Form 13. Child Custody Fast Track Response

IN THE SUPREME COURT OF THE STATE OF NEVADA

A. B.,
THOMAS CASS
Appellant
v.
C. D.,
CHRISTA CLASSON
Respondent

No. **83297**

FILED
AUG 27 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

PRO SE CHILD CUSTODY FAST TRACK REPLY TO RESPONSE

1. THOMAS A. CASS

2. PRO SE 702-530-1874; THOMAS CASS IN PROPER PERSON

3. Proceedings raising same issues. If you are aware of any
_ARCELLA v. ARCELLA 407 P.3d 341(2017)
JONES V. JONES No. 76693-COA
Sims v. Sims, 109 Nev 1146, 1148, 865
Rivero v. Rivero, 125 Nev. 410, 430
Bluestein v. Bluestein, 131Nev. Adv. Op. 14, 345
Davis v. Ewalefo, 131 Nev. Adv. Op. 45, 352

4. Procedural history. Briefly describe the procedural history
STATED IN PRO SE CHILD CUSTODY FAST TRACK STATEMENT

5. Statement of facts.

At the time of the hearing on February 26th, 2021, Kendall had been accepted into Legacy Candace Campus and waitlisted at the three magnet school programs to which I applied, in addition to being waitlisted at two alternative Legacy campuses.

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21-25081

The hearing concluded that either a STEAM magnet school program or the Legacy Charter School was in Kendall's best interest. The respondent's refusal to provide any transportation for our son and my acceptance of 100% of the cost and transportation made the school's location irrelevant regarding Kendall's best interest. The respondent filed an Order falsely claiming that we had reached an agreement regarding Kendall's schooling the day BEFORE the hearing on February 25th, 2021. The Court instructed that I write an Order for the hearing on February 26th, 2021, that both I and the respondents sign it, and that I filed it no later than March 26th, 2019. The respondent refused to sign the Order that I wrote despite providing her with several drafts, so on March 21st, 2021, I submitted the Order with a statement regarding the respondent's refusal to sign. This order stayed on the docket "pending review" until the next hearing in July.

On or about the first week of June 2021, Kendall came off the waitlist for Legacy North Valley campus, and the enrollment officer called with an enrollment offer. Legacy North Valley has an identical curriculum, academic programs, and extra-curricular activities as Legacy Candace campus. The North Valley campus is less than three miles from my home. I accepted 100% of the cost and transportation, so attending North Valley campus saves me more than $3,000.00 in transportation costs. The Respondent moved out of Nate Mack's school zone and obtained a zone variance.

The previous hearing decided that Legacy better met Kendall's academic needs. The Court took none of this into consideration.

During the hearing on July 22nd, 2021, the only reason or statement of fact provided by the Court regarding the decision was that moving out of Nate Mack Elementary School's zone was not in Kendall's best interest. The respondent provided no evidence other than unsubstantiated statements; the Court ignored the evidence I submitted and the previous hearing's finding that the curriculum at the STEAM magnet schools and Legacy Charter Schools better met Kendall's needs.

6. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:

The District Court erred in not upholding the decisions made during the evidentiary hearing and accepting the Order filed the day prior to the hearing by the wrong party. The District Court erred in basing the school choice on location rather than any of the following factors: (1) The wishes of the child, to the extent that the child is of sufficient age and capacity to form an intelligent preference;(2) The child's educational needs and each school's ability to meet them;(3) The curriculum, method of teaching, and quality of instruction at each school;(4) The child's past scholastic achievement and predicted performance at each school;(5) The child's medical needs and each school's ability to meet them;(6) The child's extracurricular interests and each school's ability to satisfy them;(7) Whether leaving the child's current school would disrupt the child's academic progress;(8) The child's ability to adapt to an unfamiliar environment; (9) Whether enrolling the child at a school is likely to alienate the child from a parent.

The district court erred and should have taken evidence and made factual findings regarding such things such as class size, curriculum, exposure to various ideologies, academic and athletic programs, quality of the teachers, parents' ability to afford better education, the campus environment and caliber of fellow students. The Respondent claims that an evidentiary hearing is not warranted, this is absurd. The fact that the parents disagree about our child's schooling and the fact that the Respondent's entire argument is based on contradictory, erroneous, and fictitious statements that are unsubstantiated by evidence warrant and evidentiary hearing and greater consideration by the District Court. This shows the ineffectuality and inefficiency of the District Court failing to grant the parent who accepts 100% of the financial and logistical responsibility of providing an education that best suits a Child's needs in contrast to granting the right to choose a school to the parent who base their decision on personal convenience.

7. Legal argument, including authorities:

Though the respondent statement of facts and argument are mostly irrelevant for this appeal and are suited for a hearing in District Court, the fraction of the facts that the respondent stated that were correct do show the absurd lengths I went through to find a school option that best suited our son's needs, and that the respondent would agree to our son attending. The further along a child is in school, the more difficult it is to successfully enroll a child into a magnet school in Clark County. Clark County high school magnet programs offer an excellent educational opportunity, but unless a student is entering from a lower school magnet program, acceptance is near impossible. Also, I attempted to find a school program that our son could attend during the pandemic in fear he would fall behind being home schooled, which is exactly what occurred.

