IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES RAMSEIER,
Appellant,
vs.
NOHELIA RIVAS, N/K/A NOHELIA MOLDESTAD,
Respondent.

No. 84645-COA

FILED

JAN 23 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

James Ramseier appeals from a district court order denying his motion to modify child custody. Eighth Judicial District Court, Family Division, Clark County; Amy Mastin, Judge.

Ramseier and respondent Nohelia Moldestad were never married but have one minor child in common, N.R., who is currently eleven years old.[1] At the time of the proceedings before the district court, Ramseier resided in Henderson, which is approximately a thirty-minute drive from where Moldestad resided in Summerlin. The parties exercised custody under a 2016 court order, which provided that Moldestad exercised her parenting time Monday at 8:00 a.m. through Friday at 8:00 a.m. and the second weekend of each month; Ramseier was granted all other weekends during the school year.[2] Ramseier had seven and one-half weeks of parenting time during summer break, and Moldestad had the remaining

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

[2]Prior to the 2016 court order, the parties were exercising parenting time under a 2011 decree of paternity and custody, which awarded joint legal and physical custody and ordered Ramseier to pay $1,010 in child support per month. These orders were not modified in the 2016 court order.

four weeks. Finally, in relevant part, the parents were to confer and agree, in writing, regarding N.R.'s participation in extracurricular activities and were not to place N.R. in any extracurricular activity that impeded on the other's parenting time.

Ramseier and Moldestad continued to follow the 2016 court order until August 7, 2020. Due to the COVID-19 pandemic, the parents entered into a revised agreement (2020 agreement), which superseded the 2016 court order only with respect to N.R.'s schooling and parenting time schedule. The 2020 agreement was only for the 2020-2021 school year and was not filed with the district court. The 2020 agreement provided, in relevant part, that N.R. would be homeschooled during the fifth grade with Moldestad having primary responsibility for N.R.'s homeschooling. The 2020 agreement also stated that the parents would "discuss and agree to [N.R.'s] extracurricular activities" and that Moldestad would "make every effort to enroll [N.R.] in activities that provide adequate opportunity for her to socialize with her peers."

As to the parenting time schedule, the parents agreed to "revert back to each of [them] having [N.R.] for 50% of the time," which included the time between N.R.'s first day of fifth grade in 2020 to her first day of sixth grade in 2021. In practice, the 2020 agreement provided that Moldestad exercised her parenting time from Monday through Friday, with drop-off at or about 1:00 p.m. to 2:00 p.m. (transfer hour), and Ramseier had parenting time from Friday through Monday, with drop-off at or about 1:00 p.m. to 2:00 p.m., which appears to be the same as the 2016 court order with the exception of the drop-off time. The 2020 agreement did not contain a clause for any make-up time at the end of the summer.

In February 2021, Moldestad filed a motion to modify the child custody schedule, to modify the holiday parenting plan, for use of Our Family Wizard to communicate, and for attorney fees and costs. Ramseier opposed the motion and filed a countermotion to designate N.R.'s middle school, modify the child custody schedule, modify the holiday timeshare plan, and for attorney fees. Both parties proposed different parenting time schedules that were closely related to N.R.'s educational benefit. Ramseier proposed that N.R. be enrolled at Bob Miller Middle School or, alternatively, Calvary Chapel Middle School, arguing that the request was supported by the factors in *Arcella v. Arcella*, 133 Nev. 868, 407 P.3d 341 (2017).[3] Moldestad argued that N.R. should remain in homeschooling, but in the

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[3]In *Arcella*, the Nevada Supreme Court provided ten factors for district courts to consider when determining the educational placement of a minor. 133 Nev. at 872-73, 407 P.3d at 346. The factors are

> (1) the wishes of the child, to the extent that the child is of sufficient age and capacity to form an intelligent preference; (2) the child's education needs and each school's ability to meet them; (3) the curriculum, method of teaching, and quality of instruction at each school; (4) the child's past scholastic achievement and predicted performance at each school; (5) the child's medical needs and each school's ability to meet them; (6) the child's extracurricular interests and each school's ability to satisfy them; (7) whether leaving the child's current school would disrupt the child's academic progress; (8) the child's ability to adapt to an unfamiliar environment; (9) the length of commute to each school and other logistical concerns; and (10) whether enrolling the child at a school is likely to alienate the child from a parent.

