

OUTLINE

EFFECTS ON CUSTODY AFTER FLEEING DOMESTIC VIOLENCE

I. Overview of the Role of Domestic Violence in Family Law

A. Definitions of domestic violence, kidnaping/abduction, abuse/neglect etc.

1. NRS 33.018.
2. NRS 200.310-200.340, 200.359.
3. NRS 432B.020.

B. Custody

1. Initial custody awards

a. NRS 125.480.

- (1) 125.480(1) &4(j) & (k) (abuse/neglect of a child, sibling of child, or DV against the child, a parent of the child, or any other person residing with the child).
- (2) 125.480(5)-(6) (domestic violence allegation, findings, and resulting presumptions).

b. NRS 125C.230 (presumptions after domestic violence).

c. NRS 125.465 (joint custody for married parents); NRS 126.031 (primary custody for out-of-wedlock births).

d. *Russo v. Gardner*, 114 Nev. 283, 956 P.2d 98 (1998) (DV impact on paternity/custody orders).

2. Modifications of custody

a. *McDermott v. McDermott*, 113 Nev. 1134, 946 P.2d 177 (1997) (criminal conviction is per se proof of DV per NRS 33.018 and therefore triggers the presumption of NRS 125.480).

b. *Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004) (in evaluating whether factual circumstances have changed, the district court may consider facts that were previously unknown to the court or a party,

even if the facts predate the support order at issue; a parent may present evidence of child abuse that occurred before the entry of the last child custody order because of the presumption that physical custody with an abusive parent is not in the best interest of the child).

- c. *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006) (notwithstanding *Huneycutt*, the district court always has jurisdiction “to make short-term, temporary adjustments to the parties’ custody arrangement, on an emergency basis to protect and safeguard a child’s welfare and security”; despite appeal, a district court has jurisdiction to rule on contempt because a lower court has the power to enforce its orders while an order is on appeal).

C. Visitation

1. NRS 125.480(4)(c)-(e) & denial of contact allegations where DV is alleged.

D. Child & Spousal Support

1. Less or no contact with child as upward deviation factor.
2. *Rodriguez v. Rodriguez*, 116 Nev. 993, 13 P.3d 415 (2000) (alimony is “no fault” in Nevada; misconduct or fault may not be considered when considering an award of alimony; however, “repetitive acts of physical or mental abuse” by one spouse “against the other, causing a condition in the injured spouse which generates expense or affects that person’s ability to work,” allows consideration of the resulting condition “in two ways: first, as a compelling reason to make an unequal distribution of property or second, without considering evidence of fault or misconduct, the court in deciding alimony will, per Buchanan, take that spouse’s physical and mental condition into account when examining his or her financial condition, health and ability to work”).

E. Relocations

1. 125C.200
2. Where there is a court order
3. Where there is no court order
4. Where no paternity has been established

5. NRS 125.510; bonds & *Pearson v. Dist. Ct.* (district court, having concluded that threshold for conducting relocation hearing has been satisfied, may not condition hearing on the posting of a bond).
6. *Hayes v. Gallacher*, 115 Nev. 1, 972 P.2d 1138 (1999) (district court's failure to address NRS 125.480(4), which requires consideration of domestic violence, given the Mother's obtaining of a Temporary Protective Order against the Father).

F. Kidnaping

1. 125.480(1) (any act of abduction against the child or any other child).
2. 125.480(7) (kidnaping allegation, findings, and resulting presumptions).
3. NRS 125C.240 (presumptions after abduction).
4. NRS ch. 125D.
5. SB 57 modifications to law:
 - a. Children's Advocate of A.G.
 - b. Hearings after warrants issue.

G. Protective orders

H. Other Resources

1. Local:
 - a. Safe Nest.
 - b. Safe House.
 - c. Other?
2. Battered Women's Justice Project.
3. Resource Center on DV from NCJFCJ.
4. Legal Resource Center on Violence Against Women.
5. WomensLaw.org.

6. HagueDV Project.

II. Jurisdictional Issues

A. TPOs & the UCCJEA

1. The limits of “emergency jurisdiction” under the UCCJEA.
2. Initial Child Custody Jurisdiction.
3. Child Custody Modification Jurisdiction.

B. Home State Status before 6 months

C. Hague Convention/ICARA – action to proceed in place of child’s location at moment of filing

III. Mechanical, Attorney, & Judicial Issues

A. Conflicting presumptions as to abduction & domestic violence

1. The process of how claims get before the court.
2. The judicial function – what is evaluated, and when.
3. Mechanics of pick-up orders, start to finish.

B. *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998) (balancing “weightier” presumptions); discretionary? Subjective?

C. What an attorney should advise a client

1. If there has been a domestic violence allegation.
2. If there has been a TPO issued.
3. If an alleged victim shows up here from elsewhere.

D. Relocation Impacts (substantive and procedural)

1. Flight with children to, or from, NV.

IV. International Effects

- A. Ramifications of allegations or proof of domestic violence on Petitions for Return
- B. Grave Risk Defenses and DV allegations