IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VANESSA PINTO,
Appellant,
vs.
FRANCIS A. GUARDADO-PINTO,
Respondent.

No. 84909-COA

ORDER OF AFFIRMANCE

Vanessa Pinto appeals from a divorce decree and an order granting joint physical and legal custody. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Vanessa Pinto and Francis Guardado-Pinto were married in February 2007.[1] They have two surviving minor children, A.P., age 8 at the time of trial, and J.P., age 5 at the time of trial.[2] While they were married, Vanessa and Francis maintained separate bank accounts where they deposited their earnings. During their marriage they acquired three properties: a residence on Kensington Street (Kensington property) in 2010, a residence on Lodge Pole Court (Lodge Pole property) in 2012, and a residence on Colour Magic Street (Colour Magic property) in 2015. Vanessa claims that each property was purchased as her sole and separate property. She admitted that Francis was made a joint tenant on the Kensington property in 2012 but has maintained that Francis gave up his interest in

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

[2]Another child tragically passed away shortly before the parties separated.

the Colour Magic property when he signed a quitclaim deed assigning his interest in the property to her when it was purchased.

Vanessa and Francis began to experience marital troubles, and Francis filed a complaint for divorce in April 2021 and sought a division of property acquired during the marriage as well as joint legal and joint physical custody of the children. Vanessa filed an answer and counterclaim in May 2021 and sought sole legal and sole physical custody of the children. In August 2021, the district court entered a temporary order granting joint legal custody and set a parenting time schedule. Under the schedule, Francis had parenting time with the children beginning on Fridays at 9:00 a.m. and ending Sundays at 7:00 p.m. Vanessa had parenting with the children during the remainder of the week.

The matter proceeded to a three-day trial. During the trial, the district court heard testimony from only Vanessa and Francis. Vanessa testified that she was the sole owner of the Colour Magic property and the Lodge Pole property and that her student loans, acquired during the marriage, should be divided between the two parties. She also testified that Francis owned property in Honduras and that he sent $40,000 of community property funds to his family in Honduras during the marriage. Finally, Vanessa testified that Francis had possession of $20,000 worth of her jewelry. Francis agreed that the Lodge Pole property was Vanessa's sole and separate property but disputed the rest of her claims.

After the trial, the district court issued two orders. First, it issued a decree of divorce determining that the Kensington property and Colour Magic property were community property. It awarded Francis the Kensington property and imputed the value of the Colour Magic property to Vanessa because it was community property and she had transferred the

property to her mother the day before Francis filed for divorce. The district court found that the Lodge Pole property was Vanessa's sole and separate property and found that Vanessa failed to prove that Francis owned any property in Honduras. Additionally, the district court found that Francis sent $20,000 to support his family in Honduras, that Vanessa's student loans were her sole and separate debt, and that Vanessa had failed to prove that Francis had possession of her jewelry.

Second, the district court issued a child custody order analyzing and applying the best interest of the child factors and determining that joint legal custody and joint physical custody with a week on/week off schedule was in the best interest of the children. Vanessa's appeal followed.

On appeal, Vanessa argues that the district court abused its discretion in the distribution of assets and debt and that the district court abused its discretion when it determined child custody. We disagree and address each issue in turn.

The district court did not abuse its discretion when it distributed assets

Vanessa raises several arguments alleging that the district court abused its discretion in the distribution of assets and her student loan debt. We disagree and address each argument in turn.

We review district court decisions regarding the characterization and disposition of property in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004); *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 75, 439 P.3d 397, 406 (2019). An abuse of discretion occurs when a district court's decision is clearly erroneous or not supported by substantial evidence. *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). Substantial evidence

is evidence that "a sensible person may accept as adequate to sustain a judgment." *Williams*, 120 Nev. at 556, 97 P.3d at 1129.

First, Vanessa argues that the district court erred in its handling of the Colour Magic property because it was not community property, Francis relinquished his rights to the property, and it is now owned by a third party, Vanessa's mother. In Nevada, all property acquired after marriage by either spouse is considered community property unless a written agreement specifies otherwise. NRS 123.220(1); *see also Pryor v. Pryor*, 103 Nev. 148, 150, 734 P.2d 718, 719 (1987) (property acquired after marriage is presumed to be community property). The party claiming the property is separate property can rebut this presumption by clear and convincing evidence. *Pryor*, 103 Nev. at 150, 734 P.2d at 719. Vanessa rebutted this presumption with the quitclaim deed Francis signed. *See Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996) (holding that spouse-to-spouse conveyance of real property creates the presumption of a gift). Therefore, the burden was on Francis to rebut the presumption that the Colour Magic property was separate property by clear and convincing evidence. *Id.*

The district court found that Francis' testimony about the quitclaim deed, his lack of understanding of English, and his intent to maintain his interest in the property was more credible than Vanessa's testimony, and that Francis rebutted the presumption created by the quitclaim deed with clear and convincing evidence. Appellate courts do not reweigh the credibility of witnesses on appeal. *Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004). Therefore, we conclude that the district court acted within its discretion when it found that Francis rebutted the presumption and the property remained community property. Additionally,

to the extent that Vanessa argues she paid for the mortgage and utilities of the property with her sole and separate funds, she has failed to identify a written agreement or other evidence that the earnings used to pay these costs were her sole and separate property. *See* NRS 123.220(1). Accordingly, the district court did not abuse its discretion when it determined that the property was community property.

As far as Vanessa argues that the Colour Magic property is currently owned by a third party, her mother, Vanessa provides no authority to support her argument that imputing the community property interest in the property to her was impermissible or was an error. Therefore, we need not consider her argument. *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). We also note that Vanessa is still living in the Colour Magic property.