Id. (footnote omitted).

alternative, that the school in her zone, Sig Rogich Middle School, was ranked objectively better than Ramseier's proposed schools.[4] The parties also contested N.R.'s participation in synchronized swimming and how it affected Ramseier's parenting time. Finally, both parties argued that child support should be reevaluated; Ramseier argued that Moldestad's household income should be factored into the calculation in determining his monthly child support payment, which necessarily should include the income she received from her husband, whereas Moldestad requested recalculation based on Ramseier's income and for an upward deviation for N.R.'s participation in synchronized swimming.

The district court conducted a hearing in July 2021, and thereafter issued a temporary order enforcing the 2016 court order to maintain the status quo. Because the school year was approaching, the district court ordered N.R. to attend the school Moldestad was zoned for, Sig Rogich Middle School, pending an evidentiary hearing regarding school choice pursuant to *Arcella*.[5] As to child support, the district court imputed $3,000 per month in earnings to Moldestad as representing her maximum monthly income and ordered Ramseier to pay $2,000 a month in child support, effective March 1, 2021.[6]

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[4]We also note that Moldestad objected to a cost associated with Calvary Chapel Middle School.

[5]We note that Ramseier did not object or argue against the district court's decision that it was inclined to consider evidence about N.R.'s progress at Sig Rogich Middle School because it was relevant to the *Arcella* factors.

[6]We note that imputing $3,000 per month accounted for Moldestad's monthly salary earned during her highest income years.

Ultimately, the district court held an evidentiary hearing on school choice, modification of the parenting time schedule, and Ramseier's child support obligation.[7] The court considered testimony related to the *Arcella* factors regarding school choice, which included testimony on N.R.'s progress at Sig Rogich Middle School, and statistical evidence on the rankings of all three school options. The parties also testified as to N.R.'s participation in synchronized swimming, wherein Ramseier testified that he was in support of N.R.'s participation in synchronized swimming. Finally, Ramseier's counsel represented that the child support issue had been resolved by stipulation, and that Ramseier would pay $2,000 per month in child support.[8]

Following the evidentiary hearing, in March 2022, the district court entered an order on timeshare, school choice, N.R.'s participation in synchronized swimming, and child support.[9] As to school choice, the district

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[7]The evidentiary hearing was originally scheduled for three hours on November 29, 2021. Moldestad's case in chief consumed the entirety of the evidentiary hearing allotted time, and the district court scheduled two additional days for Ramseier to fully present his case in chief.

[8]Ramseier filed a motion to reconsider the district court's calculation of child support prior to the evidentiary hearing. At the evidentiary hearing, the district court allowed Ramseier to argue whether the district court's temporary order requiring Ramseier to pay $2,000 in monthly child support should remain in place. The record supports that Ramseier stipulated to accepting the $2,000 per month child support obligation, which necessarily included the $3,000 in monthly income imputed to Moldestad.

[9]While Ramseier argues that the district court granted Moldestad's request for parenting time on the fifth weekend of the month, in addition to the second weekend, this is belied by the district court's order, which specifically states that neither party demonstrated a substantial change of circumstance to warrant modification of the parenting time schedule and

court ordered that it was in N.R.'s best interest to attend Sig Rogich Middle School. For support, the district court analyzed all ten of the *Arcella* factors in its order. The court found most of the factors neutral or inapplicable but determined that two factors favored attendance at Sig Rogich and impliedly found a third factor did as well.[10] Therefore, the district court determined that N.R. would attend Sig Rogich Middle School for the foreseeable future.

The district court also ordered Ramseier to ensure N.R.'s participation in synchronized swimming practices and competitions during his parenting time. The district court found that synchronized swimming was time-consuming and expensive, but that both parties "believed it is an important part of N.R.'s growth and development and they acknowledge the importance of N.R. participating in extracurricular activities within the 2020 Stipulation." The district court further ordered that "the parties should be equally responsible for the regular, recurring costs associated with [N.R.'s] participation in synchronized swimming, an extracurricular activity."[11] In doing so, the district court found that synchronized swimming was an additional cost to meeting N.R.'s basic needs not covered

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denied both parties' requests. Accordingly, the district court enforced the 2016 court order parenting time schedule.

