

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVIN LAWRYMORE,
Appellant,
vs.
GENIE LAWRYMORE; AND PAMELA
BUNDY,
Respondents.

No. 78794-COA
FILED

APR 23 2020

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

ORDER VACATING JUDGMENT IN PART AND REMANDING

Devin Lawrimore appeals from a divorce decree involving child custody. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

Devin and Genie Lawrimore were married in 2007 and share three children.¹ Devin, Genie, and the children lived in Utah from 2012 until 2015 before Devin was laid off from his job in 2015. After having difficulty finding employment in Utah, Devin secured a trucking job in North Dakota. The children briefly lived in Nevada with Genie's mother, respondent Pamela Bundy, before joining Devin and Genie in North Dakota in 2016. Devin's new work schedule required Devin to work six-week shifts followed by two weeks off. While Devin was on the road, Genie developed a drug addiction. In February 2017, upon learning of Genie's drug addiction, Devin returned home to help Genie enter a rehab facility. Devin and Genie relocated the children to Nevada where Pamela agreed to care for the children. Since then, the children have been in Pamela's care.

In 2018, Devin filed for divorce and requested sole physical custody of the children, alleging that Genie was an unfit parent. Pamela

¹We do not recount the facts except as necessary for our disposition.

filed a motion to intervene requesting primary physical custody of the children. Genie admitted that she was not fit to have custody of the children and consented to Pamela receiving primary physical custody of the children. The case proceeded to trial where the district court heard testimony from Devin, Genie, Pamela, and various other witnesses.

In its findings of fact, conclusions of law, and decree of divorce, the district court awarded Devin and Pamela joint legal custody and Pamela primary physical custody. When the district court considered the issue of physical custody, it applied NRS 125C.004(1) to first determine that awarding Devin custody would be detrimental to the children because they would have to relocate to North Dakota. The district court further found that Devin failed to prove that he would change his work schedule if awarded custody, failed to take work opportunities in Nevada, did not care for the children while Genie struggled with drugs, and failed to show he could "effectively parent" the children. The district court also noted that Devin had been absent for the majority of the children's lives. The district court applied NRS 125C.0035(4) and concluded that awarding Pamela primary physical custody would be in the children's best interest.

On appeal, Devin argues that the district court abused its discretion by awarding primary physical custody to a nonparent because it failed to apply the factors in *Locklin v. Duka*, 112 Nev. 1489, 929 P.2d 930 (1996), when determining whether awarding physical custody to Devin would be detrimental to the children under NRS 125C.004(1). Devin further argues that the district court abused its discretion by finding that awarding physical custody to Pamela would be in the children's best interest under NRS 125C.0035(4).

We review a district court's child custody decision for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Although "the district court enjoys broad discretionary powers in determining questions of child custody," its findings must be supported by substantial evidence and may not be clearly erroneous. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009); *Locklin*, 112 Nev. at 1493, 929 P.2d at 933.

Parents have a fundamental right in the care and custody of their children. NRS 126.036(1); *see also Rico v. Rodriguez*, 121 Nev. 695, 704, 120 P.3d 812, 818 (2005) ("The United States Supreme Court has recognized several fundamental interests including the interest of parents in the care, custody, and control of their children." (internal quotation marks omitted)). Further, the supreme court has emphasized that it is usually in the child's best interest to award custody to a fit parent. *Locklin*, 112 Nev. at 1495, 929 P.2d at 934 (quoting *McGlone v. McGlone*, 86 Nev. 14, 17, 464 P.2d 27, 29 (1970)). To overcome the parental presumption, the district court must find that "the parent is unfit" or that there are "other extraordinary circumstances." *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995); *see also* NRS 128.018 (defining an "unfit parent"); NRS 128.018 (providing factors to consider when determining neglect or fitness of parent). Extraordinary circumstances are those that "result in serious detriment to the child." *Locklin*, 112 Nev. at 1495-96, 929 P.2d at 934.

