139 Nev., Advance Opinion 6

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAROLYN RAMOS; AND PHILLIP RAMOS,
Appellants,
vs.
ASHLEY DAWN FRANKLIN; AND JOHN BRYAN FRANKLIN,
Respondents.

No. 84520

Appeal from a district court order denying a petition for grandparent visitation. Eighth Judicial District Court, Family Division, Clark County; Amy Mastin, Judge.

Affirmed.

Robert W. Lueck, Ltd., and Robert W. Lueck, Las Vegas,
for Appellants.

McFarling Law Group and Emily M. McFarling and Ashlee N. Vazquez, Las Vegas,
for Respondent Ashley Dawn Franklin.

BEFORE THE SUPREME COURT, STIGLICH, C.J., HERNDON, J., AND SILVER, Sr. J.[1]

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[1]The Honorable Abbi Silver, Senior Justice, participated in this decision under a general order of assignment.

23-08054

OPINION

By the Court, STIGLICH, C.J.:

NRS 125C.050 permits grandparents and others to petition for visitation with a minor child when "a parent of the child has denied or unreasonably restricted visits with the child." Here, the district court denied a petition for grandparent visitation after concluding that one of the parents provided the grandparents with reasonable visitation. The grandparents now challenge that conclusion, asserting that the requirement was met because the other parent denied them visitation entirely and the district court incorrectly found that the visitation they received was reasonable.

We conclude that the relevant inquiry, in the context of a petition for visitation in joint custody situations, is whether the petitioners' visits with the children overall have been denied or unreasonably restricted. Because the district court in this case did not abuse its discretion in concluding that visits with the children were not denied or unreasonably restricted, we conclude that the district court properly denied the grandparents' petition for visitation. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

Respondents Ashley Franklin and John Franklin divorced in 2022. While the divorce proceedings were ongoing, Ashley and John voluntarily signed a six-month guardianship agreement providing appellant Carolyn Ramos, Ashley's mother, with temporary legal and physical custody of their two minor children, A.F. and K.F. Although

Carolyn's husband, Phillip Ramos, was not named in the agreement, the parties understood that he was also responsible for the children.[2]

The children returned to their parents' care in August 2020, while the divorce proceedings were still pending.[3] Ashley and John agreed to a partial parenting agreement, which the district court adopted. In the agreement, Ashley and John "agree[d] that no other person, including maternal grandparents, shall have court-ordered permanent custody of or visitation with their children."

The grandparents moved to intervene in the divorce case and petitioned for visitation under NRS 125C.050 in September 2020, arguing that the parents had "unreasonably restricted their ability to visit with the minor children" and citing the partial parenting agreement as evidence. In November 2020, they petitioned for immediate visitation and for an evidentiary hearing, seeking one weekend with their grandchildren each month, two weeks with their grandchildren every summer, and potentially overnight visitation on Christmas Eve. The district court granted the

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[2]We refer to Carolyn and Phillip collectively as "the grandparents."

[3]On appeal, the grandparents argue that the order terminating their temporary custody of the children, which led to the children returning to their parents' care, was made in error. The six-month guardianship agreement was entered on December 26, 2019, and thus expired on June 26, 2020. *See* NRS 159A.205(6) ("The short-term guardian appointed pursuant to this section serves as a guardian of the minor for 6 months . . . ."). Accordingly, the grandparents' arguments regarding the order terminating their temporary custody are moot because they admit that at the time they were not seeking permanent physical custody, and, regardless of any alleged error in how the district court terminated their temporary custody, the temporary guardianship had already expired. *See NCAA v. Univ. of Nev., Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) (describing mootness). Thus, we decline to reach these arguments.

motion to intervene but deferred ruling on the grandparents' visitation petition until after the divorce was settled.

Ultimately, the divorce decree awarded Ashley and John joint legal and physical custody of the children. Thereafter, in February 2022, the district court held an evidentiary hearing on the grandparents' petition for visitation. Ashley, John, and the grandparents testified. The district court found that Ashley was not a credible witness and relied instead on John's and the grandparents' testimony.