[10]The *Arcella* factors that the district court found weighed in favor of Sig Rogich Middle School were: N.R.'s extracurricular interest and each school's ability to satisfy them, whether leaving N.R.'s current school would disrupt her academic progress, and the length of commute to each school and other logistical concerns.

[11]The district court order does not contain the amount for the recurring costs associated with N.R.'s participation in synchronized swimming, but we note that Moldestad testified that she pays approximately $700 per month for N.R.'s swimming lessons and competitions.

by Ramseier's child support obligation, and adjusted Ramseier's monthly financial obligation upward to accommodate the activity. Finally, the district court ordered that, pursuant to the parties' stipulation, Ramseier's child support obligation was $2,000 per month, effective March 2021.

On appeal, Ramseier argues that the district court erred and abused its discretion during the evidentiary hearing and in its order, and presents this court with eight issues for consideration: (1) whether the district judge failed to maintain her impartiality, as reflected by her sharing inclinations and preliminary findings on the record prior to Ramseier's counsel being afforded an opportunity to ask questions or to present a case in chief;[12] (2) whether the district court erred in considering evidence regarding the child's academic progress at her current school, Sig Rogich Middle School, given that the court determined the child would be enrolled

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[12]We conclude that Ramseier's claim related to judicial bias is insufficient, as he has not overcome the presumption that judges are unbiased and the record supports that the district judge did not close her mind to the presentation of the evidence as she conducted a thorough evidentiary hearing over multiple days, and therefore, we decline to address this claim further. *See Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009), *overruled in part on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980 (2022) (recognizing that "[a] judge is presumed to be unbiased"); *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998) (noting that "[s]o long as a judge remains open-minded enough to refrain from finally deciding a case until all of the evidence has been presented, remarks made by the judge during the course of the proceedings will not be considered as indicative of disqualifying bias or prejudice"). We also conclude that the chief district judge did not abuse her discretion in denying Ramseier's motion to disqualify the district court judge because Ramseier did not establish legally cognizable grounds for an inference of bias. *See Rivero*, 125 Nev. at 439, 216 P.3d at 233 (noting that a district court should summarily dismiss a motion to disqualify a judge "[w]here the challenge fails to allege legally cognizable grounds supporting a reasonable inference of bias or prejudice").

in the school pending an evidentiary hearing regarding school choice pursuant to *Arcella*;[13] (3) whether the district court erred in its *Arcella* analysis by failing to consider and analyze both alternative schools suggested by Ramseier;[14] (4) whether the district court abused its discretion by determining that the minor child's school will be determined by Moldestad's residence; (5) whether the district court abused its discretion by ordering Ramseier to utilize his parenting time to take the child to an extracurricular activity to which Ramseier did not agree; (6) whether the district court erred in failing to consider the parties' prior agreement for a 50/50 timeshare and make-up time; (7) whether the district court erred in its application of NAC 425.150 by failing to consider the household incomes

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[13]We need not address Ramseier's claim that the district court erred in considering N.R.'s academic progress at Sig Rogich Middle School because Ramseier does not cite to any legal authority to support the notion that the district court is barred from considering such evidence. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Additionally, Ramseier waived this claim because he did not object to the district court's consideration of N.R.'s progress at Sig Rogich Middle School. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal").

[14]We also determine that Ramseier's claim related to the alternative schools is without merit because the record supports that the district court considered evidence related to both Bob Miller Middle School and Calvary Chapel Middle School during the evidentiary hearing and in its order. *See Arcella*, 133 Nev. at 872, 407 P.3d at 346 (noting the district court's order must "tie the child best interest, as informed by specific, relevant findings . . . to the custody determination made").

of both parties for the purposes of determining child support;[15] and (8) whether the district court abused its discretion in issuing an upward deviation to Ramseier's child support obligation for N.R.'s extracurricular activities when Ramseier did not agree to enrolling N.R. in the same.

The district court did not abuse its discretion in its school choice decision

Ramseier argues that the district court abused its discretion by determining that N.R. would attend Sig Rogich Middle School and the minor child's school will be determined by Moldestad's residence. Specifically, Ramseier argues that the district court's order makes N.R.'s school choice a *nonmodifiable* issue. Moldestad generally argues that the district court did not abuse its discretion. We agree with Moldestad.

