IN THE SUPREME COURT OF THE STATE OF NEVADA

WARREN JOSHUA,
Appellant,
vs.
JORENE CENIZA, F/K/A JORENE JOSHUA,
Respondent.

No. 39419

FILED

OCT 23 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a father's motion for physical custody of his son and granting a mother's motion to relocate to Florida with the child. In January 1997, appellant Warren Joshua and respondent Jorene Ceniza were divorced in California. Warren and Jorene had one son together. In December 1997, the Superior Court of California awarded the parties joint legal custody of the son with Jorene having primary physical custody and Warren having reasonable visitation. The court determined that reasonable visitation with Warren at that time would be every other two week period. Sometime thereafter, the parties moved to Nevada.

In 2001, Jorene moved the Nevada district court for sole legal and physical custody of the child, partially because Warren allegedly committed domestic violence. The district court ordered a family evaluation. Later, Jorene sought permission to relocate to California. Warren filed a countermotion in the district court seeking primary physical custody. The district court conducted an evidentiary hearing. During the hearing, Jorene orally sought permission to relocate to Florida instead of California. Following the hearing, the district court entered an order denying Warren's motion for sole physical custody, awarding Jorene

primary physical custody and granting her permission to relocate with the child to Florida. The court ordered joint legal custody, with Warren's right to joint legal custody "limited to information purposes only," with Jorene to "primarily make the decisions regarding the welfare of the child." Warren appeals.

This court will not overrule a district court's determination of child custody issues unless it clearly abused its discretion.[1] If the district court's factual determinations are supported by substantial evidence, this court will affirm its determinations.[2] The district court's factual determinations were supported by substantial evidence.

Warren argues that the district court did not specify the acts of violence that he allegedly committed on which the court based its finding that he committed domestic violence. Although the acts of domestic violence on which the court relied were not specified in the court's written order, they were specified in the oral order in court, and the finding was supported by substantial evidence. Jorene testified to incidents that Warren did not deny, and the child's teachers testified regarding a bruise on the child and behavior indicative of domestic violence in the home.

Warren argues that police reports from California of prior incidents of domestic violence by Warren were improperly admitted. The police reports were hearsay, as out-of-court statements given to the police, but they could, nevertheless, be admissible to show that the statements

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[1]Hayes v. Gallacher, 115 Nev. 1, 4, 972 P.2d 1138, 1140 (1999).

[2]Gepford v. Gepford, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000); see also Schwartz v. Schwartz, 107 Nev. 378, 385, 812 P.2d 1268, 1273 (1991).

were taken.[3] Regardless, any error in introducing the reports was harmless, in that the district court made clear that it was not relying on those incidents in making its finding of domestic violence.

Warren argues that the expert the parties stipulated to hire in order to evaluate the parents and the child was improperly influenced by the police reports. Under NRS 50.285(2), an expert is entitled to rely on hearsay evidence. Nevertheless, it does not appear that the expert relied on those reports in forming her opinion and recommendation. The tests and interview with the child appeared to be the main basis for her opinion that Warren should not have primary custody for the child.

Warren's other arguments regarding character evidence and improper argument are totally without merit.

The district court's domestic violence findings were supported by substantial evidence, and in view of those findings, a presumption arose under NRS 125C.230(1) that "sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child." The district court also made clear that if Warren follows its suggestion regarding counseling, it would reconsider the order regarding legal custody of the child.

Substantial evidence also supports the district court's grant of Jorene's motion to relocate to Florida. The district court weighed several of the Schwartz v. Schwartz[4] factors and concluded that Jorene's move to Florida, where she recently obtained new employment, served the best interest of the child. Accordingly, we

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[3]Miranda v. State, 101 Nev. 562, 566, 707 P.2d 1121, 1124 (1985).

[4]107 Nev. at 382-83, 812 P.2d at 1271.

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Cheryl B. Moss, District Judge,
Family Court Division
Robert E. Glennen III
Thomas J. Fitzpatrick
Clark County Clerk