

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW WARREN,
Appellant,
vs.
AIMEE JUNG AHYANG,
Respondent.

No. 82909-COA

FILED

MAR 23 2022

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

ORDER OF AFFIRMANCE

Andrew Warren appeals from a district court order establishing child custody and order denying a motion for a new trial and reconsideration. Eighth Judicial District Court, Clark County; Rhonda Kay Forsberg, Judge.

Andrew Warren and Aimee Jung Ahyang were never married but have one minor child together.¹ In early 2019, Warren filed a complaint for child custody requesting that the district court award him primary physical custody. Ahyang filed an answer and counterclaim requesting that she be awarded primary physical custody because of Warren's emotional and mental status. After pre-trial motions, the court held an evidentiary hearing to resolve the custody issues.

At the evidentiary hearing, the district court heard testimony from both parties, wherein Warren testified that he should be awarded primary physical custody because Ahyang had issues with drug usage. Ahyang testified that she should be given primary physical custody because of Warren's mental instability. After the two-day evidentiary hearing, the district court issued detailed findings of fact and conclusions of law, as

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

required under NRS 125C.0035(4), awarding the parties joint legal custody and awarding primary physical custody to Ahyang. Warren filed a timely motion for a new trial and reconsideration of the findings of fact and conclusions of law. The district court denied that motion.

Warren now appeals, arguing that the district court abused its discretion in denying his motion for a new trial and reconsideration and in awarding Ahyang primary physical custody. We disagree.

Standard of Review

This court reviews a district court's decisions on child custody for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 982 (2022). The district court's decision must be supported by substantial evidence, which "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007)).

The district court did not abuse its discretion in awarding custody

Warren argues that the district court abused its discretion in awarding Ahyang primary physical custody. Warren argues that the district court did not have substantial evidence to support its decision and also improperly focused on his mental health in awarding primary physical custody to Ahyang. Ahyang counters that the best interest factors weighed overwhelmingly in her favor. We cannot conclude that the district court abused its discretion in awarding Ahyang primary physical custody.

The sole consideration when considering child custody is the best interest of the child. *Ellis*, 123 Nev. at 152, 161 P.3d at 244. Determining what constitutes the best interest of the child requires the district court to consider the enumerated factors of NRS 125C.0035(4)(a)-(l). In the present case, the district court held an evidentiary hearing and

heard testimony from both Warren and Ahyang. The court then determined that, under NRS 125C.0035(4)(a)-(l), it was in the child's best interest for Ahyang to have primary physical custody. Warren attempts to persuade this court to reverse the district court's findings because, in his opinion, the district court's decision relied mainly on his mental health in awarding primary physical custody to Ahyang.² The record, however, belies that assertion.

The district court's findings of fact and conclusions of law follow the prescriptions of NRS 125C.0035(4)(a)-(l) and explain which party is favored for each factor. In those detailed findings, the district court did not find any factor that favored Warren. For example, factors (c), (e), (f) and (g) favored Ahyang, and factors (a), (b), (d), (h) - (l) were either neutral or did not apply to the parties. And, assuming *arguendo*, the district court determined that Warren's mental health was not an issue, which is factor (f), additional findings based on the other factors would still support the district court's award to Ahyang. See NRS 125C.0035(4)(a)-(l). Therefore, because Warren has not demonstrated that the absence of the alleged error would have changed the result, we are not persuaded by his argument.

²Warren's brief also argues that the district court should have awarded him primary physical custody, that Ahyang did not present enough evidence to be awarded primary physical custody, and that the district court should have awarded joint physical custody. However, we find these arguments unpersuasive and repetitive. The evidentiary hearing elicited testimonial evidence that the district court considered in its decision to award Ahyang primary physical custody. This is reflected in the district court's findings of fact and conclusions of law detailing each finding as to each factor of NRS 125C.0035(4). Thus, because we need only decide if substantial evidence supports the findings the district court did make, not those it might have made, we only address why the district court did not abuse its discretion awarding Ahyang primary physical custody.

Furthermore, in making those determinations, the district court heard testimony from both parties and, from that testimony, weighed the evidence and made its determinations concerning each factor in NRS 125C.0035(4). Because this court refuses to reweigh credibility determinations or other evidence on appeal, *see Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determination on appeal) and *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal), and substantial evidence supports the conclusions reached, we cannot conclude that the district court abused its discretion.