In fact, the district court order is more sensitive to the school-choice issue compared to what Ramseier argues on appeal. The district court order provides that:

> [N.R.] will maintain her current enrollment at Sig Rogich Middle School. [N.R.] will continue to attend school in [Moldestad's] zone so long as [Moldestad] continues to reside in the same school zone unless the parties agree otherwise. Should [Moldestad] move from her current zone, the parties shall agree on the school [N.R.] will attend. If they are unable to reach an agreement, the parties will first attempt mediation (either privately or through FMC). If the parties are still unable to reach an agreement, a Motion may be filed with the Court.

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[15]We reject Ramseier's child support claim because he stipulated to paying $2,000 in monthly child support and he is barred from taking an inconsistent position on appeal than the one he took below. *See Nev. Power Co. v. 3 Kids, LLC*, 129 Nev. 436, 444, 302 P.3d 1155, 1160 (2013), *as modified* (July 24, 2013) (explaining that a party on appeal cannot assume a position inconsistent with one taken below).

While we note Ramseier's concern, Ramseier has not shown that the appropriate avenues to modify the school designation in the future are unavailable to him. *See* NRS 125C.00045(1)(a) (an order for education may be modified at any time if in the child's best interest). That is, Ramseier has not yet been aggrieved by the order, and we reject his argument that the district court's decision cannot be modified in the future if necessary. Therefore, Ramseier has failed to demonstrate how he will be foreclosed from requesting that N.R. attend a different school under the district court's order. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (providing that the appellate courts need not consider claims unsupported by cogent argument); *see also Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) ("To be reversible, an error must be prejudicial and not harmless."); *cf. Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (providing that the appellate courts have jurisdiction to entertain an appeal only insofar as the appellant is aggrieved).

Further, and more importantly, the district court applied the *Arcella* factors and determined that it was in N.R.'s best interest to attend Sig Rogich Middle School, and Ramseier does not challenge the district court's application of the *Arcella* factors in reaching its decision, but rather, argues that the district court's order was nonmodifiable as to school choice. However, his conclusion is not consistent with the district court's order, which provides that the parties may file a motion with the district court to determine school choice in the future should Moldestad move from the school district.

The district court did not abuse its discretion when it ordered Ramseier to ensure N.R.'s participation in synchronized swimming

Next, Ramseier argues that the district court abused its discretion in ordering him to ensure N.R.'s participation in synchronized

swimming, an extracurricular activity to which he did not initially agree. In turn, Moldestad argues that the district court did not abuse its discretion because it may make orders for the care, custody, education, or maintenance of a minor child that appear to be in the child's best interest pursuant to NRS 125C.0045(1)(a). Moldestad also points to various instances in the record where Ramseier took positions in district court that are inconsistent with those he takes on appeal, noting that below he agreed with N.R.'s participation in synchronized swimming.

We agree with Moldestad and conclude that the district court did not abuse its discretion in ordering Ramseier to ensure N.R.'s participation in synchronized swimming during his parenting time. The record supports that Ramseier agreed to N.R.'s participation in synchronized swimming by taking N.R. to synchronized swimming-related activities and conceding his support for N.R.'s participation in his testimony during the proceedings below. *See Nev. Power Co.*, 129 Nev. at 444, 302 P.3d at 1160 (explaining that a party on appeal cannot assume a position inconsistent with one taken below). Further, the district court did not abuse its discretion because it made specific findings as to it being in N.R.'s best interest to participate in synchronized swimming based on the testimony at the evidentiary hearing. *See Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142-43 (2015) (noting that a district court's discretionary determinations, such as those involving the best interest of the child, are reviewed deferentially).

The district court did not err in declining to enforce the 2020 agreement

Ramseier also argues that the district court erred in failing to consider the 2020 agreement for a 50/50 timeshare and make-up time in denying Ramseier's request to modify the timeshare. Moldestad argues that the district court did not abuse its discretion because neither party

provided a sufficient basis for modification of the schedule and thus the 2016 court order remained in effect. We agree with Moldestad.

To modify physical custody the movant must show 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 983 (quoting *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007)).

