

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS ALBERTO CASTANEDA,
Appellant,
vs.
ELAINNE ZHELEZNYAK,
Respondent.

No. 55275

FILED

JAN 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

This is a proper person appeal from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Sally Loehrer, Senior Judge.¹

Having considered appellant's civil proper person appeal statement, respondent's response thereto, appellant's reply, and the district court record, we affirm in part, reverse in part, and remand to the district court the issue of sole legal custody of the minor children for the district court to award joint legal custody.²

There is a presumption that joint custody is in the minor children's best interests when the parents agree to an award of joint custody. NRS 125.490(1). Parties can share joint legal custody regardless of the parties' physical custody arrangement. NRS 125.490(2); Rivero v.

¹The underlying matter was resolved by Senior Judge Loehrer following an evidentiary hearing. Judge Frank P. Sullivan signed the divorce decree.

²In considering this appeal, we did not consider any arguments that were raised for the first time in appellant's reply. See Weaver v. State, Dep't of Motor Vehicles, 121 Nev. 494, 502, 117 P.2d 193, 198-99 (2005) (providing that this court need not consider an argument raised for the first time in a reply brief).

Rivero, 125 Nev. ___, ___, 216 P.3d 213, 221 (2009). The presumption can be defeated if certain findings regarding the parties' ability to co-parent are made by the district court. Mosley v. Figliuzzi, 113 Nev. 51, 60-61, 930 P.2d 1110, 1116 (1997).

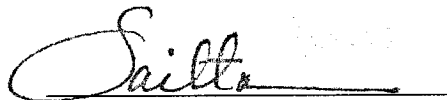
Here, the district court awarded sole legal custody to respondent based on appellant's financial and living conditions. While such findings support awarding respondent primary physical custody, they do not support the court's legal custody determination. See id. Legal custody generally has no relation to a parent's financial or living conditions, as it concerns the parents' legal responsibility for "making major decisions regarding the child, including the child's health, education, and religious upbringing." Rivero, 125 Nev. at ___, 216 P.3d at 221. Thus, we conclude that the district court abused its discretion, as substantial evidence does not support the district court's custody award. See Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (reviewing a district court's child custody decision for an abuse of discretion). Accordingly, we reverse the district court's award of sole legal custody to respondent and remand this issue to the district court to modify the divorce decree to award joint legal custody to the parties.

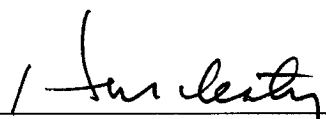
We conclude, however, that under the circumstances presented in the underlying proceedings, the district court did not abuse its discretion in awarding primary physical custody to respondent, in ordering appellant to pay \$200 per month in child support, or in denying appellant's request for temporary spousal support and attorney fees under NRS 125.040. Id. at 1019, 922 P.2d at 543 (recognizing that neither a district court's child custody decision nor its child support award will be disturbed absent an abuse of discretion); Hopper v. Hopper, 79 Nev. 86, 378 P.2d 875 (1963) (reviewing a district court's decision to deny temporary support under NRS 125.040 for an abuse of discretion). We

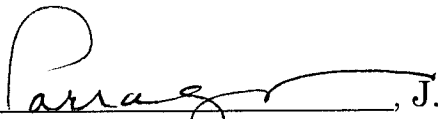
also conclude that the district court did not abuse its discretion in its disposition of the parties' property. Shane v. Shane, 84 Nev. 20, 22, 435 P.2d 753, 755 (1968) (providing that a district court's property disposition will be upheld absent an abuse of discretion).

Because we reverse the portion of the decree awarding sole legal custody of the parties' minor children and remand that issue to the district court, but affirm the district court divorce decree on physical custody of the children, child support, denying temporary spousal support, attorneys fees, and the property distribution, 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.³


Saitta, J.


Hardesty, J.


Parraguirre, J.

³Having considered appellant's remaining arguments, we conclude that they do not warrant further modification of the district court divorce decree.

We note that although appellant filed a request for transcripts, the request was not properly served on any court reporter. NRAP 9(a)(3)(B). Further, on October 19, 2010, appellant submitted a courtesy copy of a DVD/CD regarding court proceedings. We did not consider the information submitted by appellant on October 19, however, because the information was not properly transcribed for this court's consideration. See NRAP 9; NRAP 10(b)(1).

cc: Hon. Frank P. Sullivan, District Judge, Family Court Division
Jesus Alberto Castaneda
Elainne Zheleznyak
Eighth District Court Clerk