

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD DAVID HARRIS,

Appellant,

vs.

JENNIFER FIGUEROA,

Respondent.

Docket No. 81746

District Court No. D-20-606828-C

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Appeal from Final Custody Decree

Eighth Judicial District Court of the State of Nevada
In and for the County of Clark

The HONORABLE MATTHEW HARTER, presiding

Appellant's Opening Brief

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NRAP 26.1 DISCLOSURE

1. Case Caption: In the Nevada Supreme Court, Ronald David Harris, Appellant, vs. Jennifer Figueroa, Respondent; Docket No. 81746; District Court No. D-20-606828-C.
2. The undersigned counsel of record certifies that there is no such corporation or any publicly held company that owns 10% or more of any party's stock.

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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 RONALD DAVID HARRIS,

5 Appellant,

6 vs.

7
8 JENNIFER FIGUEROA,

9 Respondent.

Docket No. 81746

District Court No. D-20-606828-C

10
11 **Appellant's Opening Brief**

12 **JURISDICTIONAL STATEMENT**

13
14 This is an appeal of a final custody Order (1 ROA 86-94). A notice of appeal
15 was timely filed on August 19, 2020 and docketed in the Supreme Court on
16 September 8, 2020 (1 ROA 105-106; 114-115).

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18 **ROUTING STATEMENT**

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20 Pursuant to NRAP, Rule 17(b)(10), the Nevada Court of Appeals
21 presumptively has jurisdiction over the instant appeal.
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1 **ISSUES PRESENTED FOR REVIEW**

- 2 I. Whether the District Court abused its discretion and violated Mr. Harris’
3 right to due process when it granted sole legal custody to Respondent
4 without providing Mr. Harris notice and an opportunity to be heard.
5

6 **STATEMENT OF THE CASE**

7
8 On April 22, 2020, Ms. Jennifer Figueroa filed a Complaint for Custody
9 requesting sole legal and physical custody of the children she shares with Mr.
10 Ronald Harris (1 ROA 1-4). Ms. Figueroa informed the district court she
11 requested sole legal and physical custody because Mr. Harris pleaded guilty to
12 felonies and is serving a lengthy prison sentence (1 ROA 4).
13
14

15 Mr. Harris submitted an Answer to Ms. Figueroa’s Complaint on May 18,
16 2020 (1 ROA 42-53). Within the Answer, Mr. Harris objected to Ms. Figueroa’s
17 complaint, citing despite his circumstances, he desired to maintain a relationship
18 with his children (1 ROA 42-53). Specifically, Mr. Harris requested he be
19 permitted to speak with his children and be permitted to send them letters (1 ROA
20 50). Mr. Harris also requested he continue to receive joint legal custody so he may
21 be informed concerning his children’s health, education and overall wellbeing (1
22 ROA 50).
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26 On July 16, 2020, the district court heard argument concerning Ms.
27 Figueroa’s complaint (A.A. Vol. 1 p. 1-6). Given that Mr. Harris was provided no
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1 notice of this hearing, he was not present. After Ms. Figueroa was permitted to
2 give lengthy argument and information concerning her complaint, the district
3 court granted her request by providing sole legal custody of the children to Ms.
4 Figueroa (A.A. Vol. 1 p. 2-5). The district court explained it granted sole legal
5 custody to Ms. Figueroa pursuant to “Hayes versus Gallagher” given that “it’s
6 physically impossible for him to have any custody rights due to the fact that he is
7 serving a prison sentence, an extended prison sentence in the state of Tennessee.”
8 (A.A. Vol. 1 p. 5).

12 **STATEMENT OF FACTS**

14 A rendition of facts is not necessary for the purpose of this appeal. The
15 pertinent facts are contained within the Statement of the case above and within the
16 argument below.

18 **SUMMARY OF THE ARGUMENT**

19 The District Court abused its discretion in awarding sole legal custody to Ms.
20 Figueroa without providing Mr. Harris proper notice of the hearing on the complaint
21 or an opportunity to be heard. Prior to rendering a decision in this case, Ms.
22 Figueroa was given an opportunity to provide lengthy argument to the court in
23 support of her request for sole legal custody. Given that Mr. Harris was provided
24 no notice of the hearing, he was not given an equal opportunity to be heard. As a
25 result, the district court granted Ms. Figueroa’s request, providing her sole legal and
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1 physical custody of the children. As such, Mr. Harris’ parental rights were taken
2 without sufficient opportunity to be heard in violation of his constitutional right to
3 due process. Given this, the district court abused its discretion and reversal is
4 mandated.

