

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DESMON BRANDES,
Appellant,
vs.
LACEY PICTUM, N/K/A LACEY
KRYNZEL,
Respondent.

No. 83399-COA

FILED

SEP 29 2022

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

ORDER OF REVERSAL AND REMAND

Desmon Brandes appeals from a district court order modifying child custody. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

Desmon and respondent Lacey Pictum, n/k/a Lacey Krynzel, were never married and have one minor child together, who was born in 2007. In 2011, the parties entered into a stipulation and order wherein they agreed that they would share joint legal custody of the child, and that Lacey would have primary physical custody with Desmon paying \$400 in monthly child support. However, because Lacey had issues with opioid addiction, the order provided that Desmon shall become the primary physical custodian of the child if Lacey relapsed.

Following entry of the stipulation and order, Lacey relapsed, and Desmon became the child's primary physical custodian from late 2011 until 2015, with Lacey exercising supervised parenting time with the child. However, in 2015, Lacey married and maintains that she has been clean

from opioids since that year. Thereafter, the child began spending alternating weekends with Lacey and, during summer vacation, would spend the weekdays with Lacey and alternating weekends with Desmon. This arrangement continued until March 2020, when schools shut down due to the COVID-19 pandemic. At that point, the parties agreed that the child could reside with Lacey on her regular summer schedule until school resumed.

In March 2020, Lacey applied for welfare benefits and the district attorney's office subsequently opened a child support case to enforce Desmon's support obligation under the 2011 stipulation and collect arrears. Desmon opposed the motion in the support case and also filed a motion in the district court, alleging that he had been the primary physical custodian from late 2011 until 2020, and that Lacey had waived child support under the stipulation. And, as relevant here, Desmon also moved to modify the custody order, arguing that a substantial change in circumstances had occurred, and that, as it appeared that Lacey had been sober for several years, a joint physical custody arrangement would be in the best interest of the child. Lacey opposed, stating that Desmon was never the primary physical custodian of the child, and that he owed full child support arrears from 2011 until 2020. Desmon replied, arguing that Lacey's opposition was demonstrably false, and requested that the court interview the child to establish that she had been living with him for the past ten years.

During the litigation following this motion, Desmon filed a supplement and included several text messages and one video recording obtained from the child, wherein the child (who was now 14) expressed

concerns that Lacey was again using drugs, stating that Lacey would drive erratically, leave for a quick errand and then return several hours later without completing the errand, and “zone out” for thirty minutes at a time. In response to these allegations, the district court ordered Lacey to submit to a drug test, which showed trace amounts of THC, but were negative for opioids or other substances. In light of this, the district court ordered an evidentiary hearing on the issue of custody modification and directed the parties to temporarily continue their current timeshare. Shortly after entry of this order, the child informed Lacey that she would prefer to live with Desmon until Lacey “got better” and, with Lacey’s permission, lived with Desmon for the five months prior to the evidentiary hearing. Because of these circumstances, Desmon modified his request for joint physical custody and requested primary physical custody of the child in his pretrial papers.

The district court held an evidentiary hearing where it considered the testimony of Desmon and Lacey.¹ Afterwards, the district court entered a 21-page order finding, among other things, that a modification of the 2011 custody order awarding primary physical custody to Lacey was necessary and awarded the parties joint physical custody of the child, with the parties to share a 50/50 split in parenting time. Following entry of the order, Desmon moved to alter or amend the judgment, arguing that the evidence received at the evidentiary hearing, and the district court’s own analysis of the best interest factors, supported

¹Although the district court entered text messages from the child into evidence, it determined that an interview of the child was unnecessary in this instance.

an award of primary physical custody to Desmon. The district court denied the motion, and this appeal followed.

In his fast track statement, Desmon admits that the district court appropriately found that the 2011 order should be modified, but argues that the district court erred when it awarded joint physical custody to both of the parties despite the parties' historical custodial arrangement, the district court's own findings that Lacey had a history of substance abuse issues, and that the child expressed a desire to reside with Desmon.²

This court reviews a child custody 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). In 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). Moreover, the district court's order must include specific findings of fact tying its findings as to the best interest factors to the custody determination made. *Davis*, 131 Nev. at 451, 352 P.3d at 1143. Without specific findings and an adequate explanation for the custody determination, this court cannot determine whether the custody determination was appropriate. *Id.* at 452, 352 P.3d at 1143.

Here, the district court's order included a detailed recounting of the parties' testimonies from the evidentiary hearing and made findings

²Lacey did not file a fast track response in this matter, and all notices sent to her address on file were returned as undeliverable. Accordingly, on February 22, 2022, the supreme court ordered that this matter would be submitted for decision without a response.

related to the best interest of the child. Specifically, while the district court found, among other things, that many of the best interest factors were neutral and commended the parties on their ability to cooperate and effectively coparent the child, the district court also recognized that Lacey has a history of opioid addiction, and that the child expressed a desire to continue living with Desmon. Moreover, while the district court acknowledged that three of the factors favored Desmon, it did not find that any of the factors favored Lacey.

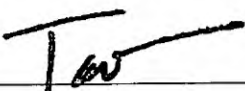
Despite these findings, however, the district court's order does not offer any explanation as to how its findings regarding the best interest factors resulted in the ultimate custody determination. Instead, the challenged order simply followed its discussion of the best interest factors by stating that neither party "established that the other is incapable of adequately caring for the child for 146 days per year," and summarily concluded—without any explanation—that "[i]t is in the best interests of the child that the parties be awarded joint physical custody."

Under these circumstances, where the district court failed to tie its ultimate custody determination to the findings regarding the best interests of the child, we must conclude that the court abused its discretion in determining that the parties should have joint custody over the child. *See id.* at 451, 352 P.3d at 1143 (requiring the district court to "tie the child's best interest, as informed by specific, relevant findings respecting the [best interest factors] and any other relevant factors, to the custody determination made"). Accordingly, we reverse this decision and remand this matter to the district court. On remand, the district court must provide

additional information and analysis connecting its findings regarding the best interest factors to its ultimate custody determination. *See id.* at 454, 352 P.3d at 1145 (reversing a district court's order regarding child custody as "none of the district court's oral or written observations explain *why* the district court ruled as it did").

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Pecos Law Group
Lacey Pictum
Eighth District Court Clerk

³Insofar as Desmon raises 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.