

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BURKE HALL,  
Appellant,  
vs.  
VANESSA MARIE LOFTIS,  
Respondent.

No. 81461-COA

FILED

JUN 03 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Burke Hall appeals from a district court order establishing custody. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

Respondent Vanessa Marie Loftis and Hall were married and had three minor children; however, the parties' youngest child died in a tragic accident. In connection with that accident, Loftis was convicted of a felony count of child abuse, neglect, or endangerment and placed on probation.<sup>1</sup>

Shortly thereafter, Loftis commenced the underlying proceeding, seeking separate maintenance and joint legal and physical custody of the parties' remaining children. Hall, in turn, filed an answer and counterclaim for divorce and sole legal and physical custody of the children. Early in the case, the district court entered a decree of divorce, but deferred ruling on the parties' highly contentious custodial dispute

---

<sup>1</sup>After Loftis was discharged from probation, her conviction was purportedly reduced to a gross misdemeanor; however, the record before this court does not include the amended judgment of conviction from her criminal case.

pending further development of the underlying issues. Much of that dispute centered around the accident referenced above, which Hall maintained supported his request for sole legal and physical custody. However, many other issues arose in the underlying proceeding, including Hall's allegations that Loftis committed other acts of child abuse as well as domestic violence and that she married a habitual felon following the parties' divorce; Loftis's assertions that Hall suffered from mental health issues and bore considerable animosity toward her, which prevented him from effectively co-parenting; and both parties' accusations that the other party withheld the children on various occasions.

Following extensive proceedings, including a multi-day evidentiary hearing, the district court entered an order awarding Loftis sole legal custody and primary physical custody of the children and giving her discretion to allow Hall supervised parenting time, reasoning that this arrangement was in the children's best interest. To support that decision, the district court made extensive findings with respect to the best interest factors, which largely favored Loftis. For example, the district court found that Loftis committed an act of child abuse or neglect in connection with the death of the parties' youngest child, but subsequently took every step possible to redeem herself and become a proper parent. By contrast, the district court found that Hall bore extreme animosity toward Loftis that was detrimental to the children, refused to cooperate with her on anything, interfered with the children's ability to have a relationship with their half-siblings, exhibited potential mental health issues yet refused to obtain a psychological examination despite the court's repeated requests for him to do so, and committed an act of abduction without just cause. This appeal followed.

On appeal, Hall first presents jurisdictional challenges to the court's entry of a divorce decree, which we review de novo.<sup>2</sup> *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009) (providing that jurisdiction is a question of law subject to de novo review). In particular, Hall maintains that the district court lacked subject matter jurisdiction to grant a divorce because Loftis only asserted a claim for separate maintenance in her complaint. See NRS 125.190-.280 (authorizing the district court to address issues such as support, custody, and the distribution of property in separate maintenance actions without granting a divorce). However, Hall overlooks that he presented a counterclaim for divorce, and the district court is empowered to grant such relief when grounds for the same exist, see NRS 125.120 ("In any action for divorce when it appears to the court that grounds for divorce exist, the court in its discretion may grant a divorce to either party."), which he does not dispute was the case here. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Insofar as Hall also contends that a separate divorce action that he previously filed deprived the district court in the present case of jurisdiction to hear his counterclaim for divorce, his

---

<sup>2</sup>The divorce decree was an interlocutory order because it did not resolve all of the issues in this case. See *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment as one that resolves all of the issues presented in a case and leaves nothing for the court's future consideration except post-judgment issues). However, this court may review the divorce decree in the context of Hall's appeal from the order establishing custody, which is the final judgment in this case. See *id.*; see also *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (explaining that a party may challenge an interlocutory order in the context of an appeal from the final judgment).

contention likewise fails. Indeed, Hall concedes that he stipulated to the dismissal of the separate action and does not suggest that the case was later reopened. Moreover, there is no Nevada legal authority that would support the existence of a jurisdictional impediment to the district court considering Hall's underlying counterclaim for divorce under these circumstances. Thus, given the foregoing, Hall has failed to demonstrate that the district court lacked jurisdiction to enter the divorce decree.

