IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JENNIFER CROSIER,
Appellant,
vs.
GARRETT MARTIN ROBERT CROSIER,
Respondent.

No. 87206-COA

ORDER OF REVERSAL AND REMAND

Jennifer Crosier appeals from a child custody decree and post-decree order. Eighth Judicial District Court, Family Division, Clark County; Paul M. Gaudet, Judge.

Jennifer and respondent Garrett Martin Robert Crosier were married in Utah and had three children together: M.A.C., born August 2007; M.D.C., born March 2009; and M.B.C., born July 2014.[1] Following their separation in 2017, Jennifer moved to Nevada with the children and Garrett moved to Colorado. Although the couple legally divorced in Utah in 2019, the parties agree that the Utah court never issued a final custody decree.

In April 2022, Jennifer filed a complaint for custody in Nevada seeking sole legal and sole physical custody of the parties' three children. In that complaint, Jennifer stated that the district court should consider, among other things, issues related to Garrett's alleged domestic violence.

[1]We recount the facts only as necessary for our disposition.

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She specifically alleged that Garrett had a prior child abuse/neglect conviction from Utah and that the children were afraid of Garrett.

The two older children, M.A.C. and M.D.C., interviewed with the Family Mediation Center (FMC) and described instances where Garrett allegedly physically abused them. M.A.C. stated that Garrett previously slapped her across her face, causing her to hit her head on the bedframe and that he once kicked M.D.C. with his steel-toed boot to the point that she urinated herself. M.D.C. alleged that Garrett once picked her up and pulled her by her hair. Both children also indicated their preference to remain with Jennifer in Nevada.

The matter proceeded to a single-day evidentiary hearing in May 2023. Both Jennifer and Garrett appeared pro se. At the start of the hearing, the district court stated that it was going to "take control of the questioning" so the parties did not "waste time." The court admitted the FMC child interview report into evidence and proceeded to directly question both the parties and their witnesses. However, the court did not inquire about the allegations of physical abuse contained in the report, nor did the court ask any questions about the domestic violence alleged in Jennifer's complaint.

After questioning the parties and witnesses, the district court stated, "that's going to conclude the presentation of evidence," and invited the parties to make closing arguments. During her closing argument, Jennifer referenced Garrett's "prior child abuse charges." However, the district court precluded her from discussing domestic violence; the court acknowledged that the FMC child interview report contained allegations of abuse but stated that Jennifer herself offered "zero evidence" that Garrett abused their children.

At the conclusion of the hearing, the district court acknowledged that it had to "consider certain factors in evaluating what is in a child's best interest" but then only addressed two of the twelve statutory best interest factors. *See* NRS 125C.0035(4) (requiring the court to "consider and set forth its specific findings concerning, among other things" twelve enumerated child custody best interest factors). As to these two factors, the court orally found that Garrett was the parent more likely to allow the other parent to have a meaningful relationship with their children and further noted M.A.C.'s and M.D.C.'s preferences to live with Jennifer. *See* NRS 125C.0035(4)(a), (c). The court then summarily concluded that the parties would share joint legal custody; that Jennifer would have primary physical custody of M.A.C. and M.D.C.; and that Garrett would have primary physical custody of their youngest child, M.B.C., in Colorado.

The district court directed Garrett to prepare the custody decree based on the court's oral decision. After a delay, Garrett submitted a proposed decree, which was signed and entered by the district court. However, the decree did not reference any of the statutory best interest factors under NRS 125C.0035(4). Likewise, the decree contained no factual findings regarding the best interest of the children.[2] This appeal follows.

This court reviews a custody determination for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). While this court gives deference to a district court's discretionary determinations, deference is not owed to legal error or to findings that are

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[2]Following the custody hearing, both Jennifer and Garrett filed various motions. The district court held a hearing on these motions in late July and entered a post-decree order reaffirming its prior custody determination. However, this post-decree order also did not reference NRS 125C.0035(4) or address the children's best interest.

so conclusory as to mask legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015). On appeal, Jennifer argues that the district court abused its discretion by failing to make findings regarding the children's best interest or apply the best interest factors enumerated in NRS 125C.0035(4). Garrett responds that the district court made sufficient findings and that any failure to address the factors should be considered harmless. We agree with Jennifer.

