IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASHAWN PREVOST,
Appellant,
vs.
KEILAH GRONVOLD,
Respondent.

No. 82916-COA

FILED

OCT 20 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jashawn Prevost appeals from an initial child custody decree. Eighth Judicial District Court, Family Court Division, Clark County; Heidi Almase, Judge.

Prevost met Keilah Gronvold in 2013, and they had a child together in 2014.[1] The parties moved to Las Vegas in 2015. Both stayed in Las Vegas until they separated in 2020. Prevost remained in Las Vegas with the child while Gronvold moved to Mississippi. The next month, Prevost filed a pro se complaint for child custody. Gronvold answered and filed a counterclaim, also acting pro se.

Prevost and Gronvold worked through pretrial motions, and Gronvold asked the court for primary physical custody of the child. Prevost had temporary physical custody. The parties participated in family mediation, but they were unable to reach an agreement. The district court set the matter for trial in April 2021.

Both parties appeared virtually for trial, which spanned a single afternoon. Prevost called the only non-party witness, Colleen Poole, the child's teacher, who testified that the child had struggled in school until

[1]We recount the facts only as necessary to our disposition.

Gronvold left. Poole attributed much of the child's recent success to Prevost's added involvement since Gronvold's departure. Prevost testified next. He asserted that he was the best parenting option for the child, but he also admitted that he and Gronvold had "a volatile incident or two." He protested any arrangement where his child went to Mississippi and accused Gronvold's current partner of being both a pedophile and sex trafficker. According to Prevost's own testimony, he based these accusations on Gronvold's word, noting the allegations were "per her." Prevost did not want his child around Gronvold's partner and her support system of "foster care people." Prevost did not attempt to admit any evidence during his testimony.

Gronvold testified next. While on the stand, she told the district court that she wanted joint physical custody and the ability to see her child in Mississippi. She testified that she wanted this lesser form of custody because, based on her conversation with self-help attorneys, she assumed primary physical custody was unlikely since she lived in Mississippi. Gronvold asserted she chose to relocate to Mississippi because she had a support system in that state. Regarding her current partner, Gronvold testified that she never told Prevost the things he used as support for his allegations. Gronvold also testified that the parties' relationship had been marked with consistent domestic violence. She described the incidents as numerous physical assaults and beatings that resulted in her needing staples in her head which was split open, a black eye, a shot to the buttocks with a pellet gun, and threats to kill her. Like Prevost, Gronvold never formally moved to admit any evidence, including photographs showing her with a bloodied face and a cut above her eye.

After hearing all the testimony, but before closing arguments, the district court asked the parties if they stipulated to its review of each party's evidence because neither had moved to admit anything during the evidence phase of trial. Initially, Prevost objected, asserting he never had the opportunity to review Gronvold's evidence because she had only sent the documents through OurFamilyWizard. Prevost admitted that he saw her message with the documents come in, but he asserted he was unable to open them through that application. Prevost maintained that Gronvold should have sent them in another format, such as hard copy. The district court noted his objection but asked Prevost again if he assented to her review of the evidence in this case. Prevost responded, "Yes, ma'am."

Next, the district court invited closing arguments. Still acting pro se, the parties used this opportunity to offer more general testimony. The district court then advised the parties that it would take the testimony under advisement and consider the exhibits offered by both parties after their cases-in-chief. A few days later, the court issued its findings of fact and conclusions of law and custody decree. It found Gronvold credible, and it noted that pictures she offered into evidence showed her face bruised and bloodied. Relying on her testimony and these photographs, and other evidence,[2] the court found Gronvold had proved one or more acts of domestic violence by clear and convincing evidence and they resulted in severe

[2]The trial exhibits contained in Prevost's supplemental appendix include primarily text messages between Gronvold and Prevost as well as the photos mentioned above. However, the district court mentioned Gronvold's protective order against Prevost as well. Without more, we cannot say whether Gronvold just testified to the protective order or submitted it as evidence, but we acknowledge the role it played—along with exhibits that are in our record—in the district court's decision.

injuries. Consistent with NRS 125C.0035(5), the court then applied the rebuttable presumption against Prevost receiving joint or primary physical custody and concluded Prevost did not rebut that presumption. As a result, the court awarded Gronvold primary physical custody.

Looking ahead to the child's move to Mississippi as required by its initial custody determination, the district court performed a relocation analysis under NRS 125C.007. Using the statutory factors, the court concluded that the move to Mississippi was in the child's best interest and put procedures in place for the child's move to Mississippi.