Hall next challenges the order awarding Loftis sole legal custody and primary physical custody of the parties' children. This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court's determinations if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment. *Id.* at 149, 161 P.3d at 242. However, we review questions of law, including those concerning jurisdiction, de novo. *Ogawa*, 125 Nev. at 667, 221 P.3d at 704.

In challenging the district court's custody determination, Hall presents three primary arguments relating to the district court's findings on the best interest factors. See NRS 125C.0035(4) (setting forth the factors that the district court must consider to evaluate the child's best interest when making a custody determination). First, Hall challenges the district court's neutral finding with respect to NRS 125C.0035(4)(j), which requires the district court to consider "[a]ny history of parental abuse or neglect of the child" in evaluating the child's best interest, arguing that the district court simply disregarded Loftis's role in the incident that resulted in the death of the parties' youngest child. However, this contention is belied by the challenged order. Indeed, the district court determined that Loftis

committed an act of child abuse or neglect based on the incident. And although the district court treated this factor as neutral, it did so because it also found that Loftis had taken every step to redeem herself and become a proper parent to the parties' remaining children, which is supported by substantial evidence in the record, including Loftis's testimony regarding her parenting and testimony from the children's guardian ad litem indicating that she complied with essentially all of his recommendations concerning actions that she should take in connection with this case. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. Therefore, relief is unwarranted in this respect.

Second, Hall argues that, based on this same incident, the district court should have applied the rebuttable presumption against awarding the perpetrator of domestic violence sole or joint physical custody, which is set forth in NRS 125C.0035(5)-(6) and NRS 125C.230, but we are not persuaded by his argument. To the contrary, the undisputed facts underlying the incident are that the parties' youngest child drowned in a swimming pool while Loftis failed to provide adequate supervision, which does not constitute domestic violence for purposes of the domestic violence presumption. *See* NRS 125C.0035(10) (defining "[d]omestic violence" as the commission of one of the acts set forth in NRS 33.018 (providing that domestic violence occurs when a person commits one of the following acts against certain persons: battery, assault, coercion, sexual assault, harassment, false imprisonment, and pandering)); NRS 125C.230(3) (same). This means that the rebuttable presumption was not triggered under the circumstances presented here, *see* NRS 125C.0035(5) (requiring the district court to determine by clear and convincing evidence that a parent committed an act of domestic violence before applying the rebuttable

presumption); NRS 125C.230(1) (same), and that the district court did not abuse its discretion by making neutral findings under NRS 125C.0035(4)(k) (domestic violence). Thus, Hall's argument in this regard does not provide a basis for relief.

Third, Hall asserts that the district court lacked subject matter jurisdiction to make any findings under NRS 125C.0035(4)(l) with respect to child abduction because it is a criminal matter.<sup>3</sup> This argument fails, however, because a family court, such as the district court in the present case, has subject matter jurisdiction over matters brought pursuant to NRS Chapter 125C (Custody and Visitation), *see* NRS 3.223(1)(a) (providing that the family court has original, exclusive jurisdiction in any proceeding brought under NRS Chapter 125C), and a provision in that chapter, NRS 125C.0035(4)(l), specifically requires the court to evaluate the best interest of the child when making a custody determination by considering, among other things, "[w]hether either parent . . . has committed any act of [child] abduction." Therefore, the district court did not abuse its discretion by finding that NRS 125C.0035(4)(l) favored Loftis.

Aside from the foregoing, Hall presents several additional challenges to the district court's custody determination, which are based on the court's decision to strike certain materials that he submitted below, as well as various issues that he raised that he believes warranted a different result in this case. Initially, we recognize that Hall submitted materials

---

<sup>3</sup>Hall also attempts to cast doubt on the abduction finding under NRS 125C.0035(4)(l) in the district court's order establishing custody by asserting that the court admitted that it erred in connection with a pick-up order and warrant that it previously issued to facilitate the return of the children to Loftis. However, we conclude that Hall has failed to demonstrate a basis for relief on this point.

throughout the underlying proceeding, both as separate filings and as exhibits attached to his motion practice, which the district court purported to strike from the record on grounds that it could not consider them because they had not been admitted and, therefore, were not evidence. Insofar as the district court's position was that it could not consider Hall's exhibits for purposes of making a custody determination unless they were admitted, the court was correct, as exhibits are not substantive evidence until admitted, although they may be deemed offers of proof. See EDCR 5.205(g) (stating the same); see also *Ellis*, 123 Nev. at 149, 161 P.3d at 242 (providing that the district court's custody determination must be "supported by substantial evidence").

