IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENISA VREELING,
Appellant,

vs.

CARL ADOLF VREELING,
Respondent.

No. 76050-COA

ORDER AFFIRMING IN PART AND REVERSING IN PART

Denisa Vreeling appeals from district court orders enforcing a stipulated child custody order and awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

Denisa and her ex-husband, Carl Vreeling, share joint legal custody of their daughter, E.V., with Denisa having primary physical custody.[1] The parties' custody arrangement is governed by multiple different orders, primarily a stipulated order from 2016. A dispute arose between the parties concerning Carl's proposed parenting schedule for part of 2017. Denisa objected to Carl's proposed schedule via letter from her counsel to Carl's. In response, Carl agreed to several modifications of his schedule, but sought confirmation from Denisa that she would honor it as modified. Just a few days later, without waiting for a response from Denisa or bringing the issue before the parties' stipulated parenting coordinator, Carl filed a motion in district court for enforcement of the parties' stipulated custody order, confirmation of his proposed schedule as an order of the court, and attorney fees. Denisa opposed the motion, and the district court held a hearing. Following that hearing and further briefing on the issue of attorney fees, the

[1]We do not recount the facts except as necessary to our disposition.

district court entered two separate orders: one enforcing and clarifying the parties' stipulated custody order, and the other awarding $34,000 in attorney fees to Carl under the custody order, NRS 18.010(2)(b), and EDCR 7.60(b).

On appeal, Denisa asserts multiple arguments as to why the district court abused its discretion when it awarded attorney fees to Carl. However, because we conclude that one of Denisa's proffered grounds is dispositive, we consider only that issue in detail. Denisa argues that the district court abused its discretion in part because Carl initiated litigation in the district court without first presenting the issue to the parties' stipulated parenting coordinator. We agree.

This court reviews a district court's decision awarding attorney fees for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 440, 216 P.3d 213, 234 (2009). Attorney fees are recoverable if "allowed by express or implied agreement or when authorized by statute or rule." *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (internal quotation marks omitted). The district court may award attorney fees under NRS 18.010(2)(b) and EDCR 7.60(b) if a party brings or maintains a frivolous defense, but "there must be evidence supporting the district court's finding that the claim or defense was unreasonable or brought to harass." *Rivero*, 125 Nev. at 441, 216 P.3d at 234. However, NRS 18.010(2)(b) "do[es] not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees."[2] NRS 18.010(4).

[2]Because this dispute arose out of the parties' stipulated custody agreement, which entitles the prevailing party to reasonable attorney fees, the district court erred when it awarded fees under NRS 18.010(2)(b). Accordingly, we consider the validity of the award only under the parties' stipulation and EDCR 7.60(b).

Here, the parties' stipulated custody order contains a mandatory attorney-fees provision, which provides as follows:

> [I]n the event either party is *required* to enforce this Stipulation and Order, in addition to any sanctions imposed by the Court for violations of this Stipulation and Order, the prevailing party shall be entitled to their reasonable attorneys' fees and costs, which shall include reasonable fees and costs associated with attempts to resolve any issues prior to Court intervention.

(emphasis added). Moreover, in a later stipulation and order, the parties agreed to utilize a court-appointed special master acting as a parenting coordinator for a period of one year from the date of the stipulation to "enforce and assist the parties in implementing the orders of the Court."[3]

Given their language and structure, these stipulations and the underlying orders are most reasonably understood to require the parties—in order to be eligible for attorney fees under the stipulated custody order—to submit their disputes concerning enforcement of the orders to the parenting coordinator prior to seeking court intervention. *See DeChambeau v.*

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[3]The order specifically granted the parenting coordinator "authority to resolve communication issues and issues that arise in regard to the minor child, in order to . . . [i]mplement and enforce the current Court Orders on child related issues." However, the order made clear that "[t]he Parenting Coordinator shall not have the authority to deviate from the Court's Orders." The order further stated that "[t]he parties shall participate in good faith in an initial mediation/conflict resolution process with the Parenting Coordinator in an effort to resolve a dispute." It went on to provide that if the parties do not reach an agreement, the parenting coordinator will prepare a written decision to which the parties must adhere "until otherwise ordered by the Court." The parties also agreed to "share equally the cost of the Parenting Coordinator's fees," and the only fee-shifting provision in the stipulation required that a party who failed to appear at a scheduled appointment with the parenting coordinator without 48 hours' notice of cancellation "shall be responsible for both parties' fees."