Prevost appeals only the district court's initial custody decree and does not challenge the court's relocation order or findings.

The district court neither abused its discretion in admitting, nor "strongarmed" Prevost into stipulating to, Gronvold's evidence

On appeal, Prevost first argues that the district court abused its discretion when it "strongarmed" him into consenting to the court's review of all the evidence. Prevost asserts that the court made the review of his evidence contingent upon his assent to the court's review of Gronvold's evidence, thereby strongarming him into the stipulation. Gronvold disagrees. She asserts the district court simply asked the parties for their stipulation, and in her view, there was no ultimatum. We agree with Gronvold.

We review a district court's decision to admit or exclude evidence for an abuse of discretion. *Abid v. Abid*, 133 Nev. 770, 772, 406 P.3d 476, 478 (2017). "An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018) (child custody context). In custody cases, the child's welfare is the court's paramount concern, and Nevada law favors an examination on the merits

of the evidence rather than strict adherence to procedural rules. *See Blanco v. Blanco*, 129 Nev. 723, 726, 311 P.3d 1170, 1172 (2013) (holding "case-concluding" discovery sanctions should not prevent consideration of the child's best interest). Moreover, "given the statutory and constitutional directives that govern child custody and support determinations, resolution of these matters on a default basis without addressing the child's best interest and other relevant considerations is improper." *Id.* at 731, 311 P.3d at 1175.

Here, the district court was correct to review all the evidence before making a child custody determination despite Prevost's challenges to Gronvold's evidence. Our review of the transcript does not support Prevost's argument that the district court "strongarmed" him into the evidence stipulation. The court heard his objection, acknowledged it, and asked him again if he stipulated to the court's review of all the evidence. The district court did not give Prevost an ultimatum that Prevost's evidence would be ignored if he did not stipulate to the court's review of Gronvold's evidence. To the contrary, the transcript shows Prevost assenting to the court's review after the court asked him a second time.

Ultimately, even crediting Prevost's objection, Gronvold's use of OurFamilyWizard for her disclosures is a minor discovery blunder, and while the information could have been received sooner or in a different format, reversal is not required in that Prevost has not demonstrated the alleged error affected his substantial rights. *See* NRS 47.040(1). This is especially true in this case because Gronvold's testimony alone, which was found to be credible, established domestic violence. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("To establish that an error is prejudicial, the movant must show that the error affects the party's

substantial rights so that, but for the alleged error, a different result might reasonably have been reached.").

Accordingly, we discern no abuse of discretion in the district court's decision in this child custody case because it reached the merits of the case based upon the totality of the evidence and the child's best interest.

The district court did not abuse its discretion when it awarded Gronvold primary custody despite Prevost's allegations against Gronvold's significant other

Prevost's next challenge questions the district court's child custody determination. He argues that the court failed to credit his uncontested allegations that Gronvold's current partner was a sex trafficker and pedophile. He asserts Gronvold's failure to contest his allegations amount to "an admission by silence," and that the court's order ignored uncontroverted evidence that should have compelled a different outcome. Gronvold disagrees, arguing that she denied telling Prevost the allegations he now makes regarding her current partner. After reviewing the record on appeal, we agree with Gronvold.

"[W]e will not disturb the district court's custody determination absent a clear abuse of discretion." *Rico v. Rodriguez*, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005) (internal quotations omitted). As noted above, an abuse of discretion occurs "when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista*, 134 Nev. at 336, 419 P.3d at 159.

Here, Gronvold disputed Prevost's allegations against her partner, even if she did not contest the allegations in explicit terms. She testified that she never told Prevost that her partner was a sex trafficker or pedophile. This is crucial because Prevost's allegations were, according to his own testimony, based solely on information he received from Gronvold.

Accordingly, substantial evidence existed, in the form of Gronvold's testimony, to support a conclusion that Prevost's allegations were not credible.

On appeal, Prevost parses out Gronvold's testimony and contends that Gronvold disputed that she previously told Prevost about the sex trafficking allegations but asserts that she never denied the underlying truth that the crimes actually occurred. Consequently, Prevost argues that the district court lacked any basis to conclude that the sex trafficking never occurred. However, the only evidence supporting that any sex trafficking ever occurred was Gronvold's alleged statement, so once Gronvold denied making the statement, she effectively denied the overall allegations. It is then within the district court's discretion to evaluate the credibility of Prevost and Gronvold with regard to Prevost's allegations. The district court was able to evaluate Gronvold's demeanor, tone of voice, and body language while she testified and we cannot, and therefore, we cannot conclude that the district court abused its discretion in finding Prevost's allegations about what Gronvold told him not to be credible. Considering all the evidence, we cannot say the district court abused its discretion in concluding that Gronvold was a more credible witness regarding Prevost's allegations concerning her current partner.

