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### Arcella v. Arcella, 133 Nev. Adv. Op. 104 (Dec. 26, 2017)

Shannon Zahm

*University of Nevada, Las Vegas – William S. Boyd School of Law*

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CHILD CUSTODY: CHILD’S EDUCATIONAL PLACEMENT

**Summary**

The Court determined that district court’s focus—in a child custody case regarding educational placement—must remain on the child’s best interest and not on the religious objections made by a parent. Specifically, the Court found that the district court abused its discretion by (1) treating one parent’s religious objection as dispositive; (2) failing to conduct an evidentiary hearing; and (3) failing to support its order with specific, factual findings.

**Background**

In 2009, Melissa and Matthew Arcella divorced and agreed to joint legal and physical custody of their two children: at the time, four-year-old R.A. and two-year-old W.A. As part of the divorce decree, the parents agreed to equally split the cost of the tuition for private school if they both agreed to send their children to private school. The parents mutually agreed to enroll their children into The Henderson International School, a small private, secular school. Five years later, the parents agreed in a stipulated order that the children would continue attending the private school, but that Matthew would pay for all tuition costs.

In 2016, R.A. was 11-years old and about to finish elementary school, the parents agreed that R.A. should attend a larger middle school instead of going to Henderson’s middle school. However, the parents disagreed as to which middle school R.A. should attend.

Matthew petitioned the district court, requesting that an order stating that R.A. would attend Faith Lutheran, a religious private school. Matthew argued that it was in R.A.’s best interest because she was accustomed to private schooling, R.A. wanted to go there, and it had a high college placement rate. Melissa objected to R.A. receiving a religious education at Faith Lutheran. Melissa argued that R.A. should attend Bob Miller Middle School, the local public school, because it was highly ranked in academics and closer to the child’s primary residence.

The district court ordered—without an evidentiary hearing— that R.A. would attend Bob Miller Middle School. The court’s order lacked any findings; in fact, the court found that attending both schools would be in the child’s best interest. But, the court decided on Bob Miller Middle School because it took Melissa’s religious objection into consideration. Matthew appealed the district court’s decision.

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<sup>1</sup> By Shannon Zahm

## **Discussion**

When parents in a joint custody agreement disagree as to a child's educational placement, the court must decide what is in the best interest of the child.<sup>2</sup> The Nevada Supreme Court reviews "a district court's best interest determination for a clear abuse of discretion."<sup>3</sup>

The Court found that the district court abused its discretion in three ways: "(1) it disfavored religion in violation of the First Amendment's Establishment Clause, (2) it failed to conduct an evidentiary hearing, and (3) it did not support its order with factual findings concerning R.A.'s best interest."

### *The district court abused its discretion by treating Melissa's religious objection as dispositive*

In determining what is in a child's best interest, the district court must remain neutral in a situation that involves religion.<sup>4</sup> A district court violates that principle of neutrality when it considers one parent's religious objection as dispositive when deciding between a religious and nonreligious institution.<sup>5</sup> Here, the Court concluded that the district court failed to act neutral towards religion. The Court reasoned that the district court made no findings regarding R.A.'s best interest and appeared to treat Melissa's objection as dispositive.

Notably, the Court stated that the district court did not violate the First or the Fourteenth Amendments with its order, rather, it abused its discretion "by deferring to a parent's religious objection instead of reviewing Matthew's affidavits for adequate cause and then holding an evidentiary hearing to determine which school served the child's best interest."

### *The district court failed to conduct an evidentiary hearing*

If a moving party demonstrates "adequate cause," a district court must hold an evidentiary hearing on a request to modify custodial orders.<sup>6</sup> The moving party demonstrates "adequate cause" by presenting a prima facie case that the requested change is in the child's best interest.<sup>7</sup> Thus, to present a prima facie case, the moving party must demonstrate: "(1) the facts alleged in the affidavits are relevant to the [relief requested]; and (2) the evidence is not merely cumulative or impeaching."<sup>8</sup>

Here, the Court found four facts that established adequate cause for an evidentiary hearing. Those facts include: R.A. was about to finish elementary school, the parents agreed R.A. should attend a different middle school, the parents disagreed as to which school, and Matthew's affidavits provided facts relevant to that determination. Therefore, the Court concluded that the district court

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<sup>2</sup> NEV. REV. STAT. § 125C.0045(1)(a) (authorizes courts to make orders regarding a child's education "as appears in his or her best interest"); *see also* *Rivero v. Rivero*, 216 P.3d 213, 221–22 (Nev. 2009).

<sup>3</sup> *Mack v. Ashlock*, 921 P.2d 1258, 1261 (Nev. 1996).

<sup>4</sup> U.S. CONST. amend. I; *see also* *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

<sup>5</sup> *Jordan v. Rea*, 212 P.3d 919, 925 (Ariz. Ct. App. 2009).

<sup>6</sup> *Rooney v. Rooney*, 853 P.2d 123, 124 (Nev. 1993).

<sup>7</sup> *Id.* at 125.

<sup>8</sup> *Id.*

abused its discretion by deciding solely based upon the pleadings and arguments of counsel.<sup>9</sup> The circumstances required the district court to hold an evidentiary hearing, but the form of the hearing is within the district court's discretion.<sup>10</sup>

*The district court failed to support its order with specific findings*

The Court must examine whether the district court's custody determination tied in the child's best interest through specific, relevant factual findings.<sup>11</sup> Here, the Court noted that the district court's only finding was that it was in R.A.'s best interest to attend both schools, which amounted to a "judicial shrug." Thus, the district court did not make any substantive findings regarding what was best for R.A.

The Court provided guidance to the district court on factors to consider in determining which school is in R.A.'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.<sup>12</sup> These factors will guide the district court in making a substantive finding on the child's best interest.

**Conclusion**

Reverse and remanded. The Court reversed the district court's ruling and ordered the district court to conduct an evidentiary hearing and make specific factual finding to determine which school is best for R.A. to attend.

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<sup>9</sup> See *Mizrachi v. Mizrachi*, 385 P.3d 982, 990 (Nev. Ct. App. 2016).

<sup>10</sup> See *Sims v. Sims*, 865 P.2d 328, 330 (Nev. 1993).

<sup>11</sup> *Davis v. Ewalefo*, 352 P.3d 1139, 1143 (Nev. 2015); *Sims*, 865 P.2d at 330.

<sup>12</sup> See, e.g., *Jordan v. Rea*, 212 P.3d 919, 925 (Ariz. Ct. App. 2009).