

IN THE SUPREME COURT OF THE STATE OF NEVADA

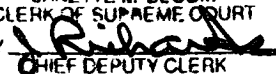
JANET L. HINZ,
Appellant,
vs.
CAMERON R. HINZ,
Respondent.

No. 42092

FILED

DEC 01 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a post-decree order modifying child custody. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Judge.

The original divorce decree, entered in 1994, awarded appellant Janet Hinz primary custody of the parties' two minor children, included a provision for child support and granted respondent Cameron Hinz reasonable visitation rights. In 1999, although child support arrearages approached \$20,000, the parties orally agreed that Mr. Hinz temporarily take physical custody of the children while Ms. Hinz pursued further education. In 2000, Ms. Hinz gave permission for respondent to relocate to the State of Washington, and provided funds to Mr. Hinz for support of the children. In January of 2003, in the wake of visitation refusals and concerns over health and education issues, Ms. Hinz unilaterally removed the children from their school in Washington and returned them to the State of Nevada. Thereafter, she moved the district court to resolve the custody issues and establish child support in her favor. In response, Mr. Hinz moved to formally change custody in his favor. Following an evidentiary hearing, the district court determined that it was in the best interest of the children that they remain in Mr. Hinz's custody and, accordingly, granted him primary physical custody, subject to visitation by Ms. Hinz.

DISCUSSION

The district court enjoys broad discretionary powers in determining issues of child custody, and this court will not disturb those findings absent a clear abuse of discretion.¹ Going further, we will not set aside a district court's factual determinations if they are supported by substantial evidence.²

“A change of custody is warranted only when: (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change.”³ In this, “[t]he moving party in a custody proceeding must show that circumstances . . . have substantially changed since the most recent custodial order.”⁴ The overriding consideration in the determination of child custody issues is the best interest of the child.⁵ In determining the order of preference for custody as between parents, the district court should consider: (1) “which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent”;⁶ (2) “[which parent] in whose home the child has been living and

¹Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

²Primm v. Lopes, 109 Nev. 502, 506, 853 P.2d 103, 105 (1993).

³Murphy v. Murphy, 84 Nev. 710, 711, 447 P.2d 664, 665 (1968).

⁴Hopper v. Hopper, 113 Nev. 1138, 1143, 946 P.2d 171, 174-75 (1997) (quoting McMonigle v. McMonigle, 110 Nev. 1407, 1408, 887 P.2d 742, 743 (1994) (quoting Stevens v. Stevens, 810 P.2d 1334, 1336 (Or. Ct. App. 1991))).

⁵NRS 125.480(1).

⁶NRS 125.480(3)(a).

where the child has had a wholesome and stable environment”;⁷ and (3) [which parent will be “suitable and able to provide proper care and guidance for the child.”⁸

The parties agree that Mr. Hinz’s custody of the children from 1999 to 2003 may constitute a material change of circumstances. However, Ms. Hinz contends that the district court committed clear error in its “best interests” determination. More particularly, she argues that the record was replete with evidence showing that Mr. Hinz was violent, had been convicted of an assault in connection with an altercation in California, lacked stable employment or residence, failed to pay child support leaving arrearages in excess of \$20,000 prior to the voluntary arrangement in 1999, was recalcitrant regarding his separate support obligation, disregarded health issues concerning the children, ignored their education and intentionally alienated the children from her. Additionally, Ms. Hinz argues the following: (1) that as a matter of public policy, she should not be punished by the trial court for making accommodations that were in the best interests of the children, (2) that the district court erred in not honoring the temporary nature of the agreement between the parties, and that (3) she was the parent most willing to allow association and parental bonding with the other parent.

It appears, however, that the district court considered all of this evidence, along with conflicting evidence supporting Mr. Hinz’s custody claims. First, it appears that Ms. Hinz was aware of the arrearages in Mr. Hinz’s support obligation and of his legal problems stemming from an assault conviction before agreeing to the relocation of


⁷NRS 125.480(3)(b).


⁸NRS 125.480(3)(d).

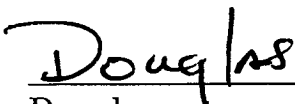
the children to the State of Washington. Second, there is no indication that Mr. Hinz engaged in any other incidents of violence. Third, the court found that allegations of neglect and alienation were largely unsubstantiated. Fourth, the court interviewed the children as part of the custody hearing and took into consideration their views concerning custody.⁹ Fifth, it does not appear that the district court took punitive measures in connection with Ms. Hinz's reasonable and salutary agreement to grant Mr. Hinz temporary custody.

In light of the above, we cannot conclude that the district court abused its discretion in its modification of the original custody award. Rather, we conclude that substantial evidence supports the district court's determination that the three-year informal change in custody constituted a material change in circumstances, and that the change in custody substantially enhanced the welfare of these children. Accordingly, we hereby

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁹See NRS.125.480 (4)(a).

cc: Hon. T. Arthur Ritchie, District Judge, Family Court Division
Bruce I. Shapiro, Ltd.
Webster & Associates
Clark County Clerk