Here, the district court ultimately found that there was not a substantial change in circumstances affecting the welfare of N.R. and that N.R.'s best interest would not be served by modifying the parenting time schedule in the manner requested by Ramseier. The record supports that the circumstances surrounding the parenting time schedule were substantially the same under the 2016 court order and the 2020 agreement: Moldestad exercised her parenting time during the school week, Ramseier exercised his time on the weekends and over the summer, and N.R. continued to attend the school in Moldestad's zone. The district court recognized that the 2016 court order and 2020 agreement had similar enough parenting time schedules to be joint physical custody. Although Ramseier argues that the 2020 agreement granted him a 50/50 timeshare, we note that neither the 2016 court order nor 2020 agreement provided for an exactly equal timeshare. Therefore, enforcing the 2020 agreement would not have granted Ramseier a 50/50 timeshare as he suggests.

Because there was not a substantial change in circumstances affecting N.R.'s welfare, and the 2020 agreement was only for the 2020-2021 school year, which had already ended, the district court did not abuse its discretion in declining to enforce the 2020 agreement and in not modifying the parenting time schedule controlled by the 2016 court order. *See*

Romano, 138 Nev., Adv. Op. 1, 501 P.3d at 983. Further, because the 2016 court order and the 2020 agreement were substantially the same regarding parenting time, Ramseier fails to demonstrate that the district court's decision to enforce parenting time pursuant to the 2016 court order granted him less parenting time than the 2020 agreement, as it did not provide for an exactly equal timeshare. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that reversal is only warranted due to prejudicial error and "[t]o 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").

The district court did not abuse its discretion when it ordered Ramseier to equally share in the costs associated with N.R.'s synchronized swimming

Finally, Ramseier argues that the district court abused its discretion in imposing an upward deviation to his monthly child support obligation for an extracurricular activity to which he did not initially agree. Moldestad argues that the district court did not abuse its discretion because it based its decision on N.R.'s best interest in participating in extracurricular activities after considering the evidence and testimony presented. We agree with Moldestad.

We review a district court child support order for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). An abuse of discretion occurs when the district court's decision is not supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018). We will, however, defer to and uphold the district court's findings that are not clearly erroneous and are supported by substantial evidence. *Hargrove v. Ward*, 138 Nev., Adv. Op. 14, 506 P.3d 329, 331 (2022).

Parents have a duty to support their children. NRS 125B.020(1). Although a district court has discretion in awarding child support, it must follow the statutory guidelines when calculating the initial child support award and when deviating from the statutory calculations. *See* NAC 425.100(3); *see also* NRS 125B.080; *Wallace v. Wallace*, 112 Nev. 1015, 1021, 922 P.2d 541, 544-45 (1996). When a district court deviates from the statutory child support formula, it must set forth specific findings of fact stating the basis for the deviation and identifying what the support obligation would have been absent the deviation. NAC 425.100(3)(a)-(b). Even if the record reveals the district court's reasoning for the deviation, the court must expressly set forth its findings of fact to support its decision. *Jackson v. Jackson*, 111 Nev. 1551, 1553, 907 P.2d 990, 992 (1995).

Here, the record supports that the district court ordered Ramseier to pay $2,000 in monthly child support to meet N.R.'s basic needs, per the parties' stipulation. *See* NAC 425.100(2). However, the district court found that N.R.'s synchronized swimming expenses were additional costs not covered by the parties' stipulated child support obligation. The district court set forth express findings that it was in N.R.'s best interest to participate in synchronized swimming and that the expenses associated with this activity, in addition to the costs of meeting N.R.'s basic needs, warranted an upward deviation in Ramseier's monthly child support obligation. *See* NAC 125.100(2); *see also Jackson*, 111 Nev. at 1553, 907 P.2d at 992. Therefore, the district court did not abuse its discretion in ordering Ramseier to equally share in the costs of N.R.'s synchronized

swimming in addition to his stipulated child support obligation.[16] *See* NAC 425.150(g) (providing that any child support obligation may be adjusted for any other necessary expenses for the benefit of the child).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Amy Mastin, District Judge, Family Division
Rosenblum Allen Law Firm
Kelleher & Kelleher, LLC
Eighth District Court Clerk

[16]Insofar as the parties have raised 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.