Moreover, the district court's custody determination is supported by statute. When reaching a custody determination, a district court "shall consider and set forth its specific findings concerning" several factors. NRS 125C.0035(4). Among those factors, as we have previously discussed, the district court must consider whether either parent committed domestic violence against the other parent or the child. NRS 125C.0035(4)(k). If a party shows domestic violence by clear and convincing

evidence, custody with the perpetrator parent is presumed *not* to be in the child's best interest. NRS 125C.0035(5).

The district court considered the necessary statutory factors, including domestic violence. Relying on Gronvold's testimony and some corroborating photographs and other evidence, it found Prevost had committed one or more acts of domestic violence by clear and convincing evidence, and the court then applied the presumption against Prevost receiving custody, joint or primary. We discuss the presumption here, despite the fact the parties do not address it, because the district court made express findings and the statutory presumption favored Gronvold, which strongly supports the district court's custody decision. Put another way, because Prevost does not challenge the district court's decision to apply the presumption or its finding that he failed to rebut it, we are left with a case in which there is a statutory presumption that Prevost should not receive custody because he committed acts of domestic violence.

Accordingly, the district court did not ignore uncontroverted allegations against Gronvold's partner, as Prevost's claims, and it possessed substantial evidence to discredit Prevost's uncorroborated allegations. Further, Prevost offers no argument under NRS 125C.0035(5) to suggest the district court erred in applying the statutory presumption favoring a custody determination for Gronvold.[3] Thus, we discern no abuse of discretion.

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[3]As noted above, the district court then performed a relocation analysis to support the child's move to Mississippi. The court used the statutory relocation factors in NRS 125C.007, particularly the child's best interest, when determining the child's cross-country move.

We will not supplant the district court's credibility determinations with our own

Next, we move to Prevost's final argument on appeal. Prevost implores this court to reexamine the district court's credibility determinations based on public policy. He asserts the court picked only facts favorable to Gronvold for its order and that this "picking and choosing" warrants our review. Gronvold argues we should not second-guess the district court on credibility issues. We agree with Gronvold.

"[W]e leave witness credibility determinations to the district court and will not reweigh credibility on appeal." *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007). This rule is common across the country. *E.g.*, *In re Alexandria P.*, 204 Cal. Rptr. 3d 617, 643 (Ct. App. 2016) ("Principles of appellate review constrain the appellate courts from making credibility determinations through transcripts alone."); *State v. Davie*, 264 P.3d 770, 775 (Utah 2011) ("Upon review, we accord deference to the trial court's ability and opportunity to evaluate credibility and demeanor." (quoting *State v. Goodman*, 763 P.2d 786, 787 (Utah 1988))).

Here, the district court listened to the parties testify via audio-visual technology, hearing their inflections and seeing their demeanor to the extent possible on the audio-visual platform. While its vantage point was less advantageous than a court hearing live in-person witness testimony, the court below received much more information through virtual testimony than we can glean by reviewing the transcripts, pleadings, and evidence over a year later. Moreover, finders of fact are entitled to "pick and choose" among testimony what to believe and what to reject. For example, in a criminal trial a jury is free to disregard a defendant's denial of committing the crime yet choose to believe his confession; and a witness's "dying declaration" is usually viewed by the law as more reliable than other

contradictory statements made earlier in life. Finders of fact are entitled to give different weight to different portions of the same witness's testimony, or to deem some of the testimony credible and other portions of it not credible. Further, we addressed this exact argument in a recent decision and found it to be unpersuasive. *See Williams v. Williams*, No. 83263-COA, 2022 WL 3584192 (Nev. Ct. App. Aug. 19, 2022) (Order Affirming in Part, Vacating in Part, and Remanding).

Thus, we cannot conclude that the district court abused its discretion in determining that Gronvold was the more credible of the two parties, and substantial evidence supports the court's decision. In view of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Heidi Almase, District Judge, Family Court Division
Law Offices of F. Peter James, Esq.
Jones & LoBello
Eighth District Court Clerk