

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSTIN JAMES BARRAL,
Appellant,
vs.
MEGAN ELIZABETH BARRAL, N/K/A
MEGAN ELIZABETH HAMMONDS,
Respondent.

No. 86231-COA

FILED

JUN 15 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dustin James Barral appeals from a district court order denying his motion to modify legal and physical custody of the parties' minor children. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

Dustin and respondent Megan Elizabeth Barral (n/k/a Megan Elizabeth Johnson) were divorced in 2012 and have two minor children who are the issue of the marriage. In the divorce decree, the district court awarded Megan sole legal custody and primary physical custody of the children, subject to Dustin's parenting time. Shortly after the divorce, Dustin was arrested and has been incarcerated since 2013. Because of this, Dustin has been unable to exercise his parenting time with the children.

As relevant here, in 2022, Dustin filed a motion to modify custody, seeking—among other things—joint legal custody and resumption of parenting time on the grounds that he is scheduled to be released on parole in September 2023. After full briefing on this motion, the district court entered an order denying Dustin's motion, primarily on the grounds that (1) his request was premature as his alleged substantial change in circumstances had not yet occurred as he has not yet been released on

parole; and (2) reunification with the children while Dustin was still incarcerated would not be in the children's best interest. Dustin now appeals.

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). Further, 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). When requesting a change to the physical custody arrangement, the movant must show that "(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 983 (2022) (quoting *Ellis*, 123 Nev at 150, 161 P.3d at 242).

"Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing." *See Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d at 984. Joint legal custody is presumed to be in the child's best interest if certain conditions are met. NRS 125C.002(1). However, this presumption is overcome when the court finds that the parents are unable to communicate, cooperate, and compromise in the best interest of the child. *See Rivero*, 125 Nev. at 420, 216 P.3d at 221.

On appeal, Dustin argues, among other things, that the district court abused its discretion by failing to consider that the children could begin reunification proceedings, and that he could exercise joint legal

custody while he was still incarcerated. However, as the district court noted in its order, Dustin failed to establish that there has been a substantial change in circumstances affecting the welfare of the children that would warrant a change to the current custodial schedule. Indeed, the district court found, and Dustin did not challenge, that Megan has been the children's sole physical custodian since his incarceration in 2013, and that his alleged change in circumstances (being released on parole), had not yet occurred—rendering the motion premature. Accordingly, as Dustin did not satisfy the first of the two modification factors required by our caselaw, we discern no abuse of discretion in the district court's denial of the motion.¹ See *Romano*, 138 Nev., Adv. Op. 1, 501 P.3d at 983; *Ellis*, 123 Nev. at 149, 161 P.3d at 241.

We likewise can discern no abuse of discretion in the district court's denial of Dustin's request for joint legal custody. Specifically, in denying Dustin's request, the district court found that Dustin has not seen the children since 2013, when they were aged 5 and 3, respectively, and that his current incarceration impedes his ability to communicate effectively with Megan or know the children's current needs at ages 15 and 13. Thus, the court found that “[r]etaining legal custody with [Megan] at this time does not impede [Dustin's] relationship with the children, and his request can be revisited once [he] is paroled and has a more open line of communication and understanding of the needs of the children.” And in light of the foregoing, we conclude that the district court did not abuse its

¹Indeed, the district court's denial of Dustin's motion was primarily based on that motion being premature. Accordingly, nothing in this order shall be construed as prohibiting Dustin from refileing his motion to modify custody at a more appropriate time.


discretion when it denied Dustin's request for joint legal custody. See *Rivero*, 125 Nev. at 420, 216 P.3d at 221; see also *Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Stacy Michelle Rocheleau, District Judge, Family Division
Dustin James Barral
Megan Elizabeth Barral
Eighth District Court Clerk

²Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.