IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTINA SOBCZYK,
Appellant,
vs.
AARON OSBORNE,
Respondent.

No. 83565-COA

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

Christina Sobczyk appeals from a district court order concerning custody and related issues.[1] Eighth Judicial District Court, Family Court Division, Clark County; Cynthia Dianne Steel, Senior Judge.[2]

Christina Sobczyk and Aaron Osborne have one minor child, C.O., born January 15, 2015.[3] In 2017, the parties entered a stipulated custody agreement, which was entered as a final order by a New York court. Pursuant to the terms of the order, Christina was awarded "sole custody" of C.O. and was permitted to relocate from New York to Nevada with C.O., while Aaron was granted parenting time on a gradually increasing schedule. Additionally, the court ordered that both Christina and Aaron

[1]We note that Christina filed an Amended Notice of Appeal regarding child support and arrearages, but in her briefing, she indicated that she is no longer appealing the court's decision on these issues. Therefore, we do not consider them.

[2]Although District Court Judge Soonhee Bailey signed the "Findings of Fact, Conclusions of Law, and Order" at issue in this appeal, Senior Judge Steel presided over the pretrial proceedings and trial giving rise to that order.

[3]We recount the facts only as necessary for our disposition.

would have independent access to healthcare and education records and providers for C.O., and that Christina was to provide Aaron with updated contact information, in writing, for any of C.O.'s providers, including those involved in her health, education, or welfare. Christina relocated to Nevada with C.O. in September 2017.

The following year, Aaron had contact with C.O. via Skype and two authorized visits with C.O. at his home in New York. The first visit occurred in June 2018 and appears to have been uneventful. The second visit took place in August 2018. During this visit, Child Protective Services (CPS) arrived at Aaron's residence to check on C.O.'s welfare based on allegations from Christina. CPS determined that the allegations were unfounded and left C.O. in Aaron's care.[4] Notably, the district court reviewed video evidence and found that C.O. did not appear "stressed, traumatized, or frightened" during her August visit.

In September 2018, following the August visit and after suspecting inappropriate conduct between Aaron and C.O., Christina domesticated the 2017 New York Custody Order in the Eighth Judicial District Court, and filed a motion to cease all contact between C.O. and Aaron. In October 2018, Aaron moved to Nevada and filed an opposition and countermotion asserting that the parties shared joint legal custody, and seeking to confirm the same, and seeking an award of joint physical custody. After a hearing on these motions, the district court temporarily ordered that Aaron was not to have any contact with C.O. but indicated that Aaron could

[4]We note that CPS in both New York and Nevada investigated various allegations made against Aaron and closed their respective cases as unsubstantiated.

obtain information about C.O.'s wellbeing from her therapist, referred the parties for a child custody evaluation, and set the matter for trial.

This case proceeded to trial in June 2019, and the district court heard 13 days of testimony between June 2019 and February 2020. Before the 14th day of the hearing, Aaron's original attorney withdrew, and the COVID-19 pandemic began. In August 2020, the district court continued the trial until April 7, 2021, concluding that this was the first available date after the restrictions limiting access to the courthouse were lifted.

The presiding judge then retired, and, in January 2021, Aaron filed a motion for a new trial under NRCP 63.[5] The motion was heard by a senior judge, who granted Aaron's motion, noting that she was uncomfortable with watching videos of the prior trial in order to reach a decision. In advance of the new trial, Aaron filed a motion in limine, arguing that the district court should exclude the admission of Aaron's criminal history and C.O.'s hearsay statements made to a therapist. While the record contains neither a transcript nor an order from the motion in limine hearing, neither party disputes that the district court excluded testimony and evidence pertaining to Aaron's prior criminal history. Specifically, the district court precluded evidence of any prior bad acts of the parties before their involvement with each other starting in 2013 and any evidence that predated the 2017 New York Custody Order unless it concerned the best interest of C.O. The district court also excluded C.O.'s hearsay statements.

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[5]We note that the parties do not contest that the hearing in this matter constituted a trial for purposes of NRCP 63 and we refer to it as such despite the New York Custody Order being the controlling custody order.

At the conclusion of the trial, the district court found that Christina severely interfered with Aaron's relationship with C.O. and ordered, as relevant here, that Aaron and Christina would have joint legal custody of C.O. Additionally, the district court ordered that Christina would have primary physical custody, subject to Aaron's parenting time occurring on a gradually-increasing schedule, when appropriate, and that the parties would "utilize a reunification specialist to determine Aaron's [parenting time] in a safe and nurturing environment." This appeal followed.

