

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE A. MCCREA,
Appellant,
vs.
CAROLYN COLARUSSO,
Respondent.

No. 43799

FILED

FEB 13 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order awarding respondent Carolyn Colarusso primary legal and physical custody of appellant Steve McCrea's minor child. Eighth Judicial District Court, Family Court Division, Clark County; Robert W. Lueck, Judge. We conclude that (1) McCrea had a full and fair hearing concerning the ultimate custody determination; and (2) the district court did not abuse its discretion in finding that Colarusso overcame the parental preference presumption set forth in NRS 125.500.

Full and fair hearing

McCrea argues that the district court abused its discretion by not holding an evidentiary hearing before making its custody determination. In Moser v. Moser, we stated:

Litigants in a custody battle have the right to a full and fair hearing concerning the ultimate disposition of a child. At a minimum, observance of this right requires that before a parent loses custody of a child, the elements that serve as a precondition to a change of custody award must be supported by factual evidence.¹

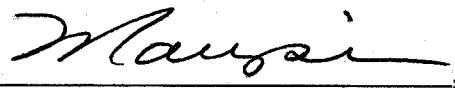
¹108 Nev. 572, 576-77, 836 P.2d 63, 66 (1992) (citation omitted).

We conclude that the twelve hearings attended by both parties through the course of two years satisfy the Moser requirements. We additionally conclude that McCrea had proper notice that Colarusso was seeking physical and legal custody of the minor child through these hearings.

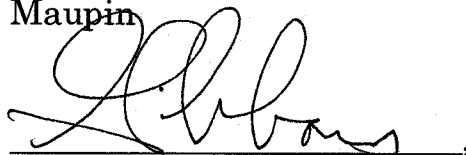
NRS 125.500

McCrea additionally argues that Colarusso, as a non-biological parent, failed to overcome the parental preference presumption set forth in NRS 125.500. NRS 125.500 provides that before awarding custody to any person other than a parent, the court must make findings that an award of custody to a parent would be detrimental to the child, and that the award to a non-parent is required to serve the best interest of the child. We concur with the district court's finding that the exceptional circumstances in this case compel a preference for the non-biological parent because of the significant absence of McCrea, and the significant attachment and psychological bonding between the minor child and Colarusso. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Eighth Judicial District Court Dept. E, District Judge, Family Court
Division
Gary M. Zernich
William S. Potter
Clark County Clerk