

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIA CHEVEZ-GAITAN,
Appellant,
vs.
WALTER CARRILLO-AGUILAR,
Respondent.

No. 75780-COA

FILED

MAY 09 2019

ELIZABETH A. DROWN
CLERK OF THE SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Maria Chevez-Gaitan appeals a district court order in a child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Judge.

In the proceedings below, Maria filed a complaint for custody against respondent Walter Carrillo-Aguilar, seeking custody of the parties' two minor children. Walter failed to file an answer or make any appearance in the proceedings and Maria sought a default against him. Maria also filed a motion for findings regarding special immigrant juvenile status (SIJS) pursuant to NRS 3.2203 relating to the eldest child. Following a hearing, the district court granted Maria sole legal and sole physical custody, but subsequently issued an order declining to make findings of fact specific to the eldest child's SIJS, concluding that the court could not take judicial notice of the complexities of life in another country. This appeal followed.

On appeal, Maria challenges the district court's failure to make SIJS findings as to the eldest child.¹ This court reviews a child custody

¹Although the district court awarded Maria custody of both children, because this appeal only contests the district court's failure to make SIJS

decision for an abuse of discretion, but “the district court must have reached its conclusions for the appropriate reasons.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013); *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617 (1992) (explaining that in divorce proceedings, this court generally will uphold a district court decision that is supported by substantial evidence). Additionally, the district court must apply the correct legal standard in reaching its conclusion and no deference is owed to legal error. See *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015); *Williams*, 108 Nev. at 471, 836 P.2d at 617-18.

Based on our review of the record, the district court failed to apply the correct legal standard. In making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis*, 131 Nev. at 451, 352 P.3d at 1143. Additionally, the district court may make the factual findings necessary for a child to apply for SIJS. NRS 3.2203(1). Specifically, the district court may find that the child is dependent on the court or has been placed under the custody of a person or agency appointed by the court; that the child's ability to reunify with one or both parents is not viable due to abandonment, abuse, or neglect pursuant to state law; and that it is not in the child's best interest to be returned to the child's previous country of nationality or last habitual residence. NRS 3.2203(3). Importantly, when there is evidence, including, but not limited

findings as to the eldest child, the remainder of this order only refers to the eldest child.

to, a declaration by the subject child, to support these findings, "the court shall issue an order setting forth such findings." NRS 3.2203(4).

Here, the district court took testimonial evidence and evidence by way of submitted affidavits. The district court heard uncontroverted evidence that the child has never had a relationship with Walter; that she only ever had two interactions with Walter, the last of which was in 2015 and at that time, Walter did not appear interested in establishing a relationship with the child; and that Walter never provided any support for the child. Notably, the district court found on the record that Walter did not answer and did not show any interest in the custodial proceedings.

Additionally, the district court heard uncontroverted evidence that the child was harassed daily by gang members in her previous country of nationality, and that gang members stole money from her and threatened her physical safety and life regularly. Moreover, the district court heard uncontroverted testimony that the child's friend who was subject to the same harassment and threats by the same gang members was found murdered after she, like the subject minor, refused to become a girlfriend of the gang members. The subject minor testified that the leader of the gang threatened that she could suffer a similar fate. The uncontroverted evidence also indicated that the child's maternal grandmother, with whom she lived in her previous country, and the child's teachers refused to report these incidents to local law enforcement due to their belief that local law enforcement was corrupt and their own fear of retaliation from the gangs. The child also testified that she was so afraid to return to school she was forced to quit and that if she returned to her previous country, she would not only have nowhere to live, but would not be able to return to school due to her age and would, therefore, be unable to obtain gainful employment.

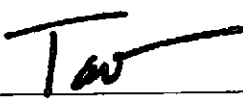
After taking the evidence, the district court found that it was in the child's best interest to remain in the sole custody of Maria and that Walter would not be entitled to any visitation with the child. However, the district court then, inexplicably, concluded that it could not make any findings pursuant to NRS 3.2203 because it could not take judicial notice of the complexities of life in another country. As discussed above, nothing in Nevada's custody provisions, case law, or NRS 3.2203 requires the district court to take judicial notice of any facts, nor did Maria ask the district court to take judicial notice. Rather, the applicable law only requires the district court to make findings related to the child's best interest based on the evidence presented, as it would in any custody matter. *See Davis*, 131 Nev. at 452, 352 P.3d at 1143 (requiring the district court to make specific findings as to the best interest of the child and to provide an adequate explanation for the custody determination). Indeed, in addressing a nearly identical issue, the Nevada Supreme Court recently concluded that the best interest findings district courts are required to make in child custody matters under Nevada law would likely also satisfy findings substantially similar to those permitted by NRS 3.2203(3). *Ramirez v. Menjivar*, Docket No. 74030 (Order of Reversal and Remand, December 27, 2018); NRAP 36(c)(3) (providing that the supreme court's unpublished orders entered after January 1, 2016, are citable for their persuasive value). In reaching this conclusion, the supreme court noted that the statutory best interest factors are not exhaustive and the "district court must make best interest of the child findings even in cases where living conditions in other countries is at issue." *Ramirez*, Docket No. 74030.

Because the district court failed to apply the proper standard and failed to make any findings based on the evidence presented, we

necessarily must reverse and remand this matter. *See Davis*, 131 Nev. at 450-51, 352 P.3d at 1142-43. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge, Eighth Judicial District Court
Hon. Bryce Duckworth, Presiding Judge, Eighth Judicial District
Court, Family Division
Department G, Eighth Judicial District Court, Family Division
Legal Aid Center of Southern Nevada, Inc.
Walter Carrillo-Aguilar
Eighth District Court Clerk