On appeal, Christina argues that the district court erred (1) when it granted Aaron's motion for a new trial under NRCP 63, (2) when it excluded certain evidence from the trial, (3) when it modified legal custody, (4) when it modified physical custody, and (5) in making its custody order and parenting time schedule. 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 such 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.*

First, Christina argues that the district court erred when it granted Aaron's motion under NRCP 63, asserting that Aaron used the rule to improperly obtain a new trial, with new evidentiary rulings, and that the district court's failure to review the prior witnesses' testimony and evidence admitted in the first trial denied Christina due process. Aaron responds that the unique facts of this case supported a new trial under NRCP 63 and that the district court was within its discretion to grant his motion. The plain language of NRCP 63 provides a successor judge with the option of either proceeding with the trial upon certifying familiarity with the record

or granting a new trial if "the successor judge did not preside at the trial or for any other reason." Here, the senior judge, who had not presided over the first trial, opted not to certify familiarity with the record and continue with the trial. Instead, the senior judge exercised her discretion to grant a new trial, specifically indicating that she was uncomfortable with only reviewing the record from the prior proceedings. This reasoning comports with the text of NRCP 63, and we cannot conclude that the district court abused its discretion in granting Aaron's motion under that rule. *See Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996) (providing that a trial court's decision to grant or deny a new trial is reviewed for an abuse of discretion).

Second, Christina argues that the district court abused its discretion when it granted Aaron's motion in limine and excluded evidence of Aaron's criminal history and C.O.'s hearsay statements. She also contends the district court abused its discretion in excluding the report she obtained from C.O.'s child interview. But Christina failed to provide this court with the necessary transcripts of the motion in limine hearing. Accordingly, we presume that the missing documents support the district court's evidentiary decisions, and we necessarily affirm the district court's rulings. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (holding that appellant is responsible for making an adequate record on appeal and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision").

As to Christina's assertion that the district court abused its discretion in excluding the child interview report she obtained from Nicholas Ponzo, we note that this report is not included in the record. To

the extent Christina argues that the district court erred in excluding this report because it was admitted during the first, uncompleted trial without objection, we decline to address this argument because Christina failed to offer any cogent argument or cite any authority to support her position that evidence admitted at a first trial must also be admitted at any subsequent trial. NRAP 28(a)(1)(A); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims that are not supported by cogent argument or relevant authority). Additionally, insofar as Christina argues that the district court erred in excluding this report because the district court ordered the child interview, this argument is belied by the record. Thus, we discern no abuse of discretion in the district court's evidentiary rulings. *See M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008) (explaining that the appellate courts review the admission or exclusion of evidence for an abuse of discretion).

Third, Christina argues that the district court erred in modifying legal custody based on her interference with Aaron and C.O.'s relationship because any interference she caused occurred only after litigation began, such that she could not be said to have frustrated Aaron's relationship with the child pursuant to NRS 125C.002(1)(b), and that the district court did not make findings that she and Aaron could cooperate, communicate, and compromise. Aaron responds that the district court made numerous findings that Aaron demonstrated an intent to establish a meaningful relationship with C.O., but that Christina had gone to great lengths to prevent that relationship, such that the legal custody award was proper.

"Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing." *Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022). "Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents." *Id.* There is a statutory presumption that joint legal custody would be in the best interest of the child when a parent "has demonstrated, or has attempted to demonstrate but has had his or her efforts frustrated by the other parent, an intent to establish a meaningful relationship with the minor child." NRS 125C.002(1)(b). Nevada's public policy is to ensure children have frequent associations and a continuing relationship with both parents and to encourage both parents to "share the rights and responsibilities of child rearing." NRS 125C.001.

When modifying custody, the district court must find "that (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Romano*, 138 Nev., Adv. Op. 1, 501 P.3d at 982. Here, the district court specifically found that there had been a substantial change in circumstances and that it was in the child's best interest to modify the parties' legal custody award based on Christina's interference with Aaron and C.O.'s relationship and her failure to comply with the 2017 New York Custody Order. The court made extensive findings supporting its conclusion that Christina interfered with Aaron's efforts to have a meaningful relationship with C.O. and that Christina did not comply with the order, as she had not historically kept Aaron informed of C.O.'s health and education status and providers. For example, despite the 2017 New

York Custody Order requiring that Christina provide Aaron with updated contact information, in writing, for all of C.O.'s providers, the district court found that Christina did not give Aaron any information about C.O.'s daycare until after C.O. was set to attend daycare and Aaron asked for the information. The district court also found that Christina made an appointment for C.O. to see a therapist and took C.O. to this appointment, without notifying Aaron. Similarly, the 2017 New York Custody Order granted both Christina and Aaron independent access to all of C.O.'s records. And the district court found that Aaron asked Christina to contact C.O.'s daycare on multiple occasions to authorize them to release C.O.'s records to him, but no evidence was presented that Christina did so. Indeed, the district court heard evidence that C.O.'s daycare refused to release information regarding C.O. to Aaron.