The district court did not abuse its discretion by denying Warren's request to have Ahyang drug tested

Warren also argues that the district court abused its discretion by not requiring Ahyang to undergo drug testing. We disagree.

Under NRS 125C.0045(a), in an action to determine child custody, a district court may enter an order "for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest." The district court's order found, "that Mother used to have a drug issue, but she has fixed it." That conclusion was based on three negative drug tests Ahyang presented to the court and a review of CPS records. Although Warren may be unhappy with the district court's finding, we conclude that there was enough evidence presented that would allow a reasonable person to accept the district court's conclusion. *See Rivero*, 125 Nev. at 428, 216 P.3d at 226. Therefore, we cannot agree that the district court abused its discretion by not requiring Ahyang to undergo drug testing.

The district court did not abuse its discretion by entering the stipulation and orders

Warren also argues that the district court abused its discretion by entering two stipulations and orders, filed after the evidentiary hearing, regarding vacation and holiday time. Warren argues the district court abused its discretion because it neither asked if he agreed to the stipulations, nor required his signature. We disagree.

In reviewing the record on appeal, both stipulations and orders, dated June 9, 2020, and June 10, 2020, respectively, were signed by Warren's counsel. Eighth District Court Rule 7.50 states:

No agreement or stipulation between the parties or their attorneys will be effective unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same is in writing subscribed by the party against whom the same shall be alleged, or by the party's attorney.

The rule expressly allows a district court to enter a stipulation when it is subscribed by a party's attorney. *See* EDCR 7.50. Additionally, for this court to decide, for the first time on appeal, that Warren did not consent to the stipulation, would be improper because we have not been presented with evidence to support that argument. *See Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) (holding that when a district court does not address an issue, we need not reach it on appeal). Consequently, because of the waiver doctrine we decline to further consider Warren's argument that he did not consent to the stipulation and orders, and we apply EDCR 7.50 and enforce the district court order based upon Warren's attorney's signature on the stipulation. Therefore, the district court did not abuse its discretion.

Warren did not demonstrate a basis for a new trial or reconsideration

Finally, Warren argues that he should have been given a new trial or granted his motion for reconsideration because the district court's decision to exclude his medical records was an irregularity in the proceedings resulting in an abuse of discretion. Additionally, Warren argues that a new trial or reconsideration was warranted because he was surprised by his inability to admit his medical records into evidence and that ordinary prudence could not have guarded against this. We disagree.

"This court reviews a district court's decision to grant or deny a motion for a new trial for an abuse of discretion." *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). A party may move the district court for a new trial, under NRCPP 59(a)(1), when their substantial rights have been affected by:

- (A) irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;
- (B) misconduct of the jury or prevailing party;
- (C) accident or surprise that ordinary prudence could not have guarded against;
- (D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;
- (E) manifest disregard by the jury of the instructions of the court;
- (F) excessive damages appearing to have been given under the influence of passion or prejudice; or
- (G) error in law occurring at the trial and objected to by the party making the motion.

Considering these enumerated avenues for attaining a new trial, we fail to discern any palpable abuse of discretion by the district court in denying Warren his requested relief.

The record here demonstrates that Warren never disclosed his medical records to Ahyang before the first day of the evidentiary hearing. So, when Warren attempted to introduce the record into evidence, Ahyang naturally objected. The district court, however, did not exclude the medical records all together. Instead, it reasoned that the exclusion applied only to day one of the hearing—thereby allowing Ahyang time to review the records. The district court then instructed Warren that he could renew his request for the records admission on day two of the hearing. However, Warren failed to do so. Because of this failure, we cannot now attribute Warren's error to the district court.

Therefore, because Warren failed to produce the medical records before day one of the evidentiary hearing, and then failed to request the records introduction on day two of the hearing, we conclude the district court did not abuse its discretion in denying Warren's motion for a new trial. Thus, we conclude that the district court did not err.

Therefore, we ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³The court has considered all other arguments on appeal and found them to be unpersuasive.

cc: Hon. Rhonda Kay Forsberg, District Judge
Israel Kunin, Settlement Judge
McFarling Law Group
Pecos Law Group
Walsh & Friedman, Ltd.
Eighth District Court Clerk