The district court based its decision solely on the length of commute to each school and other logistical concerns; concerns I was more than willing to remedy to allow Kendall to attend the school with an academic and extracurricular curriculum that best meets Kendall's needs, is most suitable to nurture his learning style, and is most likely to ensure his growth and success. Also, the district court failed to support its order with specific findings. The Court's ruling was based solely on contradictory testimony and a misdirected focus on my housing purchase and subsequent relocation rather than on any factual basis related to Kendall's academic success, desire, or best interests.

The Court heard evidence regarding this matter, found that a STEAM magnet school or Legacy Charter School were in Kendall's best interest, and then reversed the decision based solely on the location of the school and the fact that the parents disagree. In the Court's Minute Order, the Court stated that "if the Parents disagree the child will attend Nate Mack." The Court gave no other explanation as to why Kendall's best interests are better met at these two programs, but should parents disagree the school defaults to the Respondent's choice.

In making such a contradictory ruling here, without specific best interests findings, the district court committed reversible error. In its recent decisions, both published and unpublished, the Supreme Court has, time and again, requested the district courts to "show their work" when it comes to ruling on parent-child issues. Specifically, this court has advised the district courts that "the decree or order must tie the child's best interest, as informed by specific, relevant findings respecting the NRS 125.480(4) and any other relevant factors, to the custody determination made." Davis v. Ewalefo, 131 Nev. Adv. Op. 45, 352 P.3d 1139, 1143 (2015). Similarly, in Bluestein v. Bluestein, 131Nev. Adv. Op. 14, 345 P.3d 1044, 1049 (2015), this court reversed and remanded a custody modification order for further proceedings because the district court abused its discretion by failing to set forth specific findings that its decision was in the best interest of the child. In its seminal decision, Rivero v. Rivero, 125 Nev. 410, 430 and an adequate explanation of the reasons for the determination "are crucial to enforce or modify a custody order and for appellate review." Indeed, without specific findings of fact, this court cannot say with assurance that the lower court's determination was made for appropriate legal reasons. See Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

The Respondent claims only Legacy Cadence and McCaw STEAM academy, both close to the Respondent's parent's address and her former address, were found in Kendall's best interest, but this makes no sense. If the Cadence campus is in Kendall's best interest but the North Valley campus, identical to Cadence campus except for location, and the same is true for nearly identical STEAM magnet schools, than that proves the schools' locations are the sole determining factor taken into consideration by the court, and that is completely unacceptable. Although the district court did not adjudicate custody or visitation here, specific findings are no less important. To have complied with its obligation to divine Kendall's educational best interest, the district court should have considered a host of factual issues.

Indeed, other jurisdictions, in applying a best- interests standard to the school placement question have considered factors such as: 1) the child's educational needs; (2) the qualifications of the teachers at each school; (3) the curriculum used and method of teaching at each school; (4) the child's performance in each school; (5) whether the proposed or current school situation complies with state law; (6) whether one school is more suitable given the child's medical condition or other special needs; (7) whether requiring the child to leave the child's current school would aggravate the difficulties of the divorce; and (8) whether continuing in a particular school would be essential or beneficial to the child's welfare. See Jordan v. Rea, 221 Ariz, 581, 590, 212 P.3d 919, 928 (Ariz. App. 2009).

Because of the respondent's absolute refusal to contribute toward tuition or transportation in any way, and her refusal to complete any scholarship or financial aid applications in conjunction with the applications I submitted, the options were limited. Also, because I did not want to spending hours filling out applications and applying for financial aid only to have the respondent refuse a school's offer for enrollment as she is doing now, I presented the respondent with numerous private schools, STEAM, and charter school options prior to applying to receive the respondent's pre-approval to which I was unsuccessful.

Not only does the Respondent's argument show the incredible amount of effort put forth to both find the best feasible school for Kendall to attend and a school that the Respondent would agree to, not assist with since the Respondent made her intention not to contribute in any way for any other school than Nate Mack, but it also highlights the impracticalness of having to appease the whims of a parent not willing to contribute to the best possible education for the child, and then being forced to petition the court for every decision during the application process of enrollment. .

All magnet schools and private schools have a limited window of time to accept an offer for enrollment, so the only recourse is to apply to all of the programs that best meet Kendall's needs, and then petition the court for permission to enroll Kendall into all of them and then hope he is admitted into a program the court approved. By basing that approval solely on location and giving the default judgement of choice to the Respondent for any disagreement, the Court completely ignores its duty to evaluate EVIDENCE and to base the decision on the BEST INTERESTS of the child rather than placating to the Respondent's illogical, unsubstantiated arguments or blatant laziness.

I would like The Court to provide guidance to the district court on factors to consider in determining which school is in Kendall's best interest. Some of the factors include: the wishes of the child, curriculum and method of teaching, the child's extracurricular interests, the child's past scholastic achievements, etc. I believe that, with the Court's assistance and proper guidelines, the district court will be successful in making a substantive finding based on Kendall's best interest in its entirety.

VERIFICATION

I recognize that under NRAP 3E I am responsible for timely filing a fast track statement and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track statement, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

DATED this 24TH day of AUGUST, 2021

Signature of Appellant

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed child custody fast track statement upon all parties to the appeal as follows:

☒ By personally serving it upon him/her; or

☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

CHRISTA CLASSON
2335 WEYBURN CT
HENDERSON, NV 89074

DATED this 24TH day of AUGUST, 2021

Signature of Appellant

THOMAS CASS
Print Name of Appellant

1752 YELLOW ROSE ST.
Address

LAS VEGAS, NV 89108
City/State/Zip

702-530-1874
Telephone