Before awarding custody—legal or physical—to a nonparent, the district court must find that awarding "custody to the parent would be detrimental to the child and the award to a nonparent is required to serve

the best interest of the child.” NRS 125C.004(1).² Although the Legislature did not define “detrimental,” the Nevada Supreme Court established a list of factors the district court must apply to “determine whether there is sufficient detriment to the welfare of the child to overcome the parental presumption.” *Locklin*, 112 Nev. at 1495-96, 929 P.2d at 934-35. Although *Locklin* involved a guardianship, the court in resolving its nonparent guardianship issue applied the former version of NRS 125C.004(1), which governs in custody cases. Therefore, we conclude that where a district court is applying NRS 125C.004(1) to determine whether to award any custody rights to a nonparent, the court must analyze the *Locklin* factors. *See id.*

The district court must consider any one or combination of the following factors: (1) “abandonment or persistent neglect of the child by the parent;” (2) “likelihood of serious physical or emotional harm to the child if placed in the parent’s custody;” (3) “extended, unjustifiable absence of parental custody;” (4) “continuing neglect or abdication of parental responsibilities;” (5) “provision of the child’s physical, emotional and other needs by persons other than the parent over a significant period of time;” (6) “the existence of a bonded relationship between the child and the nonparent custodian sufficient to cause significant emotional harm to the child in the event of a change in custody;” (7) “the age of the child during the period when his or her care is provided by a non-parent;” (8) “the child’s well-being has been substantially enhanced under the care of the nonparent;” (9) “the extent of the parent’s delay in seeking to acquire custody

²NRS 125C.004(1) was previously codified as NRS 125.510(1). The Legislature repealed NRS 125.510 in 2015 and the same language was added to NRS Chapter 125C. *See* A.B. 263, 78th Leg. (Nev. 2015). We note that *Locklin* applied NRS 125.510(1). *Locklin*, 112 Nev. at 1493, 929 P.2d at 933.

of the child;” (10) “the demonstrated quality of the parent’s commitment to raising the child;” (11) “the likely degree of stability and security in the child’s future with the parent;” (12) “the extent to which the child’s right to an education would be impaired while in the custody of the parent;” and (13) “any other circumstances that would substantially and adversely impact the welfare of the child.” *Id.*

Here, the district court cited to NRS 125C.004(1) when it concluded that awarding custody to Devin would be detrimental to the children and then proceeded to apply NRS 125C.0035(4) to determine that it would be in the children’s best interest to award primary physical custody to Pamela. When determining whether awarding custody to Devin would be detrimental to the children, the court failed to consider the *Locklin* factors. Instead, the district court seems to have applied a dictionary definition of “detrimental,”³ which is insufficient considering the Nevada Supreme Court’s precedent in *Locklin*. We recognize that the district court made extensive findings pertaining to the statutory best interest factors, some of which overlap with the *Locklin* factors. Nevertheless, we take this opportunity to clarify that the determination of whether granting custody to a parent would be “detrimental” requires a separate analysis applying *Locklin*.

Therefore, we vacate the decree of divorce with regard to the physical custody award and remand for reconsideration of NRS 125C.004(1) in light of the *Locklin* factors. *See Davis v. Ewalefo*, 131 Nev. 445, 450, 352

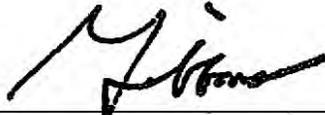
³The district court held that “[d]etrimental is defined as a loss or injury, damaging or harmful.” *Cf. Detrimental*, Dictionary.com, <https://www.dictionary.com/browse/detrimental> (defining “detrimental” as “causing detriment, as loss or injury; damaging; harmful”).

P.3d 1139, 1142 (2015) (“Although this court reviews a district court’s discretionary determinations deferentially, deference is not owed to legal error.”). On remand, the district court must first consider whether awarding Devin custody would be detrimental by considering and applying the *Locklin* factors. If the district court determines that, under *Locklin*, awarding primary physical custody to Devin would be detrimental to the children, the district court must then apply NRS 125C.0035(4) to determine if awarding custody to Pamela is required.⁴

Accordingly, we

ORDER the judgment of the district court VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.⁵


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Pecos Law Group
Walsh & Friedman, Ltd.
Mills & Anderson Law Group
Genie Lawrimore
Eighth District Court Clerk

⁴Because the district court must reassess the facts when applying the *Locklin* factors on remand, we need not determine whether the district court’s findings were supported by substantial evidence.

⁵The current physical custody award shall remain in effect until and unless the district court reaches a different conclusion on remand.