

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATHAN ROBERTSON,
Appellant,
vs.
JESSICA GARDNER,
Respondent.

No. 83988-COA

FILED

OCT 07 2022

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

ORDER OF REVERSAL AND REMAND

Nathan Robertson appeals from a district court order regarding child custody and support. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Robertson and respondent, Jessica Gardner, were never married and have one child together.¹ In 2021, Robertson filed a petition in the district court seeking to obtain joint legal custody and primary physical custody over the child, as well as child support under the custody arrangement. Gardner answered this petition and filed a counterpetition, also seeking the same relief. Both parties argued that the other parent was unfit to care for the child, and both parties submitted documents indicating that the other parent committed acts of domestic violence against them in front of the minor child. After briefing by both parties, the district court

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

held a bench trial and entered an order awarding sole legal custody and primary physical custody to Gardner, establishing a monthly support payment of \$905, and ordering Robertson to pay \$10,450 in arrears. Notably, the district court recognized that an award of joint legal and physical custody would be appropriate under the statute but appears to have awarded Gardner sole legal custody and primary physical custody based on Robertson's failure to obtain a mental health evaluation. Robertson now appeals.

On appeal, Robertson challenges the evidentiary basis for the district court's order awarding custody and support.² We review a district court's custody determinations for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980 (2022). "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*, 125 Nev. at 420, 216 P.3d at 221. Joint legal custody is presumed to be in the child's best interest if certain conditions are met. NRS 125C.002. However, this presumption is overcome

²We acknowledge that Robertson's Fast Track Statement is deficient under NRAP 3E. However, in light of the district court's lack of findings in this matter, we nonetheless conclude reversal and remand is warranted for the reasons articulated below.

when the court finds that the parents are unable to communicate, cooperate, and compromise in the best interest of the child. *See Rivero*, 125 Nev. at 420, 216 P.3d at 221.

When making a physical custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1). Moreover, the district court's "order must 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." *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Without specific findings and an adequate explanation for the custody determination, this court cannot determine with assurance whether the custody determination was appropriate. *Id.* at 452, 352 P.3d at 1143.

In its order, the district court awarded sole legal custody to Gardner despite recognizing that NRS 125C.002 favored an award of joint legal custody. And although the court recognized that it "lacked therapeutic testimony" to counter Robertson's alleged history of domestic violence, the district court otherwise made no findings as to Robertson and Gardner's ability, or lack thereof, to cooperate, communicate, or compromise in the best interest of their child. And crucially, there is no reference to the child's best interest or the court's findings or reasons for awarding Gardner sole legal custody. We therefore conclude that the district court abused its discretion by failing to tie specific best interest findings to its conclusion


that Gardner should have sole legal custody in the decree. *See Davis*, 131 Nev. at 451, 352 P.3d at 1143.

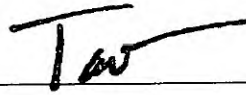
Similarly, the court also awarded primary physical custody to Gardner without discussion, analysis, or reference to the best interest of the child factors as required by NRS 125C.0035(1) and *Davis*. Moreover, to the extent that the district court based its award of primary physical custody to Gardner on the allegations that Robertson engaged in acts of domestic violence against her, the district court failed to set forth the necessary findings of fact that “support the determination that one or more acts of domestic violence occurred” and findings that the custody arrangement ordered by the court adequately protects the child as required by NRS 125C.230(1). Because the district court failed to enter the required relevant findings, we must conclude that the district court abused its discretion when awarding primary physical custody to Gardner. *See Davis*, 131 Nev. at 452, 352 P.3d at 1143.

For these reasons, we reverse the district court’s order and remand this matter to the district court for further proceedings consistent with this order, including the entry of specific, written findings as to the best interest of the child and, if applicable, the domestic violence presumption. And in light of our reversal for specific findings, we also

necessarily reverse Robertson's child support obligation and arrears for further consideration on remand.³

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³It appears that the district court miscalculated the amount of arrears owed by Robertson. In its order, the district court indicated that Robertson owed \$10,450 in arrears from the period of January 1, 2021, to December 1, 2021. However, this is equivalent to a \$950 monthly support obligation, rather than the \$905 ordered by the court.

⁴Pending further proceedings on remand, we leave in place the custody arrangement set forth in the district court's November 23, 2021, order awarding custody, subject to modification by the district court to comport with the current circumstances. *See Davis*, 131 Nev. at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand).

Insofar as the parties 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. Jim C. Shirley, District Judge
Nathan Robertson
Evenson Law Office
Clerk of the Court/Court Administrator