

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE  
GUARDIANSHIP OF J. E. G.,

No. 42856

GENNIE T.,  
Appellant,  
vs.  
EDDIE G.,  
Respondent.

**FILED**

FEB 15 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order establishing custody of a minor child. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

The mother of minor child J.E.G. was killed in a car accident and his father, respondent Eddie G., did not seek immediate custody. Petitioner Gennie T., the maternal aunt, sought temporary guardianship with intentions to establish permanent custody. Gennie alleged that Eddie was an alcoholic and abusive. Eddie filed a motion for custody and a custody hearing was held. The district court denied the petition for guardianship and granted Eddie's motion for custody. Gennie has appealed.

This court will not disturb the district court's determination in custody proceedings absent an abuse of discretion.<sup>1</sup> In child custody matters, a presumption exists that the trial court properly exercised its discretion in deciding what constitutes a child's best interest.<sup>2</sup> Nevada

<sup>1</sup>Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993).

<sup>2</sup>Id.

recognizes, and has adopted, the parental preference doctrine in custody disputes.<sup>3</sup> Under Nevada's parental preference statute, a district court must conclude that a parent is unfit or that extraordinary circumstances warrant placing the child with a nonparent before awarding custody to someone other than the parent.<sup>4</sup> There is a custodial preference for a "fit parent," unless "it clearly appears that the child's welfare requires a change of custody."<sup>5</sup> Accordingly, a biological parent should prevail over a third party seeking custody unless there are circumstances, such as abandonment, unfitness, or neglect that warrant awarding custody to someone else.

In Matter of Guardianship & Estate of D.R.G.,<sup>6</sup> this court acknowledged the factors announced in Locklin v. Duka,<sup>7</sup> relevant to determining whether extraordinary circumstances exist:

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<sup>3</sup>See NRS 125.500(1) (providing that court must find that the award of child custody to a parent is detrimental to the child and that the award to a nonparent is in child's best interest); see also Matter of Guardianship & Estate of D.R.G., 119 Nev. 32, 37, 62 P.3d 1127, 1130 (2003); Russo v. Gardner 114 Nev. 283, 287, 956 P.2d 98, 100 (1998); Locklin v. Duka, 112 Nev. 1489, 1493-94, 929 P.2d 930, 933 (1996); Litz v. Bennum, 111 Nev. 35, 37-38, 888 P.2d 438, 440 (1995); Hesse v. Ashurst, 86 Nev. 326, 330, 468 P.2d 343, 345 (1970).

<sup>4</sup>See NRS 125.500(1); Litz, 111 Nev. 35, 888 P.2d 438 (concluding that grandparents' temporary guardianship was not extraordinary circumstance where mother was a fit parent); see also Troxel v. Granville, 530 U.S. 57 (2000) (holding a statute unconstitutional that allowed a state court to infringe upon a parent's fundamental right to make child-rearing decisions by ordering visitation allowed to a non-parent).

<sup>5</sup>Litz, 111 Nev. at 38, 888 P.2d at 440.

<sup>6</sup>119 Nev. 32, 62 P.3d 1127.

Relevant factors to be considered include: “abandonment or persistent neglect of the child by the parent; likelihood of serious physical or emotional harm to the child if placed in the parent's custody; extended, unjustifiable absence of parental custody; continuing neglect or abdication of parental responsibilities; provision of the child's physical, emotional and other needs by persons other than the parent over a significant period of time; the existence of a bonded relationship between the child and the non-parent custodian sufficient to cause significant emotional harm to the child in the event of a change in custody; [and] the age of the child during the period when his or her care is provided by a non-parent . . . .”<sup>8</sup>

Gennie argues that the district court erred in failing to indicate that it had considered all the Locklin factors. However, the district court stated, “[it had] considered among other factors, the contact [J.E.G.] had with the Petitioner and the role Petitioner played in [J.E.G.]’s life, the length of time Eddie waited to seek custody after learning the whereabouts of [J.E.G.], and the bond between [J.E.G.] and the Petitioner.” The above-stated passage from the district court’s order indicates that the court did consider all the factors, despite not setting out the findings and conclusions on each and every factor. There is nothing in the record demonstrating that the district court did not evaluate the custody determination with anything but the most careful scrutiny.

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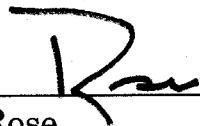
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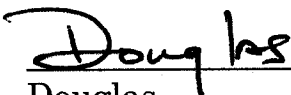
<sup>7</sup>112 Nev. 1489, 929 P.2d 930.

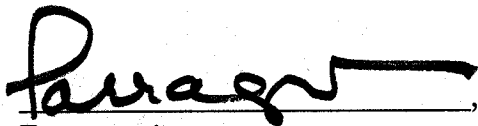
<sup>8</sup>Matter of D.R.G., 119 Nev. at 38, 62 P.3d 1131 (quoting Locklin v. Duka, 112 Nev. 1489, 1496, 929 P.2d 930, 934-35 (1996)).

It is clear from the record that Eddie has made substantial efforts to obtain custody and appears to genuinely want to parent J.E.G. Evidence was presented that Eddie kept in touch with the child as much as he could, because of J.E.G. and his mother's frequent moves, and Gennie's prohibition on contact with J.E.G. after the mother's death. Additionally, Eddie passed a spontaneous drug and alcohol screening given to him before the custody hearing. We are not in a position to reweigh the credibility of the testimony presented in the district court.<sup>9</sup> Therefore, we conclude that Gennie's argument lacks merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. J. Michael Memeo, District Judge  
Robert J. Kilby  
William E. Schaeffer  
Elko County Clerk

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<sup>9</sup>Washington v. State, 96 Nev. 305, 308, 608 P.2d 1101, 1103 (1980).