Balkenbush, 134 Nev. ___, ___, 431 P.3d 359, 361-62 (Ct. App. 2018) (noting that written stipulations are "a species of contract" and "should therefore generally be read according to their plain words unless those words are ambiguous, in which case the task becomes to identify and effectuate the objective intention of the parties" (internal quotation marks omitted)); *see also Henson v. Henson*, 130 Nev. 814, 818, 334 P.3d 933, 936 (2014) (noting that a district court's interpretation of its own order is reviewed de novo). The stated purpose of the parties' stipulation to use a parenting coordinator was "to provide [the] parties with a forum for resolving child-related disputes outside of the courtroom." Though Carl contends that Denisa bypassed the parenting coordinator by having her counsel send a letter to his counsel, nothing in the record suggests that the parties were not free to negotiate directly with one another prior to (or in addition to) approaching the parenting coordinator.

However, the language of the parties' agreements did require them to submit disputes concerning enforcement to the parenting coordinator prior to seeking the last-resort intervention of the district court, at least insofar as the prevailing party desired to recover his or her attorney fees. Had the parties consulted the parenting coordinator below, he may have been able to facilitate a settlement between them regarding their parenting time dispute. Moreover, we note that Carl—not Denisa—initiated these proceedings in the district court by filing a motion for enforcement of the stipulated custody order and for attorney fees. Rather than waiting for Denisa to respond to his letter accepting and rejecting some of her requests to modify his schedule, and rather than waiting for her to file her own motion, Carl preemptively filed a motion seeking to confirm the schedule only a few days after sending his letter.

We note further that nothing in the record supports Carl's argument and the district court's conclusion that the parenting coordinator could not have assisted the parties by enforcing the stipulated custody order and confirming the schedule. The parenting coordinator had express authority to enforce the stipulated order; he just was not allowed to modify it in any way.[4] Thus, the parenting coordinator could have resolved this dispute with a binding decision, subject of course to judicial review by the district court should either party have sought it. Because Carl filed a motion with the district court when he could have either sought the assistance of the parenting coordinator or waited for Denisa to file her own motion, he was not yet required to seek court intervention and thus was not eligible for fees under the stipulated custody order. Accordingly, Denisa's opposition to Carl's request for attorney fees was not frivolous, and thus the district court abused its discretion when it awarded fees under EDCR 7.60(b).[5]

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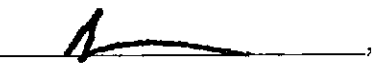
[4]This is consistent with cases from the Supreme Court of Nevada addressing the authority of parenting coordinators. *See Bautista v. Picone*, 134 Nev. ___, ___, 419 P.3d 157, 159 (2018) (noting that district courts may delegate decision-making authority to parenting coordinators on issues like scheduling and travel, but not with respect to substantive custody determinations like modification of an existing agreement); *Harrison v. Harrison*, 132 Nev. 564, 573, 376 P.3d 173, 179 (2016) (concluding that "judicial integrity was preserved" where "the parenting coordinator's authority was limited in scope and was subject to judicial review").

[5]We reject Denisa's argument that this court should set aside the district court's findings that Denisa claims modified the parties' stipulated custody order. Denisa fails to articulate how the district court's findings amounted to anything more than mere clarification of the order. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider claims that are not cogently argued or supported with relevant authority). Moreover, she fails to show that she is entitled to relief with respect to the two findings she

Based on the foregoing, we reverse the district court's award of attorney fees to Carl, but we do not disturb the district court's findings and conclusions with respect to its enforcement of the parties' stipulated custody order.[6]

It is so ORDERED.[7]

_____, C.J.
Gibbons



_____, J.
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primarily challenges on appeal—that Carl is entitled to a minimum of two contacts per month with E.V. and that he is entitled to exercise up to 39 percent of total custodial time. With respect to the former, Denisa's counsel expressly agreed to that finding at the hearing on Carl's motion. With the latter, the district court was merely clarifying the existing provision of the stipulated custody order allowing Carl to "have additional time if agreed upon between the parties, with [Denisa] not to unreasonably withhold her consent." As the district court concluded, under that provision and with Denisa having primary physical custody of E.V., Carl is entitled, in principle, to have E.V. in his custody *up to but not necessarily* 39 percent of the time. *See Rivero v. Rivero*, 125 Nev. 410, 425-26, 216 P.3d 213, 224 (2009) (defining "joint physical custody" as each parent having custody at least 40 percent of the time).

[6]We also reject Denisa's argument that this court should remand the case to a different district court judge on grounds that Judge Moss is biased against her. The record reflects that the district court thoroughly considered both parties' arguments below. Though Judge Moss ruled in favor of Carl and granted his requested relief, "rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification." *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). Accordingly, we reject Denisa's argument on this point. Moreover, in light of our disposition, we reject Carl's request under NRAP 38 for attorney fees and costs incurred in this appeal.

[7]The Honorable Jerome T. Tao did not participate in the decision in this matter.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Fine Carman Price
The Jimmerson Law Firm, P.C
Eighth District Court Clerk