

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE LEE NAVARRO,
Appellant,
vs.
STEPHEN DEAN NAVARRO,
Respondent.

No. 39577

FILED

JAN 20 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order modifying a child custody arrangement. Through a stipulation and order, appellant Michelle Navarro, the mother, was granted primary physical custody of the parties' minor children. Michelle later alleged that the father, respondent Stephen Navarro, had sexually abused one of the children. Shortly thereafter, Stephen filed a motion to set aside the stipulated custody agreement, alleging that Michelle had falsely accused him. The district court placed the burden of proof for the sexual allegations on Michelle. After an evidentiary hearing, the district court granted Stephen sole legal and physical custody. This appeal followed.

After reviewing the briefs and the record on appeal, we conclude that the district court's March 20, 2002 order that modified child custody suffers from the following errors that warrant reversal:

1. The district court erred in reversing the burden of proof by requiring Michelle, the non-moving party, to establish the existence of the alleged sexual abuse in order to retain primary physical custody of the children;¹

¹McMonigle v. McMonigle, 110 Nev. 1407, 1408, 887 P.2d 742, 743 (1994) (recognizing that in a child custody proceeding, the moving party has the burden of establishing changed circumstances).

2. The district court erred in using the child custody arrangement as punishment for Michelle's accusations of sexual abuse;² and

3. The district court erred when it bifurcated the child custody issues from the remaining issues resolved in the actual divorce decree.³

In light of these perceived errors, equity demands that Michelle have another opportunity to address child custody in the district court. Accordingly, we vacate the March 20, 2002 order changing child custody and remand this matter to the district court for further proceedings. On remand, the presiding judge of the Eighth Judicial District Court's Family Court Division is ordered to re-assign this matter to a different judicial department for a complete de novo review of Stephen's motion to set aside the custody agreement under McMonigle v. McMonigle⁴ and Murphy v. Murphy.⁵

As we vacate the March 20, 2002 order changing child custody, the August 14, 2000 order adopting the parties' stipulation that Michelle

²Sims v. Sims, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993) (stating that "a court may not use changes of custody as a sword to punish parental misconduct").

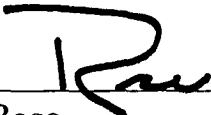
³Smith v. Smith, 100 Nev. 610, 613 n.1, 691 P.2d 428, 431 n.1 (1984) (emphasizing that "bifurcated divorce proceedings and the problems they are likely to engender are disfavored and should generally be avoided"); Gojack v. District Court, 95 Nev. 443, 596 P.2d 237 (1979) (disapproving bifurcation of divorce proceeding).

⁴110 Nev. 1407, 887 P.2d 742 (1994).

⁵84 Nev. 710, 711, 447 P.2d 664, 665 (1968) ("A change of custody is warranted only when: (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change.").

have primary physical custody of the children remains in force. Even so, since Stephen has been the children's primary physical custodian since March 2002, keeping the current child custody arrangement status quo during the pendency of the district court's de novo review of Stephen's motion to set aside the custody agreement is in the children's best interests. Finally, because this case involves the issue of child custody, this matter must be resolved in the district court as expeditiously as possible.

It is so ORDERED.⁶


_____, J.
Rose


_____, J.
Maupin

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Eighth Judicial District Court, Family Court Division,
Presiding Judge
Bruce I. Shapiro, Ltd.
Chad A. Bowers
Clark County Clerk

⁶This matter was submitted for decision by a panel of this court comprised of Justices Rose, Leavitt, and Maupin. Justice Leavitt having died in office on January 9, 2004, a two-justice panel decided this matter.