5 6 ARGUMENT

7 8 1. The District Court Abused Its Discretion When It Granted Sole Legal 9 Custody to Ms. Figueroa Without Providing Mr. Harris Notice and An 10 Opportunity to be Heard.

11 *a. Legal Standard*

12 This Court has repeatedly recognized “the district court’s broad discretionary
13 powers to determine child custody matters” and “will not disturb the district court’s
14 custody determinations absent a clear abuse of discretion. *Ellis v. Carucci*, 123 Nev.
15 145, 149, 161 P.3d 239, 241 (2007). *See also Rivero v. Rivero*, 125 Nev. 410, 428,
16 216 P.3d 213, 226 (2009). However, the district court's findings must be supported
17 with substantial evidence. *Id.* “Substantial evidence is evidence that a reasonable
18 person may accept as adequate to sustain a judgment.” *Id.* (internal quotation marks
19 omitted). However, deference is not owed to legal error. *Davis v. Ewalefo*, 131 Nev.
20 445, 450, 352 P.3d 1139, 1142 (2015). As demonstrated within this appeal, the
21 district court’s decision amounted to an abuse of discretion.

22 23 *b. The District Court’s granting of Ms. Figueroa’s request for sole custody* 24 *without providing Mr. Harris notice of the hearing or an opportunity to* 25 *be heard is violative of his constitutional due process rights and amounts* 26 *to an abuse of discretion.*

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2 In this case, it was incumbent upon the district court to provide Mr. Harris an
3 opportunity to be heard at the July 16, 2020 argument concerning Ms. Figueroa's
4 complaint for sole legal and physical custody. The failure to do so is violative of
5 Mr. Harris' due process rights and requires reversal.
6

7 Due process of law is guaranteed by the Fourteenth Amendment to the United
8 States constitution and the Nevada constitution. *See* U.S. Const. Amend. 14 § 1;
9 Nev. Const. Art 1, § 8(5). Specifically, Article 1, § 8(5) of the Nevada Constitution
10 provides that no personal shall be deprived of life, liberty or property without due
11 process of law. *Id.* The Nevada Supreme Court has recognized that due process
12 protects certain substantial and fundamental rights, including the interest parents
13 have in the custody of their children. *Gordon v. Geiger*, 133 Nev. 542, 402 P.3d
14 671 (2017), citing *Rico v. Rodriguez*, 121 Nev. 695, 704, 120 P.3d 812, 818 (2005).
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19 Due process requires notice and a hearing before this right is affected. *See*
20 *Gordon*, 133 Nev. 542. For this reason, orders that alter custody *sua sponte*
21 generally violate due process. *See id.* at 546, 402 P.3d at 674–75 (holding that a
22 district court's *sua sponte* order modifying visitation without providing notice and
23 a hearing violated due process); *Micone v. Micone*, 132 Nev. 156, 159, 368 P.3d
24 1195, 1197 (2016) (holding that a district court's surprise order awarding primary
25 physical custody to nonparty grandparents violated due process where the parents
26 were not provided notice).
27
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1 Due process requires sufficient notice before such parental rights are affected.
2 *Wiese v. Granata*, 110 Nev. 1410, 1412, 887 P.2d 744, 745 (1994). Accordingly, a
3 party threatened with loss of a parental right must be given sufficient opportunity
4 to disprove evidence presented. *Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d
5 541, 544 (1996).
6
7

8 In this case, Mr. Harris' constitutional due process rights were violated when
9 the district court issued its Order providing Ms. Figueroa sole legal custody of Mr.
10 Harris' children, after it failed to provide notice to Mr. Harris concerning the
11 hearing or providing him an opportunity to be heard. Here, a permanent change to
12 Mr. Harris' legal custody affects Mr. Harris' fundamental right concerning the
13 custody of his children. Mr. Harris never received notice of the hearing concerning
14 the custody order. As a result, Mr. Harris never had an opportunity to be heard. Mr.
15 Harris was further unable to contest or provide any argument concerning Ms.
16 Figueroa's statements at the July 16, 2020 hearing.
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21 A review of the record in this case does not provide any information that Mr.
22 Harris was noticed of the July 16, 2020 hearing wherein the district court revoked
23 his shared legal custody, providing sole legal custody to Ms. Figueroa. The record
24 is similarly devoid of any information demonstrating Mr. Harris was provided an
25 opportunity to be present and heard at the hearing concerning custody. Upon
26 information and belief, at the time of the hearing, it was common practice that
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1 incarcerated individuals have been permitted to make court appearances via remote
2 means.

