

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINA CALDERON F/K/A
CHIRSTINA CALDERON STIPP,

Appellant,

vs.

MITCHELL DAVID STIPP,

Respondents.

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CHILD CUSTODY FAST TRACK REPLY

The Answering Brief is most remarkable for what it does not say. It does not dispute that the district court was required to make findings by clear and convincing evidence when making a finding of domestic violence in a child custody matter. And, he acknowledges that the district court failed to make the required findings. Ultimately, Mitchell Stipp can muster just two thread bare arguments. First, he contends that a finding of domestic violence by clear and convincing evidence is not required in custody determinations¹. Second, he contends that the failure of the district court to hold him in contempt is not

¹ Answering Brief page 5

appealable². Neither of the arguments presented in the Response withstand scrutiny.

Domestic Violence Finding

In his Response, Mitchell Stipp attempts to manufacture uncertainty with regards to the application of domestic violence in child custody determinations. The legislature has reaffirmed its rule in terms too plain to obfuscate: when making a determination of domestic violence in the context of a child custody matter, the district court is required to make the finding by clear and convincing evidence³.

Mitchell Stipp is correct when he advances the proposition that a trial courts determination in a custody proceeding will not be disturbed absent an abuse of discretion, but ignores that the appeals court must be satisfied that the trial court applied the appropriate reasoning⁴. Here, as in *McDermott v. McDermott*, there is no indication that the district court gave due weight to, or even considered the rebuttable presumption under Nevada law⁵.

² Answering Brief page 5

³ NRS 125C.230(1)

⁴ Litz v. Bennum, 111 Nev. 35, 888 P.2d 438 (1995)

⁵ McDermott v. McDermott, 113 Nev. 1134, 946 P.2d 177 (1997)

Here, Mia and Ethan were similarly situated when the district court made its custody determination. When the district court applied the best interest factors under Nevada law⁶ it made the following findings:

- (a) The district court gave greater weight to Mia's preference than to Ethan's but also stated that the children's preference is not by itself, intelligent or sufficiently justified to warrant granting Mia and Ethan the authority to circumvent the decision of their parents to share physical custody⁷.

Additionally, the district court stated that except for the fact that the disputes between Christina and Mia resulted in physical altercations, they hardly warrant a loss of physical custody⁸. It also stated that the other best interest considerations on balance are just as important as the children's preference⁹;

- (b) Not applicable;

- (c) Both parents are equally likely to allow the children to have frequent associations and a continuing relationship with the other parent¹⁰;

- (d) Considered together with subsection (e)

- (e) Both parties continue to have significant conflict¹¹ but did not state whether the factors weighed in favor of either party¹²;

⁶ NRS 125C.0035(4)

⁷ AA001999

⁸ AA002000

⁹ AA002000

¹⁰ AA002000

- (f) Not in favor of either party¹³;
- (g) Not in favor of either party¹⁴;
- (h) The district court again references the “physical fights” between Christina Calderon and Mia Stipp¹⁵;
- (i) Not in favor of either party¹⁶;
- (j) Neither party proved a history of parental abuse and neglect. The physical altercations between Mia and her mother readdressed in the findings concerning domestic violence¹⁷;
- (k) District court concluded that domestic violence is always relevant in child custody determinations¹⁸ and that “Mitchell Stipp proved that Christina Calderon committed acts of domestic violence against Mia in May 2019 and August 2019¹⁹. The district court was unable to determine the identity of the primary aggressor²⁰;

¹¹ AA002001

¹² AA002001

¹³ AA002002

¹⁴ AA002002

¹⁵ AA002003

¹⁶ AA002004

¹⁷ AA002004

¹⁸ AA002005

¹⁹ AA002004

²⁰ AA002005

(l) The district court did not find the factor relevant to the child custody determination²¹.

The only other findings by the district court that were relevant to the custody determination was “[i]t is in Mia’s best interest to resume meaningful time with her mother, but because she is two years from the age of majority, and because she has significantly more conflict with her mother, it is best that she live primarily with her father²².” It is clear from the findings of the district court that it used the domestic violence between Christina and Mia in making its determination to change custody of Mia. Not only did the district court fail to make the finding of domestic violence by clear and convincing evidence, but it also failed to make the other findings regarding domestic violence required under Nevada law²³.

Contempt

Mr. Stipp states in his response “[a]n order denying a motion to hold a party in contempt is not appealable.²⁴” He is correct in that “the proper mode of review is by an original writ petition²⁵.” Although, he overlooks that this Court may exercise its discretion to consider a matter when an important issue of law needs

²¹ AA002005

²² AA002007

²³ NRS 125C.230(1)(b)

²⁴ Pengilly v. Rancho Santa Fe Homeowners Ass’n, 116 Nev. 646, 647, 5 P.3d 569 (2000)

²⁵ Id.

clarification and the court's review would serve considerations of public policy or sound judicial economy²⁶. The matter before the Court involves child custody proceedings.

Parents have a fundamental constitutionally protected interest in continuity of legal bond[s] with their children²⁷. Natural parents have a fundamental liberty interest in the care, custody and control of their children which is constitutionally protected²⁸. The United States Supreme Court has re-affirmed the fundamental right of a parent to the care, custody and control of their child²⁹. The district court found that the “fact that the children have spent no overnights with their mother for more than one year, and have had no meaningful custody time with their mother since August 2019, is unjustified³⁰.” The length of time that the minor children went without having meaningful contact with Christina Calderon impacted the custody proceedings. Judicial economy and sound judicial administration dictate that this Court should exercise its discretion and entertain the issues involving the Mr. Stipps contempt.

²⁶ City of Henderson v. Eighth Judicial District Court, 137 Nev. Adv. Rep. 26, 489 P.3d 908 (June 2021)

²⁷ Matter of Delaney, 617 P.2d 886

²⁸ Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388 (1982); Quilloin v. Walcott, 434 U.S. 246, 255, 98 S. Ct. 1208 (1978); Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208 (1972); Ginsberg v. State of N.Y., 390 U.S. 629, 88 S. Ct. 1274 (1968)

²⁹ Troxel v. Grandville, 530 U.S. 57, 120 S. Ct. 2054 (2000)

³⁰ AA001995

CONCLUSION

For the foregoing reasons and those stated in the Fast Track Statement, it is respectfully requested that this matter be remanded to the district court

DATED this 19th day of November, 2021.

RESPECTFULLY SUBMITTED
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Fast Track Reply complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:
2. This Fast Track Statement has been prepared in a proportionally spaced typeface using Microsoft Word 2010, in Times New Roman 14;
3. I further certify that this Fast Track Statement complies with the page or type-volume limitations of NRAP 32(a)(5) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points containing 1,418 words;
4. Finally, I recognize that under NRAP 3E, I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a Fast Track Statement. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

DATED this 19th day of November, 2021.

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 19th day of November, 2021,
a copy of the foregoing Fast Track Reply was served as follows:

BY ELECTRONIC FILING TO

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