

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN HERRERA, JR.,  
Appellant,  
vs.  
SARAH SERPA,  
Respondent.

No. 59065

**FILED**

NOV 16 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY H. Anderson  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order regarding child custody. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

The parties to this appeal have a minor child, but were never married. After the parties separated, respondent filed a petition to establish child custody. Following a bench trial, the district court awarded respondent sole legal and primary physical custody of the child, and awarded appellant supervised visitation. This appeal followed. Having considered the parties arguments and the record on appeal, we conclude that reversal of the district court's order is not warranted.

Generally, child custody matters rest in the district court's sound discretion. Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996). This court will not disturb the district court's custody decision absent a clear abuse of that discretion. Castle v. Simmons, 120 Nev. 98, 101, 86 P.3d 1042, 1045 (2004). When determining child custody, the district court's sole consideration is the child's best interest. See NRS 125.480(1).

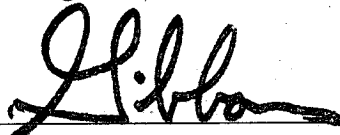
NRS 125C.230(1) sets forth a rebuttable presumption that it is not in a child's best interest to award child custody to a parent who has engaged in an act of domestic violence against the child or other parent. The district court must set forth written findings of fact established by clear and convincing evidence that the domestic violence act occurred, as well as a finding that the custody arrangement adequately protects the child and the other parent. NRS 125C.230. This court will not disturb the district court's decision if it is supported by substantial evidence. See Rico v. Rodriguez, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005).

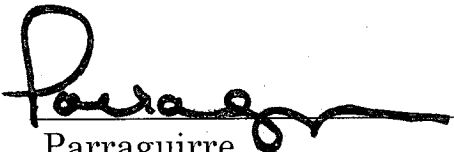
Here, the district court found that appellant had engaged in an act of domestic violence against the minor child as evidenced by a 2006 conviction for willfully endangering a child as a result of abuse and/or neglect. Moreover, the district court made written findings of fact as to evidence presented at trial, which included appellant's numerous acts of domestic violence against respondent, appellant's extensive criminal record, appellant's history of mental health issues and substance abuse problems, and appellant's constant stream of unwanted calls and text messages to respondent. The district court found this evidence credible. It is the duty of the trier of fact, not an appellate court, to weigh the credibility of witnesses. Castle, 120 Nev. at 103, 86 P.3d at 1046. The district court concluded that, based on appellant's 2006 conviction and the other evidence presented, the child's best interest would be served by awarding custody to respondent, with appellant to have supervised visitation. Having reviewed the district court record, we conclude that the district court's findings are supported by substantial evidence and that the

district court did not abuse its discretion in awarding custody to respondent and supervised visitation to appellant.<sup>1</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Gibbons

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

cc: Hon. Leon Aberasturi, District Judge  
John Herrera, Jr.  
Volunteer Attorneys for Rural Nevadans  
Lyon County Clerk

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<sup>1</sup>We have considered the video recording of the bench trial in this matter, received from the district court on September 20, 2012.

We have reviewed all proper person documents filed by appellant in this matter, and conclude that all relief requested in those documents should be denied. In light of our basis for resolving this matter, we need not address the alternative grounds for affirmance of the district court's order advanced by respondent.