The district court's sole consideration when determining custody is the best interest of the child. *Ellis*, 123 Nev. at 149, 161 P.3d at 242; NRS 125C.0035(1). When evaluating a child's best interest, the district court must consider all twelve factors set forth in NRS 125C.0035(4), and a written custody decree must contain findings regarding those factors and tie the findings to the ultimate custody determination. *Davis*, 131 Nev. at 450-51, 352 P.3d at 1143 ("Crucially, the decree or order must tie the child's best interest, as informed by specific, relevant findings respecting [the statutory factors] and any other relevant factors, to the custody determination made."). In this case the custody decree contained no findings regarding the children's best interest and neither addressed nor analyzed any of the twelve best interest factors under NRS 125C.0035(4).[3] This was an abuse of discretion and reversible error. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142.

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[3]At oral argument, Garrett agreed that a district court usually must make written findings as to all of the NRS 125C.0035(4) best interest factors. However, Garrett contends in his answering brief that the district court's oral findings were sufficient to support the custody determination. We disagree. The district court orally addressed only two of the statutory best interest factors when it was required to consider all twelve factors. *See* NRS 125C.0035(4). Further, under *Davis*, the court was required to include those findings in its written order. 131 Nev. at 450-51, 352 P.3d at 1143.

Jennifer also argues that the district court abused its discretion by failing to address whether Garrett had previously engaged in an act of domestic violence involving the children. Garrett responds that the court did not err because Jennifer failed to present evidence of domestic violence when she had an opportunity to do so at the hearing.

"As our Legislature has recognized, domestic violence poses a very real threat to a child's safety and well-being." *Castle v. Simmons*, 120 Nev. 98, 105, 86 P.3d 1042, 1047 (2004). Therefore, one of the twelve best interest factors that district courts are required to consider is whether either parent has engaged in an act of domestic violence. *See* NRS 125C.0035(4)(k). For purposes of conducting a best interest analysis under NRS 125C.0035(4), a district court need only find that domestic violence occurred by a preponderance of the evidence. *Monahan v. Hogan*, 138 Nev. 58, 69, 507 P.3d 588, 597 (Ct. App. 2022) (noting that a "preponderance of the evidence is still the default evidentiary standard in family law absent clear legislative intent to the contrary"). Additionally, NRS 125C.0035(5) provides that, after an evidentiary hearing, if the district court finds by clear and convincing evidence that a parent has engaged in domestic violence, there is a rebuttable presumption that it is not in the child's best interest to award that parent sole or joint physical custody.

As relevant here, "domestic violence" includes the commission of any act of assault or battery against or upon a person's minor child. *See* NRS 125C.0035(10)(b) ("'Domestic violence' means the commission of any act described in NRS 33.018."); NRS 33.018(1) (identifying the acts that may be committed against or upon a person that constitute domestic violence to include battery, assault, coercion, sexual assault, harassment, false imprisonment, and pandering). A district court "must hear *all* information

regarding domestic violence in order to determine the child's best interests." *Castle*, 120 Nev. at 105, 86 P.3d at 1047.

Although Jennifer alleged in her pro se child custody complaint that the district court should consider issues related to Garrett's domestic violence, the court failed to ask a single question about domestic violence after informing the pro se litigants that the court would control the questioning to save time. While Jennifer may not have personally introduced evidence of domestic violence at the hearing, the court nevertheless admitted the FMC child interview report into evidence and acknowledged that the report contained allegations that Garrett physically abused two of his minor children. Yet, the court failed to address those allegations and thus did not determine whether domestic violence occurred by a preponderance of the evidence in connection with the required best interest analysis under NRS 125C.0035(4), nor did it determine whether domestic violence occurred by clear and convincing evidence for purposes of applying the rebuttable presumption set forth in NRS 125C.0035(5). Under the circumstances of this case, this was also an abuse of discretion.[4]

Jennifer also argues that the district court erred by failing to assess whether it was in M.B.C.'s best interest to relocate to Colorado.