John testified that he did not allow the grandparents contact with the children when they initially returned to his and Ashley's care. John said that he did not permit contact because he believed that Phillip was responsible for his fiancé's arrest. When he learned that was not true, he allowed the grandparents to visit the children. According to John, the grandparents (1) visited the children during his weekends for "an afternoon, maybe"; (2) picked up the children from school occasionally; (3) hosted the children overnight on Christmas Eve 2021; (4) arranged a spring-break trip involving the grandparents, John, his fiancé, and the children; and (5) had three overnight stays with the children while he was working.

John also expressed that he was willing to agree to the grandparents visiting with the children during his weekends. When asked about the partial parenting agreement, he testified that he understood the difference between court-ordered contact and contact that he decides to allow. However, John also said, "I can't guarantee time with the [grandparents]. I work a lot."

Phillip testified that there was a period of about "five months, maybe—maybe a little bit less" when John denied the grandparents contact with the children. After John apologized to Phillip for his mistaken belief

that Phillip was responsible for his fiancé's arrest, Phillip said, they "got to see them for—occasionally. Not very often." Phillip provided a list of the dates, times, and duration of his visits with the children since August 2020, reporting 196 hours spent with the children in 2021.

Carolyn testified that, since August 2020, she had no contact with the children via Ashley. She said that when she reached out to Ashley, Ashley responded with "I'll let you know" but did not follow up. Carolyn recognized that there could be additional days when she had contact with the children that are not on Phillip's list. For example, she helped the children with virtual schooling for a few days at her home in 2021. Carolyn said, "If the Court doesn't grant us any time with these kids, there—there isn't any guarantee these children will ever see us again, from either parent." She continued, "We can't—we can't count on either one."

The district court denied the grandparents' petition, concluding that "although the grandparents' contact is limited to the alternating weeks that John has custody of the children, the amount of time spent with the girls is sufficient to defeat a finding that the [grandparents'] contact is being denied or unreasonably restricted." Although the court acknowledged the partial parenting agreement and the fact that the grandparents were "denied nearly all contact for a five month period," by time of the February 2022 hearing, circumstances had changed—the grandparents had ongoing contact with A.F. and K.F. The grandparents appealed.[4]

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[4]John consents to the idea of court-ordered visitation insofar as it forces Ashley to give up some of her custodial time to the grandparents. Accordingly, he did not respond to the grandparents' fast track statement or otherwise communicate with this court about the response. As a result, we resolve this appeal without his response. *Ramos v. Franklin*, Docket No. 84520 (Order, August 24, 2022).

DISCUSSION

Petitioners' visits with the children must have been denied or unreasonably restricted to warrant relief in a petition for visitation

The grandparents argue that their visits with the children were "denied or unreasonably restricted."[5] They contend that the district court's finding that they were not denied or unreasonably restricted visits "rubber stamped" Ashley's decision to deny them contact with the children during her time. We disagree and take this opportunity to clarify NRS 125C.050(3).

We have not addressed whether NRS 125C.050(3) requires each parent, rather than just one, to have denied or unreasonably restricted contact. Here, the district court focused on the contact that the grandparents had with the children, not which parent provided it. Because the grandparents had regular access to the children, it was irrelevant to the district court that Ashley allegedly denied visits. We agree and clarify that in a petition for visitation, where the parents have joint custody and participate in resolving the petition, the focus is on petitioners' access to the children. As a result, if one parent has not denied or unreasonably restricted visits, then the petition fails, and the district court does not need to address the actions of the other parent.

