IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATRINA CARTER,
Appellant,
vs.
RUNNDLEY DUCKSWORTH,
Respondent.

No. 81966-COA

FILED

APR 29 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Katrina Carter appeals from a post-decree order in a child custody case. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

In 2017, the parties obtained a custody decree whereby they shared joint legal custody and Katrina was awarded primary physical custody of the parties' minor child. Additionally, Katrina was granted permission to relocate with the minor child to Texas. The parties have since had a contentious relationship, with both parties filing several motions seeking to enforce the custody order at various times. As relevant here, in 2020, Runndley filed a motion to enforce the custody order and/or for an order to show cause why Katrina should not be held in contempt for violating the custody order, and a motion to modify custody seeking an award of primary physical custody. Katrina opposed both motions and the district court set the matter for an evidentiary hearing.

Following the evidentiary hearing, the district court found that Katrina had violated the parties' 2017 custody order and a subsequent order

issued by the district court after a hearing in June 2020—providing Runndley with parenting time during the child's summer break—by failing to send the child to Runndley for winter break in December 2019, for spring break in March 2020, and for the start of summer break in 2020, and that Katrina violated the custody orders by taking the child back early at the end of the summer break in 2020. As a result, the district court concluded that Katrina was in contempt, but held that it would not sanction Katrina except to award Runndley make-up time with the child. Additionally, the district court determined that since being granted primary physical custody and permission to relocate to Texas, Katrina had consistently made it more difficult for Runndley to maintain a relationship with their child by withholding parenting time and regular electronic communication. The court concluded that this constituted a substantial change in circumstances affecting the child's welfare. And after addressing each of the best interest factors, the court concluded that it was in the child's best interest to modify custody to award Runndley primary physical custody of the child, subject to Katrina's parenting time in Texas. This appeal followed.

On appeal, Katrina challenges the district court's order modifying custody and finding Katrina in contempt. Child custody matters rest in the sound discretion of the district court. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Accordingly, this court reviews a child custody decision for a clear abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody decisions, this court will affirm the district court's child custody determinations if they are supported by substantial evidence. *Id.* at 149,

161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* We likewise review orders of contempt for an abuse of discretion. *Lewis v. Lewis*, 132 Nev. 453, 456, 373 P.3d 878, 880 (2016).

First, Katrina challenges the district court's modification of custody, asserting that the district court failed to properly consider the best interest of the child, failed to make specific factual findings, and failed to consider certain evidence or otherwise improperly weighed the evidence. She also contends that there was no substantial change in circumstances warranting modification and that the district court improperly modified custody solely to punish her for her alleged contempt.

Modification of a primary physical custody arrangement is appropriate only when the district court finds that there has been a substantial change in circumstances affecting the welfare of the child and that modification would be in the best interest of the child. *Ellis*, 123 Nev. at 150, 161 P.3d at 242. And when determining custody, the district court must make specific findings as to the best interest of the child, pursuant to NRS 125C.0035(4).

Although Katrina is correct that the district court cannot modify custody to punish a parent's non-compliance with court orders, *see Lewis*, 132 Nev. at 459, 373 P.3d at 882, the district court here specifically found that the modification was not intended to punish Katrina, but was granted because Runndley met his burden of demonstrating a substantial change in circumstances and that it was in the child's best interest to modify. Following the evidentiary hearing, the district court found that

since being awarded primary physical custody, Katrina hindered Runndley's ability to maintain a relationship with the child, and that she interfered with Runndley's physical and electronic parenting time. Accordingly, the district court determined that these findings constituted a substantial change in circumstances affecting the child's welfare. The court went on to address each of the best interest factors, making specific findings as to each factor. Based on the foregoing, we cannot conclude that the district court abused its discretion in finding that there was a substantial change in circumstances affecting the welfare of the child and that modification was in the child's best interest.[1] *Ellis*, 123 Nev. at 149-50, 161 P.3d at 241-42. And, as to Katrina's assertion that the district court improperly weighed the testimony and evidence, this court will not reweigh witness credibility or the evidence on appeal. *See id.* at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

Next, Katrina asserts that the district court abused its discretion in finding her in contempt because the alleged conduct occurred three years prior and that the district court failed to consider her argument

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[1]Katrina also contends the district court erred in failing to consider the relocation factors in modifying custody. But because Katrina failed to raise any arguments relating to relocation below, we decline to consider this argument in the first instance on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

that she did not send the child to Runndley because the child did not want to go and she could not force him to go. Contrary to Katrina's assertion, the district court found Katrina in contempt for her conduct that occurred in 2019 and 2020. Similarly, a review of the record demonstrates that the district court considered Katrina's arguments, but found her testimony lacked credibility and, regardless of her reasoning, determined that she willfully violated the court's orders. Thus, we discern no abuse of discretion in the district court's finding of contempt. *See Lewis*, 132 Nev. at 456, 373 P.3d at 880.

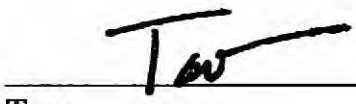
Finally, Katrina contends that the district court erred in failing to relinquish its jurisdiction on its own motion as the child resided in Texas for the three years prior to the subject motion. This court reviews subject matter jurisdiction under the UCCJEA de novo. *Friedman v. Eighth Judicial Dist. Court*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011). Although the district court may decline to exercise jurisdiction if it determines that Nevada is an inconvenient forum, *see* NRS 125A.365(1), this rule is permissive, not mandatory. *Sengbusch v. Fuller*, 103 Nev. 580, 582, 747 P.2d 240, 241 (1987) ("'May' is to be construed as permissive, unless the clear intent of the legislature is to the contrary."); *see also* SCR 2(9) (defining "may" as permissive); DCR 2(6) (same). And pursuant to NRS 125A.315, the district court has exclusive, continuing jurisdiction until certain findings regarding the parties' contacts with the state or residences are made. Here, Katrina does not allege and the record does not indicate that any such findings have been made. Thus, we discern no error in the district court's determination that it had exclusive, continuing jurisdiction

over the matter or its exercise of that jurisdiction. *See Friedman*, 127 Nev. at 847, 264 P.3d at 1165.

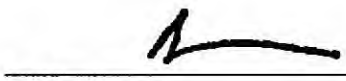
Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Katrina Carter
McFarling Law Group
Eighth District Court Clerk

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[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.