notice to the maternal grandparents of his intent to visit the children, then appellant may exercise visitation in Nevada.


---

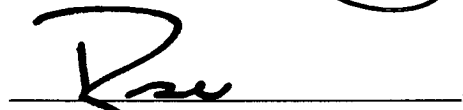
<sup>2</sup>See NRS 125.500(1) (providing that before awarding child custody to a nonparent, court must find the award of custody to a parent detrimental to the child and that the award to a nonparent is in the child's best interest); see also Russo v. Gardner, 114 Nev. 283, 956 P.2d 98 (1998); Locklin v. Duka, 112 Nev. 1489, 929 P.2d 930 (1996); Litz v. Bennum, 111 Nev. 35, 888 P.2d 438 (1995); Hesse v. Ashurst, 86 Nev. 326, 468 P.2d 343 (1970).

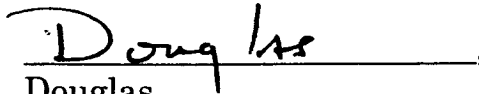
<sup>3</sup>See Locklin, 112 Nev. 1489, 929 P.2d 930 (discussing the factors necessary to overcome the presumption); see also NRS 125.500(1).

Having reviewed the record, we conclude that the district court did not abuse its discretion when it awarded the maternal grandparents custody of the children.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. David R. Gamble, District Judge  
Rowe & Hales  
Paul Eric Herrera  
Douglas County Clerk

---

<sup>4</sup>Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996) (holding that matters of custody, including visitation, rest in the sound discretion of the trial court); Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993) (concluding that the district court enjoys broad discretionary powers in determining child custody issues and this court will not disturb the district court's judgment absent a clear abuse of discretion).

<sup>5</sup>Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant. We note that appellant's failure to pay the supreme court filing fee could constitute a basis for dismissing this appeal.