IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARY-ANNE COLT, AND STACEY KANTER,
Appellants,
vs.
ALYSSA MARIE PLUMMER,
Respondent.

No. 82662-COA

ORDER OF AFFIRMANCE

Mary-Anne Colt and Stacey Kanter appeal from a district court order in a child custody matter. Eighth Judicial District Court, Clark County; Gerald W. Hardcastle, Senior Judge.

Colt and Kanter are the paternal grandmother and aunt of respondent Alyssa Marie Plummer's minor child. After the child's father passed away, Colt initiated the underlying action for custody or, in the alternative, for visitation and Kanter later intervened in the action. After prolonged litigation and several days of trial, the district court ultimately entered an order denying appellants' petition for custody or visitation and awarding full custody of the child to Plummer. This appeal followed.

On appeal, appellants challenge the district court's order granting custody to Plummer and denying their petition for custody or visitation, asserting that it was never demonstrated below that Plummer is fit to have custody and that the district court failed to consider evidence that Plummer was unfit. In particular, appellants contend the district court

failed to consider that Plummer abused and neglected the child, that she has an addiction problem, and that she has mental health issues. 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 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). Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

First, regarding appellants' challenge to the denial of their request for custody, parents have a fundamental right in the care and custody of their children. NRS 126.036(1); *Rico v. Rodriguez*, 121 Nev. 695, 704, 120 P.3d 812, 818 (2005). And "the best interest of the child is usually served by awarding his custody to a fit parent." *Locklin v. Duka*, 112 Nev. 1489, 1495, 929 P.2d 930, 934 (1996) (quoting *McGlone v. McGlone*, 86 Nev. 14, 17, 464 P.2d 27, 29 (1970)). Thus, before awarding custody of a child to a person other than a parent, without the parent's consent, the district court must find that awarding "custody to a 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). A non-parent seeking custody can only overcome NRS 125C.004(1)'s preference for awarding custody to a parent,

"by a showing that the parent is unfit or other extraordinary circumstances." *Locklin*, 112 Nev. at 1494, 929 P.2d at 933.

As noted above, appellants assert the district court abused its discretion by failing to consider their allegations regarding Plummer's fitness. Based on our review of the record, contrary to appellants' assertions, the district court considered the evidence presented, including appellants' allegations that Plummer was unfit, and made numerous, detailed findings regarding the same. Indeed, the district court specifically noted that it had reviewed the extensive file submitted by Child Protective Services (CPS) in this case and found that of more than 30 referrals that CPS investigated, it only substantiated one incident several years prior to the onset of the instant litigation. The court went on to acknowledge that Plummer had struggled with addiction, but noted that while she could do more to address this issue, there was no evidence of recent incidents relating to Plummer's addiction issues, that some of Plummer's behavioral issues seem to stem from the volatile relationship with appellants and the litigation stress, and that despite these facts, Plummer was not unfit such that she could not parent the child. Similarly, the court noted that while there was one incident in 2018 where Plummer was detained on a Legal 2000 hold, the evidence indicated that she was extremely intoxicated, and there was no other relevant evidence of Plummer's mental health history presented. After considering the allegations and the evidence presented, the district court ultimately concluded that appellants' evidence failed to demonstrate that Plummer was unfit and, therefore, appellants failed to overcome the parental preference provided by NRS 125C.004(1). In light of

these findings, we cannot conclude that the district court abused its discretion in denying appellants' request for custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Next, as to appellants' challenge to the district court's denial of their petition for visitation, grandparents or other persons who have resided with a child and established a meaningful relationship may petition the court for reasonable visitation if the parents of the child have unreasonably denied visitation. NRS 125C.050(1)-(3). However, if a parent has denied visitation with the child, there is a rebuttable presumption that granting visitation to the petitioners is not in the child's best interest. NRS 125C.050(4). And to rebut this presumption, the petitioners must demonstrate by clear and convincing evidence that it is in the best interest of the child to grant visitation. *Id.* When determining whether the petitioners have rebutted the presumption, the district court shall consider the factors enumerated in NRS 125C.050(6).

Here, again, appellants assert that the district court failed to consider their allegations, that Plummer failed to comply with the court's temporary orders regarding visitation, and that they are entitled to a relationship with the child due to the death of the child's father. As an initial matter, we note that it is unclear from the record whether the child ever resided with Kanter and, therefore, whether Kanter was eligible to seek visitation pursuant to NRS 125C.050. *See* NRS 125C.050(1), (2) (permitting the district court to grant visitation to a grandparent, or a person with whom the child has resided and established a meaningful relationship, respectively). Regardless, because the district court

considered appellants' request for visitation on the merits, we likewise address appellants' challenges on appeal.

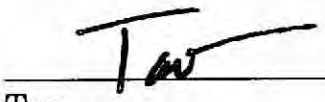
Based on our review of the record, the district court correctly applied NRS 125C.050 in considering appellants' petition for visitation. Notably, the district court first noted that there was a rebuttable presumption that visitation was not in the child's best interest, pursuant to NRS 125C.050(4), and that it was appellants' burden to overcome that presumption by clear and convincing evidence. The court then found that although there had been instances where Plummer denied appellants contact with the child, she generally was compliant with visitation. Additionally, the court specifically considered the factors enumerated in NRS 125C.050(6) and found that many of the factors favored appellants' request for visitation. Similarly, the court noted that there were many ways in which a relationship with appellants would serve the child's best interest. But the court went on to find that it had serious concerns about NRS 125C.050(6)(g)—the willingness and ability of the person seeking visitation to facilitate and encourage a relationship between the child and parent. Specifically, the court noted that there was a high degree of animosity and conflict between the parties, that the child was constantly exposed to the conflict, such that it was not in his best interest to continue a relationship with appellants. Ultimately, the court concluded that although some factors, indeed most of the factors, favored appellants, the appellants' inability to encourage a relationship between Plummer and the child and the extreme conflict between the parties outweighed the other factors. Accordingly, the district court held that appellants failed to meet their

burden of demonstrating that continued visitation would be in the child's best interest. Based on these findings, we cannot say that the district court abused its discretion in denying appellants' petition for visitation.[1] *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



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[1]As to appellants' assertion that the district court gave improper weight to the evidence, 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).

[2]Insofar as appellants raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Gerald W. Hardcastle, Senior Judge
Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department I
Mary-Anne Colt
Stacey Kanter
Hurtik Law & Associates
Eighth District Court Clerk