IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KYMBERLIE JOY HURD,
Appellant,
vs.
MARIO OPIPARI,
Respondent.

No. 85537-COA

ORDER REVERSING IN PART, VACATING IN PART, AND REMANDING

Kymberlie Joy Hurd appeals from a district court order establishing custody as to a minor child. Eighth Judicial District Court, Family Division, Clark County; Bill Henderson, Judge.

Kymberlie and respondent Mario Opipari were never married, but have one minor child in common, who was born in 2016 and was diagnosed with Trisomy 21 (Down syndrome). The minor child, A.O., received supplemental security income (SSI), with Kymberlie being the designated payee. In 2021, Mario filed a complaint seeking joint legal custody and primary physical custody. Kymberlie, in turn, filed an answer and counterclaim seeking joint legal custody and primary physical custody.

Extensive litigation ensued, and after several months of being represented by counsel, Kymberlie, who was unemployed, proceeded pro se in the district court. Initially, the parties agreed on, and the district court

orally ordered,[1] that the parties share temporary joint physical and legal custody over A.O., with Mario having parenting time from Thursdays at 5:30 p.m. until Sundays at 5:30 p.m. However, the parties' relationship devolved and, eventually, Kymberlie refused to allow Mario to exercise his parenting time.

Following a drug test in November 2021, which revealed Kymberlie had tested positive for methamphetamine, amphetamine, and barbiturates, Mario sought, and was awarded, temporary sole physical custody of A.O. in January 2022. The district court later entered several orders maintaining Mario's temporary sole physical custody. It also granted Mario temporary sole legal custody and ordered that Kymberlie have weekly supervised parenting time with Family First (the third-party supervisor for her parenting time), which she was to pay for in lieu of child support. The district court additionally directed Kymberlie to give Mario the SSI payments while he had temporary sole physical custody of A.O. Ultimately, an evidentiary hearing regarding custody was set for August 2022.

Kymberlie did not attend the evidentiary hearing regarding custody. Rather, on the day of the hearing, she filed an ex parte motion to continue the hearing, arguing that she could not properly prepare for it

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[1]The district court never entered a written order following this hearing, as Kymberlie refused to agree to the order prepared by Mario's attorney.

because she had not been aware of the hearing until several days prior, despite acknowledging that she received an email from the court's law clerk in June 2022, which listed the date and time that the evidentiary hearing would take place.

The district court proceeded with the evidentiary hearing and entered a written order, noting it attempted to contact Kymberlie to no avail, and that she "may have" abandoned her interest in the litigation by failing to appear at the hearing, at her supervised parenting time, and for drug testing. The court's order additionally made conclusory best-interest findings and a summary determination awarding Mario sole legal and physical custody of A.O. The court also awarded Mario $600 a month in child support, which included $180 per month for arrears from January through August 2022, after imputing income to Kymberlie. Additionally, the district court ordered that Kymberlie turn over all future SSI income to Mario and reimburse him for the SSI income that she failed to turn over beginning in January 2022. This appeal followed.

On appeal, Kymberlie contends that the district court abused its discretion in its custody determination.

The district court has broad discretion to determine child custody matters, and this court will not disturb those custody determinations absent a clear abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). When a district court determines the custody of a minor child, "the sole consideration of the court is the best

interest of the child." NRS 125C.0035(1). We presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004). This court will affirm the district court's child custody determinations if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment. *Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Moreover, in our recent opinion in *Roe v. Roe*, we held that where, as here, the district court enters an order for sole physical custody, it must first find either that the noncustodial parent is unfit for the child to reside with or make "specific findings and provide[ ] an adequate explanation as to the reasons why primary physical custody is not in the best interest of the child." 139 Nev., Adv. Op. 21, *9, ___ P.3d ___, ___ (Ct. App. 2023). These findings must be in writing "and are separate and in addition to the best interest findings required under NRS 125C.0035(4)." *Id.* Following these findings, the district court is then required to order "the least restrictive parenting time arrangement possible that is within the child's best interest." *Id.* In the event that a less restrictive parenting time arrangement exists, the district court must explain how the child's best interest is served by the more restrictive arrangement. *Id.*

Although the district court did not have the benefit of our decision in *Roe* when it entered the challenged order, we conclude that the court abused its discretion when it awarded Mario sole legal and physical

custody of A.O. without separately providing an explanation of Kymberlie's unfitness or rendering specific findings why primary physical custody is not in A.O's best interest, as now required by *Roe*.

