

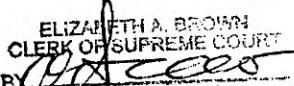
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONALD DAVID HARRIS,
Appellant,
vs.
JENNIFFER FIGUEROA,
Respondent.

No. 85333-COA

FILED

SEP 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ronald David Harris appeals from a district court order establishing custody. Eighth Judicial District Court, Family Division, Clark County; Mathew Harter, Judge.

Harris and respondent Jenniffer Figueroa share four children and were divorced in 2017. Harris later pleaded guilty to sexually abusing his stepdaughter, Figueroa's daughter from another marriage. In April 2020, Figueroa brought the instant custody action, requesting sole legal and sole physical custody of the parties' four children. Harris filed an answer, expressing that he wished to remain in the children's lives and requesting joint legal custody because he had never made inappropriate remarks to his four children or spoke poorly of Figueroa in their presence.

In May 2020, the district court sua sponte granted Figueroa sole legal and sole physical custody at a case management conference that Harris did not attend. On appeal, Harris challenged only the award of sole legal custody, and this court reversed the district court's order in part, concluding the district court (1) violated Harris' due process rights and (2) abused its discretion in awarding Figueroa sole legal custody without holding an evidentiary hearing, addressing the NRS 125C.002 presumption

in favor of joint legal custody, or tying its best interest findings to its conclusion. *Harris v. Figueroa*, No. 81746-COA, 2021 WL 5176842 (Nev. Ct. App. Nov. 5, 2021).

On remand, the district court conducted a hearing solely on the issue of legal custody, which both Harris and Figueroa attended. Figueroa argued that she did not want Harris to have access to their children because he was incarcerated, the children did not know the reason for his incarceration, and she believed that, if given the opportunity, he would lie to them. This was based on Harris' prior letters to the children, in which he stated they would know "the truth" about his incarceration when they turned 18 and would hate Figueroa. Moreover, Figueroa claimed that Harris both continued to contact his stepdaughter and had not taken accountability for his behavior with his stepdaughter and therefore, he should not make decisions for their children.

Figueroa also asserted that she and Harris could not get along and do not talk. Upon hearing this statement, the district court interrupted Figueroa and told her that "sentence" was "exactly what the issue is" and informed her that some of her prior statements were irrelevant. Figueroa continued that they would not be able to come to "a common ground" related to Harris talking to the children, and the court again interjected that the issue related to legal custody rather than access to the children. Figueroa stated that she did not want Harris reaching out to her regarding the children because he threatens her, and she did not want to reach out to him because he was not helping her raise them and should not be involved in their lives.

Harris argued that he and Figueroa did not fight and had generally agreed on how to raise their children. He also argued that his

incarceration had no bearing on his children. The district court interrupted him and stated that his statement concerning his incarceration “is one of the sub-issues” on remand. Harris continued asserting that he had not “done anything” to his children and did not believe that “what may or may not have occurred” with his stepdaughter impacted his ability to make decisions for his children. And Harris further argued that Figueroa’s claim that they had conflict was an insufficient basis to award her sole legal custody.

Harris claimed that he and Figueroa communicated without issue, and that he had contact with his children until February 2019, when Harris informed her that he was filing a postconviction petition and “a lot of things are gonna come out about her,” which prompted Figueroa to retaliate and cut off contact between him and their children. Specifically, Harris claimed that he told Figueroa he planned to “bring her to justice.” Harris further argued that he was able to be cordial with Figueroa and put their children first when interacting with her. Finally, he requested that the district court review the evidence he provided and stated, “the only thing that’s separating her and I right now is that she hasn’t been convicted of anything yet.”

Figueroa responded that she was not seeking sole legal custody “just to make him pay or anything” but felt that they would never agree with respect to the children because Harris was not “in the right state of mind for that.”

Following the hearing, the district court entered a written order awarding Figueroa sole legal custody of the children. In its order, the court applied the statutory presumption in favor of joint legal custody set forth in NRS 125C.002 as this court had previously directed. The court found that

the level of conflict between the parties was high, NRS 125C.0035(4)(d), the parties were unable to cooperate regarding their children's needs, NRS 125C.0035(4)(e), and Harris had been "convicted of child abuse of a step-sibling," NRS 125C.0035(4)(j). Specifically, the court noted that Harris claimed they could cooperate for the sake of the children, while Figueroa claimed they could not cooperate because Harris upsets the household by continuing to reach out to his stepdaughter and threatens Figueroa. Harris additionally claimed that Figueroa was also culpable in the crimes against her daughter and that he planned to "bring her to justice."

Based on those statements, the district court found that Harris was to blame for the parties' inability to cooperate because a reasonable parent would not be able to cooperate with the parent convicted of "serious sexual abuse" against her underage daughter, especially since Harris continued to contact his stepdaughter. Moreover, the court found that a reasonable parent would not be able to cooperate, communicate, or compromise with a parent who admits to actively attempting to have them prosecuted. Thus, the court concluded that Figueroa overcame the presumption in favor of joint legal custody since she proved they could not cooperate. Finally, the district court concluded that it was in the children's best interest for Figueroa to have sole legal custody because Harris was "the root of this problem," and it would be impractical for Harris to be the sole legal custodian given his incarceration. This appeal followed.