However, to strike exhibits on this basis is an abuse of discretion since EDCR 5.205(g) contemplates the filing of exhibits that have not yet been admitted into evidence. See *Citizens for Honest & Responsible Gov't v. Sec'y of State*, 116 Nev. 939, 952-53, 11 P.3d 121, 130 (2000) (reviewing a district court's decision to exclude exhibits for an abuse of discretion). Nevertheless, any abuse of discretion by the district court in this respect was harmless, as the district court eventually conducted an evidentiary hearing where both parties had the opportunity to seek to have any materials or testimony that they believed necessary to the resolution of their custodial dispute admitted for the district court to consider in resolving that dispute.<sup>4</sup> Cf. NRCP 61 ("At every stage of the proceeding, the

---

<sup>4</sup>We recognize that the district court did not take testimony or evidence on the final day of the evidentiary hearing; however, Hall does not challenge the district court's decision in that respect, see *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3, nor does he offer any argument or explanation as to what he would have presented if the district court had not proceeded directly to ruling on the parties' custodial dispute on the final day

court must disregard all errors and defects that do not affect any party's substantial rights.”).

Moreover, the record reflects that the district court considered the evidence and testimony presented at the evidentiary hearing and weighed the same in evaluating the best interest factors and making its custody determination. Because this court does not reweigh the evidence or the district court's credibility determinations, *see Ellis*, 123 Nev. 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), substantial evidence supports the conclusions reached,<sup>5</sup> and none of Hall's arguments concerning NRS

---


of the hearing. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider issues unsupported by cogent argument). Moreover, Hall presents no specific argument with respect to any of the district court's evidentiary determinations, and as a result, he waived any challenge thereto. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.


<sup>5</sup>The district court's best interest analysis included a finding that there was no admissible evidence of domestic violence even though Loftis testified that there was an incident in which both parties were arrested for domestic violence. But insofar as that finding relates to Loftis and the district court's determination that the best interest factors weighed in her favor, it was supported by her subsequent testimony that she was never charged in connection with the incident, which means that she was only arrested on suspicion of domestic violence. Moreover, because the testimony and admitted evidence in this case did not include any details concerning the incident, the district court lacked the clear and convincing evidence needed to make a domestic violence determination that would trigger the domestic violence presumption. *See* NRS 125C.0035(5)-(6) (requiring the district court to find by clear and convincing evidence that a party committed an act of domestic violence before applying the rebuttable presumption). And while Hall briefly asserts that the State of Nevada Division of Child and Family Services confirmed that domestic violence



125C.0035(4) are persuasive, we cannot conclude that the district court abused its discretion by awarding Loftis sole legal and primary physical custody.<sup>6</sup> See *Ellis*, 123 Nev. at 149, 161 P.3d at 241. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

---

occurred in a confidential report, the report was not admitted at the evidentiary hearing, and Hall offers no argument or explanation as to how the district court could properly consider it in making its custody determination. See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

<sup>6</sup>Nothing in this order should be construed as limiting Hall's ability to pursue a motion for parenting time or the district court's ability to order a parenting time schedule, supervised or otherwise. See NRS 125C.0045(1) (stating that, at any time, the district court may enter orders for the "custody, care, education, maintenance and support of the minor child as appears in his or her best interest" and modify or vacate such orders if it is in the best interest of the child). Likewise, Hall is not barred from taking such action insofar as the order establishing custody purports to prohibit him from seeking to revisit the parties' parenting time arrangement until he obtains a comprehensive psychological evaluation. See *id.*; see also *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1253, 148 P.3d 694, 699 (2006) (providing that a district court judge "has a duty to sit and preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary" (internal quotation marks omitted)).

<sup>7</sup>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 our disposition of this appeal.

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Family Court Division, Dept. P  
Burke Hall  
Roberts Stoffel Family Law Group  
Eighth District Court Clerk