

NOT DESIGNATED FOR PUBLICATION

No. 110,669

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of
MAURICIO ARAMBULA,
Appellee,

and

JUANA E. VALENZUELA, F/K/A JUANA E. ARAMBULA,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; NEIL B. FOTH, judge. Opinion filed September 5, 2014.
Affirmed.

Juana E. Valenzuela, appellant pro se.

No appearance by appellee.

Before STANDRIDGE, P.J., GREEN and ATCHESON, JJ.

Per Curiam: Juana E. Valenzuela appeals the order of the Johnson County District Court giving her ex-husband Mauricio Arambula residential custody of their twin daughters and granting him possession of what had been the marital home so the children could remain there. The order substantially modified the arrangements in place during the divorce and reflected in the final decree—Valenzuela had primary custody of the children and had occupied the house. Especially given the deferential standard of review we apply to district court rulings on those matters, we have no legal basis to set aside the order.

We, therefore, affirm the district court's ruling because the record reflects substantial evidence the switch served the best interests of the children.

Although Valenzuela was represented by a lawyer early in the divorce, she has represented herself in both the district court and on appeal with respect to the issues before us. People who are not lawyers tend to be at a significant disadvantage when they represent themselves. See, e.g., *University of Kansas Hosp. Authority v. Yang*, No. 108,199, 2013 WL 518112 (2013) (unpublished opinion). The courts have to follow rules on how facts may be presented and what facts parties must prove to support their respective positions. The courts have to apply those rules the same way whether or not a party is represented by a lawyer. *Mangiaracina v. Gutierrez*, 11 Kan. App. 2d 594, Syl. ¶¶ 1, 2, 730 P.2d 1109 (1986). In other words, the courts can't bend the rules for someone appearing without a lawyer.

Valenzuela and Arambula married in May 2005. Their daughters were born about a year later. Arambula filed for divorce in late 2010. The district court entered a decree of divorce in October 2012. During that part of the case, Valenzuela had physical custody of the children and lived in the marital home. Arambula had joint legal custody of the children with liberal visitation. The decree continued those arrangements. As part of the property settlement, the district court retained jurisdiction over the disposition of the marital residence awarding only physical control of it to Valenzuela subject to her securing refinancing that would relieve Arambula of any financial obligation for the property. The record suggests there was little equity in the house. And it is undisputed that Valenzuela had not obtained refinancing. Sometime after the decree was entered, Arambula filed a motion regarding custody and parenting. That prompted additional motions from both sides. The district court then appointed Jessica A. Gregory, a lawyer, as a guardian ad litem for the children. The record on appeal, which this court reviews, does not contain those motions, among many other filings and orders related to the divorce.

The district court heard those motions in late June 2013. A transcript of that hearing is in the record. The district court heard from Arambula, principally through his lawyer; from Gregory; and from Valenzuela, who continued to represent herself. The district court granted physical custody of the children to Arambula and allowed Valenzuela visitation. The district court also ordered that Arambula occupy the marital home with the children because that would be the least disruptive to them—they had lived nowhere else and would be able to continue at the same school. Valenzuela has appealed those rulings. Later, the district court imposed specific restrictions on Valenzuela's visitation with the children.

Our review of a district court's ruling on child custody issues is exceptionally deferential. The foremost consideration in any custody determination is a placement that serves the best interests of the children. *In re Marriage of Vandenberg*, 43 Kan. App. 2d 697, 701, 229 P.3d 1187 (2010). A child custody order may be modified at any time upon a showing of materially changed circumstances. K.S.A. 2013 Supp. 23-3218(a); see *Lewis v. Lewis*, 217 Kan. 366, 368, 537 P.2d 204 (1975) ("Before a custody order will be modified, the movant has the burden of showing the child can be better cared for if the requested change is granted."). The standard for appellate review of the district court's decision on a motion to modify child custody is abuse of discretion. *In re Marriage of Nelson*, 34 Kan. App. 2d 879, 883, 125 P.3d 1081, *rev. denied* 281 Kan. 1378 (2006). A district court exceeds that discretion if it rules in a way no reasonable judicial officer would under the circumstances, if it ignores controlling facts or relies on unproven factual representations, or if it acts outside the legal framework appropriate to the issue. See *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106, *cert. denied* 134 S. Ct. 162 (2013); *State v. Ward*, 292 Kan. 541, Syl. ¶ 3, 256 P.3d 801 (2011), *cert. denied* 132 S. Ct. 1594 (2012).

