

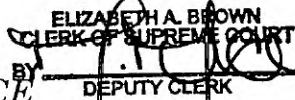
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARNISHA BOYD,  
Appellant,  
vs.  
DAVID D. HINES, JR.,  
Respondent.

No. 85339-COA

**FILED**

FEB 15 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Carnisha Boyd appeals from a district court decree of child custody. Eighth Judicial District Court, Family Division, Clark County; Michele Mercer, Judge.

David D. Hines, Jr., filed a second amended complaint for custody in which he requested a finding of paternity and requested sole legal and physical custody of the minor child. In his complaint, Hines contended that DNA testing established that he was the child's father and he sought an order to alter the child's birth certificate to list him as the child's father. Hines also asserted that Boyd had a history of domestic violence and that child protective services had become involved with the child, and for those reasons, he should have sole legal and physical custody of the child.

Boyd answered Hines' complaint. Boyd did not dispute that Hines was the biological father of the child. However, Boyd requested sole legal and physical custody of the child and she noted that Hines was not a Nevada resident.

The parties entered into a partial parenting agreement but were unable to agree on all of the issues related to child custody. The

district court subsequently conducted an evidentiary hearing concerning Hines' request for sole custody. Both parents testified at the evidentiary hearing. Hines testified that he had a brief relationship with Boyd while they were teenagers and that he was initially told by Boyd's brother that he was not the child's father. Hines stated that subsequent DNA testing revealed that he was the child's father. Hines explained that he currently lives in Houston, Texas. Hines also stated that he was notified by child protective services that the child was removed from Boyd's custody but the child was not allowed to be placed in his care because he was not listed as the child's father on the birth certificate. Hines also explained that, after the underlying action was initiated and a temporary custody order was entered, Boyd refused to cooperate and coordinate with him concerning the child's travel to Houston to facilitate Hines' court-ordered parenting time with the child.

Boyd also testified at the hearing. Boyd discussed her criminal history and acknowledged that she has previously been charged with child abuse and neglect and had been convicted of felony grand larceny. Boyd also discussed a violent incident involving her former boyfriend and she acknowledged that the incident caused child protective services to remove the child from her care for a time. However, Boyd explained that she had no further contact with the former boyfriend and the child was eventually returned to her care. Boyd also expressed concern as to the child possibly going to live with Hines in Houston.

The parties also presented argument concerning their preferred custody arrangement. Hines urged the district court to review information related to the incident that caused child protective services to remove the

child from Boyd's care and urged the court to find that the information warranted his requested relief.

The court subsequently entered a written order granting the parties joint legal custody and Hines primary physical custody of the child. In its order, the court expressly considered the required factors under NRS 125C.0035(4) concerning the best interest of the child. Based on those findings, the court concluded that Hines should have primary physical custody of the child. The court also ordered Hines' name to be added to the child's birth certificate. This appeal followed.

On appeal, Boyd first argues that the district court abused its discretion by awarding Hines primary physical custody of the parties' child because its findings were not supported by the evidence, it failed to properly weigh the necessary factors, and it did not understand that she was the victim in the domestic-violence incident that led to the child being removed from her care. In addition, Boyd contends that the court did not permit her to participate in the decision-making process concerning the child and it did not consider that causing the child to move away from Nevada will result in a significant disruption to the child's well-being.

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 factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. 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). A court may award one parent primary physical custody if it determines that joint physical custody is not in the best interest of the child. NRS 125C.003(1). This court

is not at liberty to reweigh the evidence or the district court's credibility determinations 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), and this court presumes that the district court properly exercised its discretion in determining the best interest of the child if it made substantial factual findings, *see Culbertson v. Culbertson*, 91 Nev. 230, 233-34, 533 P.2d 768, 770 (1975).

In its order, the district court expressly considered Boyd's testimony and desire for physical custody of the child. The court also evaluated the required best interest factors from NRS 125C.0035(4) and found that several factors favored awarding Hines' primary physical custody. In particular, the court focused on domestic violence between Boyd and her former boyfriend. The court acknowledged that Boyd was the victim of domestic violence. But it also found that there had been ongoing domestic violence between Boyd and her former boyfriend, and that it occurred in the presence of the child. The district court noted that Boyd had almost been arrested following one of those incidents and that the child had been present when a firearm was discharged during a domestic-violence incident. Moreover, the court found that the child had been placed in harm's way as a result of domestic violence between Boyd and her former boyfriend and that the child had been placed in foster care for six months due to the risk of danger to the child. And, based on that information, the district court found that Boyd demonstrated a lack of capacity to protect the child.

The court further found that Boyd interfered with Hines' parenting time with the child and found that she would not have permitted the child to stay with Hines during the summer absent the court's

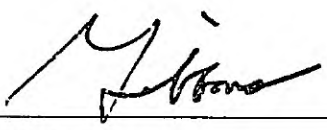
intervention. The court also noted that Hines resides in Texas, that the child will have to travel between states to visit both parents, and that the child enjoyed his time spent with Hines' family in Texas. The court found that the child has a strong bond with Boyd, but also noted Boyd has a lengthy criminal history, including an arrest for child abuse and neglect.

The district court ultimately decided, based on the circumstances at issue in this matter, that the child's best interest favored awarding Hines' primary physical custody, which required the child to move to Texas. The district court's factual findings made in support of this determination are supported by substantial evidence in the record, *see Ellis*, 123 Nev. at 149, 161 P.3d at 242, and this court will not second guess a district court's resolution of factual issues involving conflicting evidence or reconsider its credibility findings, *see id.* at 152, 161 P.3d at 244; *Quintero*, 116 Nev. at 1183, 14 P.3d at 523. Accordingly, we discern no abuse of discretion by the district court in awarding Hines primary physical custody of the child. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. Therefore, we conclude that Boyd is not entitled to relief based on this claim.

Next, Boyd argues that the district court was biased against her. We conclude that relief is unwarranted on this point because Boyd has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and the court's decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 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 and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 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 v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Therefore, Boyd is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Michele Mercer, District Judge, Family Division  
Carnisha Boyd  
Roberts Stoffel Family Law Group  
Eighth District Court Clerk