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[5]We decline to consider the grandparents' arguments that Ashley is an unfit parent and that we should adopt the functional-parent theory because they are waived. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). Although Carolyn argued in an earlier motion that Ashley was unfit, she abandoned that argument by failing to raise it in subsequent petitions for visitation, and the district court did not address it. Thus, this argument is waived. Likewise, the grandparents did not raise the functional-parent theory below, so it also is waived. *Id.*

Although we generally review decisions regarding visitation rights for an abuse of discretion, *Rennels v. Rennels*, 127 Nev. 564, 568-69, 257 P.3d. 396, 399 (2011), we review a district court's interpretation of a statute de novo, *Potter v. Potter*, 121 Nev. 613, 616, 119 P.3d 1246, 1248 (2005); *see Rennels*, 127 Nev. at 568-69, 257 P.3d at 399 (providing that even in the context of a child visitation case, we review questions of law de novo). "When the language of a statute is clear and unambiguous, its apparent intent must be given effect." *Potter*, 121 Nev. at 616, 119 P.3d at 1248. But if a statute is ambiguous, "we then look beyond the statute to the legislative history and interpret the statute in a reasonable manner in light of policy and the spirit of the law." *Pawlik v. Shyang-Fenn Deng*, 134 Nev. 83, 85, 412 P.3d 68, 71 (2018) (internal quotations omitted). A statute is ambiguous if it "is subject to two or more reasonable interpretations." *Id.*

NRS 125C.050 provides that certain relatives or other persons may petition for visitation with minor children. If a parent of a minor child is deceased, divorced or separated from the parent who has custody of the child, no longer has parental rights, or was never married to the other parent but cohabitated with the other parent and is deceased or separated from the other parent, then the grandparents, great-grandparents, or other children of either parent may petition for a reasonable right to visit the child. NRS 125C.050(1). Alternatively, regardless of biological relation, a person who has lived with and established a meaningful relationship with the child may petition for visitation.[6] NRS 125C.050(2).

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[6]Although the district court acknowledged NRS 125C.050(1) and (2), it did not address which category the grandparents fell into. The parties agree that the grandparents were eligible to petition for visitation. Regardless of whether the grandparents fell under NRS 125C.050(1) or (2),

Visitation under these provisions may be ordered "only if a parent of the child has denied or unreasonably restricted visits with the child." NRS 125C.050(3). If visits have been denied or unreasonably restricted, "there is a rebuttable presumption that the granting of a right to visitation to a party seeking visitation . . . is not in the best interests of the child." NRS 125C.050(4). "To rebut this presumption, the party seeking visitation must prove by clear and convincing evidence that it is in the best interests of the child to grant visitation." *Id.* NRS 125C.050(6) provides factors that the district court must consider in determining whether the petitioners rebutted the presumption.

NRS 125C.050(3) is ambiguous

Here, there are two reasonable ways to interpret NRS 125C.050(3). On the one hand, NRS 125C.050(3) refers to "a parent," which is singular, so it can be read as allowing the court to consider ordering visitation when only one parent denies or unreasonably restricts visits. On the other hand, where two parents have joint custody, NRS 125C.050(3) can be read to apply to each parent, so that the inquiry is whether, overall, the petitioners' visits have been denied or unreasonably restricted. Thus, NRS 125C.050(3) is ambiguous, and we must "look beyond the statute." *Pawlik*, 134 Nev. at 85, 412 P.3d at 71.

Reason and policy suggest that NRS 125C.050(3), in a petition for visitation, refers to the actions of both parents collectively, not to those of just one parent

In 2001, the Nevada Legislature amended NRS 125C.050 in response to the United States Supreme Court case *Troxel v. Granville*, 530

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in order for a petition for visitation to proceed the district court must find that a parent denied or unreasonably restricted visits under NRS 125C.050(3). Accordingly, we only address NRS 125C.050(3).