In reviewing the hearing transcript and the findings in other orders included in the record on appeal, we can see that the divorce between Arambula and Valenzuela was a difficult, emotional one. The children were often thrown directly into the midst of those difficulties. The record shows that the district court concluded that during the divorce each parent improperly tried to use the children as bargaining chips to obtain concessions from or advantages over the other. But the district court also found Valenzuela to be the greater offender and to have persisted in that way despite warnings to stop.

The record also shows that Valenzuela had accused Arambula of physically abusing his daughters when they were in his custody. The Kansas Department of Social and Rehabilitation Services investigated the allegation and determined it to be unfounded, according to Gregory's statement to the district court at the custody hearing. Valenzuela did not dispute that representation, and we gather the report appears in the district court record or otherwise had been made available to the district court in an earlier hearing. Gregory told the district court that the twins seemed to be happy and well adjusted. They showed no signs of abuse. And they expressed a desire to spend time with both Valenzuela and Arambula. According to Gregory, the children obviously love both their mother and their father.

Although the record is less than especially clear on several points, it is apparent that Valenzuela has alleged more than once that members of Arambula's immediate family have physically threatened her to the point of saying they would kill her. She repeated that allegation at the custody hearing. The district court has consistently found no evidence to support Valenzuela's statements. The district court also pointed out during the hearing that at an earlier court appearance Valenzuela threatened to leave the country with the children if custody were given to Arambula. At the custody hearing, Valenzuela attempted to defuse that as a miscommunication because she had spoken in English without a translator. (Valenzuela's primary language is Spanish. At the custody hearing, she communicated principally through a translator.)

It is similarly apparent that Valenzuela has experienced significant anxiety and depression during the divorce and custody proceedings. For a time at least, she was actively meeting with one or more mental health professionals. Gregory reported one instance in which Valenzuela became emotionally distraught in front of the children at home, prompting one of them to call Arambula out of concern. The record indicated Valenzuela had stopped any sort of counseling at the time of the custody hearing. In her brief to this court, Valenzuela acknowledges the anxiety and depression, which she attributed to pressure from the divorce and Arambula in particular. In the brief, she asserts that she is now doing much better. But that obviously is not something the district court could have considered. We, in turn, are to decide only if the district court made a proper legal determination based on the evidence available at the time of the hearing.

Based on many of those considerations, Gregory, as the legal advocate for the children, recommended that the district court grant physical custody to Arambula. We note, of course, that doesn't mean the children said that's what they wanted. They apparently wished to spend a good deal of time with each parent. What that does mean, however, is that Gregory, as an advocate for the children, concluded the change would be in their best interests.

The district court agreed with that assessment and ordered the change in physical custody to promote the children's welfare. In that respect, the district court applied the correct legal standard or framework. The evidence, though not one-sided, supported that conclusion, as we have outlined. Valenzuela had persisted in acting in ways that could or would be harmful to the children, such as the accusations against Arambula and his family. The district court also found her to be inflexible and uncompromising in dealing with custody issues—upsetting visitation schedules when Arambula did something that displeased her. We are not to reweigh the evidence in determining whether a district court has acted within its discretion. *State v. Anderson*, 291 Kan. 849, 855, 249 P.3d 425

(2011). There was sufficient evidence to justify the change in custody. So we are left to ask if no other judge would have ruled as the district court did here. We cannot say so.

The district court acted within the bounds of the law in ordering the change in custody.

The district court's decision to grant Arambula possession of the marital house really is part and parcel of the custody ruling. The divorce decree did not give Valenzuela an outright ownership interest in the home until or unless she refinanced the property and the district court approved. That did not happen. In the divorce decree, the district court retained specific control over ownership and occupancy of the marital residence. Accordingly, the district court had the legal authority to give Arambula possession of the house. The district court exercised that authority to insure continuity for the children and, thus, to promote their best interests. The district court did not abuse its discretion in shifting possession of the house from Valenzuela to Arambula, since neither had been given an exclusive ownership interest in it in the decree. The switch did not upset the distribution of marital property in the decree, since the residence appeared to have no equity or net value as part of the marital estate.

For those reasons, the district court properly followed the law and came to a conclusion that was within its broad authority. As we have said, matters of child custody can be reviewed at any time based on the changed circumstances of the parties to a divorce. So what the district court has done does not automatically control the child custody arrangements from now until the twins become adults.

Affirmed.