On appeal, Harris challenges the district court's order awarding sole legal custody to Figueroa.

Child custody decisions are reviewed for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). A district court abuses its discretion when its decision is clearly erroneous.

See *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). Additionally, this court will not set aside child custody determinations if they are supported by substantial evidence. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Evidence is substantial if a reasonable person would accept it as adequate to sustain a judgment. *Id.*

Legal custody is the basic legal responsibility for a child and the responsibility to make major decisions regarding the child. *Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *overruled in part on other grounds by Romano v. Romano*, 138 Nev. 1, 501 P.3d 980 (2022). “Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents.” *Id.* There is a statutory presumption that joint legal custody would be in the best interest of the child when certain conditions are met, such as when the parties have agreed to an award of joint custody. NRS 125C.002(1)(a). However, this presumption is overcome when the district 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 221.¹

Harris first contends that the district court’s award of sole legal custody to Figueroa was an abuse of discretion because it was not supported by substantial evidence, and the court failed to both consider all the statutory best interest factors and link its findings to the best interest of the children.

¹We have already interpreted *Rivero* to stand for this proposition in *Doucettperry v. Doucettperry*, No. 80114-COA, 2020 WL 6445845 (Nev. Ct. App. Nov. 2, 2020) (Order Affirming in Part, Reversing in Part, and Remanding).

We disagree as, based on our review of the record, substantial evidence supports the district court's decision. At the hearing, Figueroa testified that she was unable to cooperate with Harris because he threatened her, he wrote letters to the children telling them that they would know the truth about his incarceration and would hate Figueroa, and he continued to reach out to his stepdaughter, the victim of his crimes. Although Harris claimed he could put the children first and cooperate with Figueroa, he also testified that he was compiling evidence to "bring her to justice" for her alleged culpability in his crimes against his stepdaughter. The court noted in its order that the "animus between the parties was palpable," and at the hearing stated that their briefs consisted of personal attacks. Therefore, substantial evidence supported the district court's finding that the parties could not cooperate, communicate, and compromise in their children's best interest.

Additionally, as required by our prior order of reversal, *Harris*, No. 81746-COA at *4, the district court explicitly applied the statutory presumption in favor of joint legal custody and concluded that Figueroa overcame the presumption by demonstrating the parties could not cooperate. When considering whether Harris' behavior toward his stepdaughter rendered him unable to participate in important legal decisions for his children, the court found that a reasonable parent could not cooperate, communicate, or compromise with a parent who was convicted of sex crimes against their underage child, and who admitted to attempting to have them prosecuted. The court further concluded that Harris was the "root cause" of the parties' inability to communicate, further supporting its custody determination. Finally, the district court linked its findings to its conclusion as to the resolution of the legal custody issue when

it determined that, because Harris was the cause of the issues between the parties and was incarcerated, it was in the best interest of the children for Figueroa to have sole legal custody.

Moreover, contrary to Harris' contention, the district court did not base its legal custody determination solely on a single best interest factor. Further, despite his argument that *Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016), controls the disposition here, *Lewis* is inapposite because there the supreme court addressed physical custody, not legal custody. The best interest factors in NRS 125C.0035 apply generally to physical custody as opposed to legal custody. See NRS 125C.0035(1). To the extent NRS 125C.0035(4) applies here, the district court determined what were the relevant best interest factors to the narrow issues on remand. Then the court made findings that there was a high level of conflict between the parties, that they were unable to cooperate regarding the children's needs, and that Harris had a history of (and criminal convictions relating to) sexually abusing the children's half-sibling. See NRS 125C.0035(4)(d), (e), and (j). Substantial evidence supports the district court's findings and therefore it did not abuse its discretion in awarding sole legal custody.

Harris next alleges that the district court was biased against him because he is incarcerated, he had the court's prior order reversed, he moved to disqualify the court in the proceedings following the reversal, and the court "seemed to have a predetermined outcome." However, relief is unwarranted because he has not demonstrated that any alleged bias was based on knowledge acquired outside of the proceedings, and the decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." See *Canarelli v. Eighth Judicial Dist. Court*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation

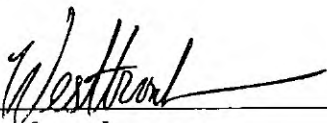
marks omitted) (explaining that, unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings, which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); *see also Rivero*, 125 Nev. at 439, 216 P.3d at 233 (noting that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification).

In sum, we conclude that substantial evidence supported the district court’s legal custody determination and Harris has not demonstrated that the court exhibited bias against him. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²Insofar as the parties have raised any other 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: Presiding Judge, Family Division
Eighth Judicial District Court, Family Division, Dept. N
Ronald David Harris
Jenniffer Figueroa
Eighth District Court Clerk