

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MISTY LILLIAN AHERN, N/K/A MISTY
LILLIAN MCCURRY,
Appellant,
vs.
SHANE MICHAEL AHERN,
Respondent.

No. 74454

FILED

AUG 10 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Misty Ahern n/k/a Misty McCurry appeals from a district court order denying a motion to modify child custody. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

The parties divorced in 2012 and have three minor children. As relevant here, respondent, Shane Ahern, has primary physical custody of the parties' three minor children subject to Misty's parenting time every other weekend. In the proceedings below, Misty moved to modify custody and for an order holding Shane in contempt of court for failing to exchange the children and failing to allow Misty speak with the children by phone, pursuant to the custody order. The district court denied Misty's motion for modification and denied her request for a contempt order on several allegations against Shane, but did find Shane in contempt for failing to exchange the children on one occasion. The district court fined Shane \$500 for this contempt. The district court also awarded Shane attorney fees and costs in the amount of \$3,000, and offset this amount by the \$500 sanction, for a total award of \$2,500 in favor of Shane. This appeal followed.

On appeal, Misty asserts that the district court abused its discretion in declining to find Shane in contempt for failing to exchange the

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children and for failing to allow Misty telephone calls with the children. In particular, Misty argues that the district court erred in failing to find Shane in contempt because Shane admitted he withheld the children. Disobedience to a lawful court order constitutes contempt. NRS 22.010(3). This court reviews contempt orders for an abuse of discretion. *Lewis v. Lewis*, 132 Nev. ___, ___, 373 P.3d 878, 880 (2016).

Here, the district court made numerous factual findings based on the evidence presented at the evidentiary hearing. The district court acknowledged that Shane refused to exchange the children, but concluded that this refusal did not constitute a willful violation of the court's custody order because Misty had not yet provided evidence that she obtained a stable residence for the children, as previously required by the court. Additionally, for a number of Misty's alleged missed visits and missed phone calls, the district court concluded that Shane did not violate the court's order as the evidence demonstrated Shane attempted to contact Misty, with no response, or that Misty otherwise failed to meet her burden to prove Shane willfully withheld the children. Further, the district court did find Shane in contempt for his failure to exchange the children on one occasion. On that occasion, Shane refused to exchange the children because Misty did not have a valid driver's license, but Misty had a licensed driver available to assist her in transporting the children. Accordingly, the district court concluded that Shane's refusal to exchange on that date was unreasonable. Based on the district court's findings and our review of the record, we cannot conclude that the district court abused its discretion in declining to find Shane in contempt for the alleged violations of the custody order.

To the extent Misty asserts that she should be awarded primary physical custody based on Shane's alleged contempt, as noted above, the

district court correctly concluded that Shane did not willfully violate the court's order. Additionally, as to Shane's one violation of the court's order, the district court is not to change custody as a punishment for a parent's disobedience to a court order. *Lewis*, 132 Nev. at ___, 373 P.3d at 882 (quoting *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993)). Further, to the extent Misty generally attempts to challenge the district court's denial of her motion to modify custody, based on the district court's numerous findings and our review of the record, we cannot conclude that the district court abused its discretion in denying Misty's motion to modify custody. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007) (explaining that this court reviews a child custody decision for an abuse of discretion and will uphold the district court's determination if it is supported by substantial evidence).

Misty also appeals the district court's award of attorney fees to Shane, arguing that the district court abused its discretion in concluding her motion was frivolous when the court found Shane in contempt for one custody exchange. This court reviews an award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005).


Contrary to Misty's assertion, the district court did not award Shane attorney fees based on a finding that Misty's motion was frivolous. The district court order concludes that Shane was entitled to attorney fees because he was the prevailing party, having prevailed on the majority of issues before the court, citing NRS 18.010. Additionally, we note that even if the district court had incorrectly awarded attorney fees pursuant to NRS 18.010, it was permitted to award fees and costs pursuant to NRS 125C.250 (allowing the district court discretion to award attorney fees and costs in actions to determine legal custody, physical custody, or visitation). *See*

Saavedra-Sandoval v. Wal-Mart Stores, Inc., 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (“This court will affirm a district court’s order if the district court reached the correct result, even if for the wrong reason.”). Therefore, based on our review of the record, we cannot conclude that the district court abused its discretion in awarding Shane attorney fees as a prevailing party. *See Miller*, 121 Nev. at 622, 119 P.3d at 729.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Misty Lillian Ahern
Shane Michael Ahern
Eighth District Court Clerk