3
4 Moreover, the district courts finding – that Mr. Harris would have no legal
5 rights to his children – is not supported by substantial evidence. Legal custody
6 involves having basic legal responsibility for a child and making major decisions
7 regarding the child, including the child’s health, education, and religious upbringing.
8 *Mack v. Ashlock*, 112 Nev. 1062, 1067, 921 P.2d 1258, 1262 (1996). Joint legal
9 custody can exist regardless of the physical custody arrangements of the parties.
10 NRS 125.490(2); *Mack*, 112 Nev. At 1067, 921 P.2d at 1262. The parents need not
11 have equal decision-making power in a joint custody situation. *Rivero*, 125 Nev. at
12 421, citing *Fenwick v. Fenwick*, 114 S.W. 3d 767, 776 (Ky. 2003). When making a
13 custody determination, the sole consideration is the best interest of the child. NRS
14 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).
15 Legal custody generally has no relation to a parent’s financial or living conditions,
16 as it concerns the parents’ legal responsibility for “making major decisions
17 regarding the child, including the child’s health, education, and religious
18 upbringing.” *Rivero*, 125 Nev. at 421, 216 P.3d at 221.

19
20 Within the complaint as the basis for obtaining sole legal custody, Ms.
21 Figueroa only cited that Mr. Harris was incarcerated long term for offenses he had
22 committed. It is important to note these offenses *were not* committed against his
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1 children with whom he shares with Ms. Figueroa. Under these circumstances, the
2 district court's decision granting sole legal custody to Ms. Figueroa based upon this
3 fact alone is not based upon substantial evidence. This is especially true when
4 considering this Court has held legal custody¹ generally has no relation to a parent's
5 financial or living conditions. *Id.* When combined with the fact that Mr. Harris was
6 provided no notice of the hearing, and thus no opportunity to be heard, it is clear
7 reversal is required.

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11 Therefore, Harris requests this Court remand this matter to the District Court
12 with direction for joint legal custody to be reinstated unless or until either party
13 meets the burden to modify custody and after Mr. Harris has had an opportunity to
14 be heard on this issue.

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25 ¹ Mr. Harris does not contest the district court's awarding of sole
26 physical custody to Ms. Figueroa, rather, he only contends the district court
27 stripping him of all legal rights to his children amounts to an abuse of discretion.
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3 **CONCLUSION**

4 Based on the foregoing facts and legal argument, Mr. Harris respectfully
5 requests that this Honorable Court reverse the District Court's decisions as set forth in
6 this appeal.
7

8 Dated this 11th day of June, 2021.

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1 **ATTORNEY’S CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting requirements
3 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because:
5

6 This brief has been prepared in a proportionally spaced typeface using Times
7 New Roman in 14 size font.
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9 2. I further certify that this brief complies with the page or type-volume
10 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
11 NRAP 32(a)(7)(C), it is either:
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13 Proportionally spaced, has a typeface of 14 points or more and 1,626 words
14 which does not exceed the 14,000 word limit.
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16 3. I hereby certify that I have read this appellate brief, and to the best of my
17 knowledge, information, and belief, it is not frivolous or interposed for any
18 improper purpose. I further certify that this brief complies with all applicable
19 Nevada Rules of Appellate Procedure, in particular NRAP.28(e)(1), which requires
20 every assertion in the brief regarding matters in the record to be supported by a
21 reference to the page and volume number, if any, of the transcript or appendix where
22 the matter relied on is to be found. I understand that I may be subject to sanctions
23 in the event that the accompanying brief is not in conformity with the requirements
24 of the Nevada Rules of Appellate Procedure.
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1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that I electronically filed the foregoing with the Clerk of the
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