U.S. 57 (2000). 2001 Nev. Stat., ch 547, § 1, at 2712-14; Hearing on S.B. 25 Before the S. Comm. on Judiciary, 71st Leg. (Nev. Feb. 13, 2001) (noting that "language might need to be added to S.B. 25 to meet the constitutional challenge of *Troxel*" (statement of Senator Ann O'Connell)). In *Troxel*, a plurality of the Supreme Court held that a Washington State visitation statute was unconstitutional because it infringed on the parents' fundamental rights to make decisions on the care, custody, and control of their child. *Troxel*, 530 U.S. at 60, 75. NRS 125C.050(3), along with the presumption in NRS 125C.050(4), were added to strengthen the constitutionality of NRS 125C.050 by protecting the parents' fundamental interests. *See* Hearing on S.B. 25 Before the Assemb. Comm. on Judiciary, 71st Leg., Exh. D (Nev. May 7, 2001) (advising that "NRS 125C.050 would be less vulnerable to constitutional challenge if the statute were amended to require a threshold showing of harm or potential harm to the child before visitation may be sought" and listing denial of visits and the parental presumption as examples); *compare* NRS 125C.050 (1999) (containing no parental presumption or "denied or unreasonably restricted" language), *with* NRS 125C.050 (2001) (adding NRS 125C.050(3), (4)).

We are persuaded that interpreting "a parent" to refer to each parent rather than just one parent serves both the interests of the child and the parents' interests. NRS 125C.050 recognizes that the best interests of the child may be contact with grandparents in some circumstances. The proper focus then is whether the child has reasonable contact with the grandparents, not which parent provides that contact. The "each" parent interpretation properly focuses on what contact the child actually receives, and if one parent is providing reasonable contact, then the petition for visitation fails. This result serves the best interests of the child because the

child is receiving contact with the grandparents while the parents' rights to determine those interests are also being recognized.

In contrast, interpreting "a parent" to refer to only one parent unreasonably burdens the parents' interests without furthering the child's interests. Under this interpretation, one parent may provide the grandparents with regular, reasonable contact with the child, which serves the child's best interest, but the petition may nonetheless proceed just because the other parent denies or unreasonably restricts additional contact. This interpretation does not further the child's best interests because the child's best interests are already met via the contact that one parent provides and thus undermines a parent's interest in the care, custody, and control of his or her child for no justifiable reason.

The district court did not abuse its discretion by finding that the parents did not unreasonably restrict visits with the children

The grandparents argue that the record does not support the district court's finding that their visits with the children have not been unreasonably restricted. However, the grandparents do not allege that the district court got the facts wrong by relying on visits that did not actually happen. Instead, they disagree with how the district court determined that the visits did not amount to an unreasonable restriction.

A district court decision regarding visitation rights is reviewed for an abuse of discretion. *Rennels*, 127 Nev. at 568-69, 257 P.3d at 399. We uphold the district court's factual findings if they are supported by substantial evidence and not clearly erroneous. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

Here, the grandparents do not dispute the facts, and the visits relied on by the district court in making its findings are supported by testimony at the evidentiary hearing. Although Ashley and John agreed to

oppose court-ordered visitation, an agreement against court-ordered visitation is not the same thing as an agreement that the grandparents will not have any contact with the children. Instead, Ashley and John seek to retain their discretion as parents to decide who has contact with their children and the circumstances under which such contact occurs.

The grandparents appear to assert that the volatility of their relationships with both John and Ashley warrant court-ordered visitation. But this volatility, this uncertainty, is inherent in parent-child relationships. Without more, anxiety about what the future may hold, or uncertainty about how relationships will play out in the future, does not constitute an unreasonable restriction. Based on these facts, where the grandparents are receiving fairly regular visits with the children, we cannot say that the district court abused its discretion by finding that the parents did not unreasonably restrict the grandparents' visits with the children.[7]

CONCLUSION

In a petition for visitation under NRS 125C.050, where the parents of minor children have joint custody, the district court must determine whether the parents have denied or unreasonably restricted petitioners' visits with the children. If one parent provides the petitioners with sufficient contact with the children so that their visits are not denied or unreasonably restricted under NRS 125C.050(3), the petition fails, regardless of whether the other parent provides contact. Here, one parent permitted regular contact between the grandparents and the children and thus the grandparents were not denied or unreasonably restricted visitation. The grandparents' concern for the volatility of their

[7]We decline Ashley's request for monetary sanctions on appeal.

relationships with either parent does not constitute an unreasonable restriction. Accordingly, we affirm.

_____, C.J.
Stiglich

We concur:

_____, J.
Herndon

_____, Sr. J.
Silver