Moreover, the parenting-time portion of the order is seemingly unworkable and inconsistent. The order specifies that Mario will (1) determine Kymberlie's contact with A.O., (2) cooperate with Kymberlie's parenting time on a supervised basis, and (3) provide Kymberlie with notice of the supervised parenting time. It then mandates that Kymberlie is responsible for coordinating her supervised parenting time even though Mario has been given the sole discretion to determine what time she gets with the child, if any. And despite these provisions, the challenged order goes on to provide, in the child support section, that "we do not have supervised visits at this time." Given the inconsistent nature of the parenting time plan set forth in the district court's order, we conclude that the district court abused its discretion in making this determination. *See Roe*, 139 Nev., Adv. Op. 21 at *10, ___ P.3d at ___ (concluding that the district court abused its discretion in establishing parenting time where, among other things, it implemented a parenting time plan with conditions that made the plan unachievable).

Based on the analysis set forth above, the district court's child custody and parenting time determinations must be reversed and remanded for reconsideration under the principles, rules and requirements articulated in *Roe*. We note, however, that there are several other deficiencies with the

challenged decision that the district court must also address on remand. Thus, we briefly address each of these issues below, in turn.

First, while the district court discussed the best interest factors in making its custody and parenting time decision, the court's best-interest findings are so vague and conclusory as to preclude meaningful review of the challenged order. "Specific findings and an adequate explanation of the reasons for the custody determination are crucial to enforce or modify a custody order and for appellate review." *Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015) (internal quotation marks omitted). "Without them, this court cannot say with assurance that the custody determination was made for appropriate legal reasons." *Id.*

Specifically, in the challenged order, the district court repeatedly relies on exhibits as the basis for its best interest findings, but does not explain or otherwise indicate what facts or information within the exhibits support its conclusions. *See e.g., Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) ("Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation."). For example, with regard to the factor on the parents' ability to cooperate to meet the needs of the child, the court found, in part, that "Exhibits 48 through 56 . . . bolster that when Kymberlie seeks an accommodation, [Mario] reasonably and readily agrees. On the other hand, Kymberlie is

quite an obstructionist," without explaining what facts or information within the exhibits form the basis for this conclusion.

Similarly, when analyzing the factor regarding the history of parental abuse or neglect, the district court states that "the totality of everything the court has already determined in the factors above clearly establishes parental abuse and neglect. The court relies upon the testimony and evidence listed above," without making specific factual findings regarding what acts or occurrences constituted abuse or neglect or explaining in any detail which parts of the testimony and documents it relied upon in reaching this conclusion. Instead, the district court simply references its previous summary findings regarding the best interest factors to support its decision.

Further, in considering the best interest factors, the district court improperly speculates that, "[d]ue to [Kymberlie's] history of unemployment, she most likely used the minor child's SSI funds to support her illegal drug use." The court also conflates neglect of the minor child with domestic violence. *Compare* NRS 125C.0035(4)(j) (directing district courts to consider any history of parental abuse or neglect of a child) *with* NRS 125C.0035(4)(k) (directing district courts to consider whether the person seeking physical custody of the child has committed an act of domestic violence against the child). Specifically, the court, relying only on the exhibits "includ[ing] but . . . not limited to Exhibit 6," found by clear and convincing evidence that Kymberlie "has committed act[s] of domestic

violence against the child due to the fact that Kymberlie was extremely neglectful with a down syndrome child." But in conflating these two concepts, the district court failed to offer any explanation as to how it believed these two factors related to one another.

The district court additionally failed to link its best interest findings to its ultimate custody determination and instead summarily concludes that Mario is awarded sole legal and physical custody of A.O. without explaining how its findings support the custody determination. *See Davis*, 131 Nev. at 451, 352 P.3d at 1143 ("Crucially, the decree or order must tie the child's best interest, as informed by specific, relevant findings respecting the [enumerated best interest factors] and any other relevant factors, to the custody determination made.").

Finally, with regard to the district court's arrearages determination, the court awarded $3,360 in arrearages (to be paid in $180 monthly installments) for January 1 through August 31, 2022, even though no support was due during this period. In particular, the court had previously ordered that Kymberlie would cover the fees for her supervised parenting time in lieu of support. Given this inconsistency, we reverse the district court's arrearages determination for reconsideration on remand.

In sum, we reverse the district court's custody and parenting time decision and remand this matter for the court to reconsider its decision in accordance with the guidance set forth in *Roe*, and to fully and properly analyze and apply the best interest factors. We further reverse the

arrearages determination for the reasons articulated above. Finally, because we reverse the district court's resolution of the custody and parenting time issues, we vacate the court's child support determination as well.

It is so ORDERED.[2]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

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[2]Pending further proceedings on remand, we leave in place the custody arrangement set forth in the district court's October 17, 2022, custody and parenting time order, subject to modification by the district court to comport with the current circumstances. *See Davis*, 131 Nev. at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand).

Additionally, we grant Kymberlie's motion to file an overlength motion to stay the challenged order, deny the stay motion and motion for a show cause order and to enforce visitation as moot, and grant the motion to inform this court of relevant authority.

cc: Hon. Bill Henderson, District Judge, Family Division
Kymberlie Joy Hurd
Ford & Friedman, LLC
Eighth District Court Clerk