

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KARI LYNN DAVIS,  
Appellant,  
vs.  
JAMES BERTHELOT DEGRELLA,  
Respondent.

No. 73591

**FILED**

JUL 13 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kari Lynn Davis appeals from a district court custody decree. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

In the proceedings below, respondent James Degrella initiated proceedings seeking a custody order regarding the parties' minor child. Following an evidentiary hearing, the district court awarded the parties joint physical custody and awarded James primary legal custody. This appeal followed.

On appeal, Kari asserts that the district court abused its discretion in awarding the parties joint physical custody and in awarding James primary legal custody. This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court's child custody determinations if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

Here, Kari asserts that the district court failed to properly consider her evidence that a temporary protective order was issued against James, with his consent, and that the district court abused its discretion by failing to conclude that James committed acts of domestic violence against Kari. Therefore, Kari concludes, the district court's failure in these regards led to an improper conclusion that joint physical custody was in the child's best interest. If a district court finds that domestic violence has occurred by clear and convincing evidence, there is a rebuttable presumption that joint physical custody is not in the child's best interest. NRS 125C.0035(5). The district court's order makes numerous, detailed factual findings as to the child's best interest. Additionally, the order indicates that the court did weigh this evidence and concluded that it could not determine by clear and convincing evidence whether any act of domestic violence occurred. Importantly, the district court found that Kari failed to provide any evidence regarding the conduct upon which the TPO was based and our review of the record supports that conclusion.<sup>1</sup> Accordingly, the district court did not abuse its discretion in concluding that NRS 125C.0035(5)'s domestic violence presumption did not apply and in awarding joint physical custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Kari also asserts that the district court abused its discretion in awarding James primary legal custody, citing to NRS 125C.002 for the proposition that there was a presumption in favor of joint legal custody.

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<sup>1</sup>To the extent Kari argues the district court failed to give appropriate weight to her testimony and the evidence that a TPO existed, this court will not reweigh witness credibility or the weight of the evidence on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

“Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing.” *Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009). “Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents.” *Id.* “Joint legal custody requires that the parents be able to cooperate, communicate, and compromise to act in the best interest of the child.” *Id.* As noted above, the district court has broad discretion in determining child custody. *Davis*, 131 Nev. at 450, 352 P.3d at 1142. And child custody determinations include legal custody, along with physical custody and parenting time. *Id.*; NRS 125A.045.

Kari argues that, pursuant to NRS 125C.002, there was a presumption in favor of joint legal custody because there was no showing that one parent frustrated the other parent's efforts, apparently referring to NRS 125C.002(1)(b). NRS 125C.002(1) dictates that joint legal custody is presumed to be in the best interest of a child if: (a) the parents agree to joint legal custody, or (b) if one “parent has demonstrated, or has attempted to demonstrate but has had his or her efforts frustrated by the other parent, an intent to establish a meaningful relationship with the minor child.” As Kari indicates, the district court did not find that one parent frustrated the other's attempts to establish a meaningful relationship with the child. However, contrary to Kari's assertion, without such a finding, the statutory presumption that joint legal custody is in the child's best interest does not apply. Additionally, Kari and James did not agree that joint legal custody was in the child's best interest. Because neither of NRS 125C.002(1)'s factors was met, there was no presumption that joint legal custody was in the child's best interest. Additionally, as noted above, the district court


made numerous factual findings as to the child's best interest, including finding that James is more likely to promote parenting time between Kari and the child, that Kari has not fostered a relationship between James and the child, and that Kari caused unnecessary delays in the litigation. Based on the foregoing, we cannot conclude that the district court abused its discretion in awarding James primary legal custody. See *Ellis*, 123 Nev. at 149, 161 P.3d at 241; *Davis*, 131 Nev. at 450, 352 P.3d at 1142.


To the extent Kari also argues that the district court changed physical custody as retaliation or punishment for Kari's failure to comply with the court's orders in violation of *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993), we note that this was not a change in custody, but an order establishing custody. Additionally, nothing in the record suggests that the district court issued its decision in an attempt to punish Kari; rather, the district court's order makes numerous findings as to the child's best interest in support of its ultimate determination. See *Davis*, 131 Nev. at 451, 352 P.3d at 1143 (explaining that when making a custody determination, the district court must make specific, relevant findings relating to the best interest of the child).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Cynthia Dianne Steel, District Judge, Family Court Division  
Schwab Law Firm PLLC  
James Berthelot Degrella  
Eighth District Court Clerk