Based on these findings, we cannot conclude that the district court abused its discretion in awarding the parties joint legal custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. We recognize that "[j]oint legal custody requires that the parents be able to cooperate, communicate, and compromise to act in the best interest of the child," *see Rivero,* 125 Nev. at 420, 216 P.3d at 221, and here the district court did not make specific findings that the parties could cooperate, communicate, and compromise. However, because the district court's general findings as to the parties' ability to cooperate and communicate weigh against Christina, we cannot say the district court abused its discretion in concluding that Christina should not have sole legal custody and thus awarding the parties joint legal custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Further, as to Christina's argument that the district court improperly based its legal custody determination on Christina's conduct

during litigation, rather than conduct prior to the litigation being initiated, the district court found that Christina had hindered Aaron's relationship with C.O. prior to Christina filing this litigation. And to the extent the district court noted additional evidence of Christina hindering Aaron's relationship with C.O. after the filing of this litigation, Christina failed to provide any cogent argument or authority to support her assertion that the district court could not consider such evidence. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Fourth, Christina argues that the district court abused its discretion in modifying physical custody because the district court inappropriately applied legal conclusions regarding termination of parental rights, the change of circumstances that the district court relied on occurred during the pendency of the litigation and not before the litigation was initiated,[6] and the district court's best interest findings were insufficient. Aaron responds that the district court noted the termination of parental rights standard because Christina was essentially requesting that the district court terminate his parental rights, that *Ellis* does not require that the basis for custody modification be based on events that occurred before the filing of litigation, and that the district court made detailed findings as to child custody based upon the testimony and evidence admitted a trial.

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[6]As noted above, the district court found that there had been a substantial change in circumstances affecting C.O. and that Christina had hindered Aaron's relationship with C.O. prior to Christina filing this litigation. And to the extent the district court noted evidence of Christina hindering Aaron's relationship with C.O. after the filing of this litigation, again Christina failed to offer any cogent argument or provide any authority to support her assertion that the district court could not consider such evidence. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

While the district court stated the standard to be applied in termination of parental rights cases, our review of the record does not indicate that the district court improperly applied that standard to making its custody determination here. Rather, the district court only noted the standard in termination of parental rights cases after finding that it appeared Christina was essentially seeking a termination of parental rights, despite not having properly filed such a request, because her filings and testimony indicated that she did not want Aaron to have any contact with C.O. Additionally, we note that the district court made detailed best interest findings that are supported by evidence in the record and its best interest findings were either inapplicable, neutral, or implicitly favored Aaron. Therefore, we cannot say the district court abused its discretion in making its best interest findings and its physical custody determination. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Fifth, Christina argues that the district court abused its discretion in making its custodial order and parenting time schedule because the district court improperly delegated its authority to make custodial orders to the reunification specialist and because its order is vague and does not define the parties' parenting time with sufficient particularity. Aaron responds that the district court did not delegate its authority to the reunification specialist because the district court did not give the reunification specialist the authority to change the district court's custodial order. He goes on to assert that NRS 125C.010 does not require that a district court include specific times in a parenting time order.

District courts have "the ultimate decision-making power regarding custody determinations, and that power cannot be delegated." *Bautista v. Picone*, 134 Nev. 334, 337, 419 P.3d 157, 159 (2018). Although

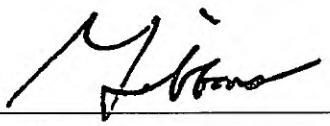
the district court may delegate some of its authority "by appointing a third party to perform quasi-judicial duties," *see Harrison v. Harrison*, 132 Nev. 564, 572, 376 P.3d 173, 178 (2016), the "decision-making authority [that is delegated] must be limited to nonsubstantive issues . . . and it cannot extend to modifying the underlying custody arrangement," including significant changes to the timeshare for either parent. *Bautista*, 134 Nev. at 337, 419 P.3d at 159-60. As noted above, the district court here ordered Aaron's parenting time to be determined completely by the reunification specialist. Thus, because the district court did not limit its delegation to nonsubstantive issues, it improperly delegated its decision-making authority, and we must reverse and remand this portion of the district court's order. *See id.*

As to Christina's argument that the district court abused its discretion in its physical custody order and parenting time schedule by failing to specify the exact timeshare Aaron would have with C.O., we recognize that the district court's order does not include a specific custody schedule because the district court improperly delegated that decision to the reunification specialist. But, in light of our conclusion above that reversal is required due to this improper delegation, the district court will necessarily have to readdress the parties' custody schedule upon remand. Nevertheless, we take this opportunity to point out that NRS 125C.010(1) requires custody orders to define the parties' parenting time "with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved," and requires such orders to "include all specific times and other terms." Thus, on remand, we remind the district court that its final custody order must define the parties' custodial rights with sufficient particularity, including the

specific times they will exercise their parenting time, to ensure that the child's best interest is realized and that the parties' rights can be enforced moving forward. *See* NRS 125C.010(1); *Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[7]



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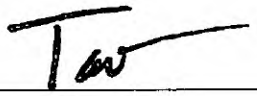

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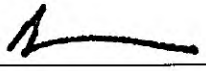

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cc: Hon. Cynthia Dianne Steele, Senior Judge
Hon. Soonhee Bailey, District Judge, Family Court Division
McFarling Law Group
Pecos Law Group
Eighth District Court Clerk

[7]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.