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[4]Jennifer contends that the district court abused its discretion by failing to apply the presumption against awarding Garrett physical custody because he committed an act of domestic violence. *See* NRS 125C.0035(5). However, the district court did not conduct an adequate evidentiary hearing to specifically determine whether the allegations were supported by clear and convincing evidence, nor did the court give Garrett an opportunity to introduce evidence to rebut that presumption, *see id.*, and we decline to make this factual determination in the first instance, *see Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012).

Garrett responds that the district court was not required to conduct a relocation analysis under NRS 125C.007 as that statute requires an existing physical custody order. When a district court has not issued a custodial order and both parents have equal custody rights to their children, "one parent may not relocate his or her child out of state over the other parent's objection without a judicial order authorizing the move." *Druckman v. Ruscitti*, 130 Nev. 468, 473, 327 P.3d 511, 515 (2014). When "determining the parents' custodial rights, the court must decide whether it is in the best interest of the child to live with parent A in a different state or parent B in Nevada," *id.* at 474, 327 P.3d at 515 (internal quotation marks omitted), by assessing five factors:

> (1) the extent to which the move is likely to improve the quality of life for both the child[ren] and the custodial parent; (2) whether the custodial parent's motives are honorable, and not designed to frustrate or defeat visitation rights accorded to the noncustodial parent; (3) whether, if permission to remove is granted, the custodial parent will comply with any substitute visitation orders issued by the court; (4) whether the noncustodian's motives are honorable in resisting the motion for permission to remove, or to what extent, if any, the opposition is intended to secure a financial advantage in the form of ongoing support obligations or otherwise; (5) whether, if removal is allowed, there will be a realistic opportunity for the noncustodial parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship with the noncustodial parent.

Id. (footnote omitted) (quoting *Schwartz v. Schwartz*, 107 Nev. 378, 382-83, 812 P.2d 1268, 1271 (1991)). Even though NRS 125C.007 does not specifically apply to an initial custody decree, the five factors identified in *Druckman* are substantially similar to those in NRS 125C.007(2) and can

serve "as a guide in instances where no custodial order exists and the parents dispute out-of-state relocation." *Id.* at 473, 327 P.3d at 515 (citing NRS 125C.200 (1999)). Here, the district court abused its discretion by failing to make findings as to whether M.B.C.'s relocation to Colorado was in her best interest.[5] *See Davis*, 131 Nev. at 450-51, 352 P.3d at 1143.

Because the district court's errors in this case were not harmless, we necessarily reverse the custody decree and post-decree order. On remand, the district court must conduct an evidentiary hearing to determine whether domestic violence occurred and whether relocation to Colorado is in M.B.C.'s best interest. If the court determines that Garrett committed an act of domestic violence by clear and convincing evidence, then it must apply the rebuttable statutory presumption against awarding Garrett physical custody. *See* NRS 125C.0035(5). The court must also consider and make findings regarding all twelve factors set forth in NRS 125C.0035(4) and tie the findings to the court's ultimate custody

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[5]Jennifer also argues that the district court abused its discretion in failing to address the threshold requirements for a custody modification. However, as there was no existing custody order, this was an initial custody determination as defined by the UCCJEA, rather than a modification. *See* NRS 125A.095 (defining an "initial determination" as "the first child custody determination concerning a particular child"). Thus, the district court did not abuse its discretion in failing to address the requirements to modify custody.

Insofar as the parties have raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief or need not be reached given the disposition of this appeal.

determination.[6] *See Davis*, 131 Nev. at 450-51, 352 P.3d at 1143. Finally, the district court must determine whether relocation to Colorado is in M.B.C.'s best interest, after considering the five factors set forth in *Druckman*.

Accordingly, we

ORDER the custody decree and post-decree order REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Paul M. Gaudet, District Judge, Family Division
Legal Aid Center of Southern Nevada, Inc.
McFarling Law Group
Eighth District Court Clerk

[6]Even if the district court concludes that domestic violence did not occur by clear and convincing evidence to trigger the rebuttable presumption set forth in NRS 125C.0035(5), the court must still consider whether domestic violence occurred by a preponderance of the evidence when analyzing the best interest factors. *See* NRS 125C.0035(4)(k); *see also Monahan*, 138 Nev. at 69, 507 P.3d at 597.