Second, Vanessa argues that the district court (1) made an unequal distribution of property by awarding Francis the Kensington property; (2) erred when it found that Vanessa "gifted" the Kensington property to community property by deeding it to the parties as joint tenants after it was initially purchased in her name;[3] and (3) erred by failing to identify the equity that Vanessa had acquired in the property before she transferred it to Francis. Francis responds that the Kensington property was community property, and that the district court did not err by awarding him the Kensington property to offset his one-half interest in the Colour Magic property.

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[3]We note that the property was purchased after the marriage with community funds even though it was initially titled only in Vanessa's name.

The district court found that the Kensington property was community property because it was purchased during the marriage with community funds. *See* NRS 123.220 (1); *see also Pryor*, 103 Nev. at 150, 734 P.2d at 719. The court was required to make an equal disposition of community property if practicable. NRS 125.150(1)(b). Since the value of the Colour Magic property was imputed to Vanessa and she currently resides there, it was not clearly erroneous for the district court to award Francis the Kensington property after determining that the properties had the same net community property value, and her other arguments are unpersuasive. Accordingly, we conclude that the district court did not abuse its discretion when it awarded Francis the Kensington property and Vanessa has not shown how any error affected her substantial rights. *Cf.* NRCP 61 ("Unless justice requires otherwise, no error in admitting or excluding evidence — or any other error by the court or a party — is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

Third, Vanessa argues that the district court erred by finding that the earnings and income of the parties during their marriage was community property.[4] Francis responds that there was never an agreement

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[4]Vanessa also argues that the district court erred when it did not reimburse her for half of the rental income on the Kensington property that Francis collected during the proceeding. We note that Vanessa only makes a conclusory statement that "the court erred when it did not offset the amount of rental income Francis was collecting on the Kensington property and give Vanessa half." Since Vanessa has failed to cogently argue this position or present relevant authority, we decline to consider her argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

that the parties' earnings would be sole and separate property, so the district court properly found that it was community property.

Vanessa failed to rebut the community property presumption by clear and convincing evidence. *See Pryor*, 103 Nev. at 150, 734 P.2d at 719; NRS 123.220(1). While the parties did keep separate bank accounts, this does not overcome the requirements of NRS 123.220(1) since she produced no written agreement that her earnings were her sole and separate property. Accordingly, we conclude that the district court did not abuse its discretion when it found that the parties' income was community property.

Fourth, Vanessa argues that the district court erred when it found that Francis did not own property in Honduras and that he only sent $20,000 to Honduras. Francis responds that the only credible evidence presented showed that Francis sent $20,000 to Honduras and there was no evidence that Francis owned property in Honduras.[5]

However, if we consider the merits of Vanessa's argument, the district court based its decision on the credibility of witness testimony. Francis testified that he only sent $20,000 to Honduras during the marriage while Vanessa claimed he sent $40,000 during the marriage. No evidence was introduced at trial to definitively prove or corroborate the statements of either party. Further, there was no evidence provided at trial to prove that the pictures of a house being built in Honduras depicted a house that

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[5]We note that Vanessa provides no authority to support her argument. Instead, she briefly recites testimony form the trial that supports her point and ignores trial testimony that does not support her position. Vanessa fails to provide any legal authority or cogent argument in support of her position, so we need not consider her argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Francis owned. Rather, Vanessa testified the house was Francis' while Francis testified that the house was his father's. Appellate courts do not reweigh the credibility of witnesses on appeal. *Castle*, 120 Nev. at 103, 86 P.3d at 1046. Accordingly, we conclude that the district court did not abuse its discretion when it determined that Francis had sent $20,000 to Honduras and did not own property in Honduras.

Fifth, Vanessa argues that the district court erred when it found that Vanessa's student loan debt was not community debt. Francis responds that Vanessa failed to meet her burden of proof to demonstrate that the debt was community debt.

We note that Vanessa only makes a conclusory statement that "Francis did not rebut the claim that the student loan debt is Vanessa's sole and separate debt by clear and convincing evidence," which appears to be contrary to what she intended to argue. Since Vanessa fails to provide any legal authority or cogent argument in support of her position, we need not consider her argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. However, if we consider the merits of her argument, the district court found that Vanessa did not meet her burden of proof to demonstrate that the student loans currently or ever existed or that they were community debt if they did exist. The burden is on the party claiming student loan debt is a community debt to prove that the debt existed and was for the benefit of the community. *See Barry v. Lindner*, 119 Nev. 661, 670-71, 81 P.3d 537, 543 (2003), *overruled on other grounds by LaBarbera v. Wynn Las Vegas, LLC*, 134 Nev. 393, 395, 422 P.3d 138, 140 (2018). While the record is unclear on what evidence was admitted, it does not appear that any documents proving the existence of Vanessa's student loans were

admitted.[6] Additionally, even if the loans existed, Vanessa failed to testify or provide any proof that her degree was acquired for the benefit of the community. Finally, as the district court noted, Vanessa will continue to personally benefit from her education while Francis, who has a sixth-grade education, will no longer benefit. Further, Francis makes no claim to share in the advancement of her career that occurred during the marriage. Accordingly, we conclude that the district court did not abuse its discretion when it determined that Vanessa's loans were not incurred for community purposes.

Sixth, Vanessa states that Francis is in possession of $20,000 worth of her jewelry. She then argues that the district court erred by not requiring Francis to reimburse her for the jewelry. Francis responds that the district court was only presented with Vanessa's unsupported testimony on the topic, so the district court did not err when it determined that Vanessa failed to demonstrate Francis had possession of the jewelry.

A "district court's factual findings will be left undisturbed unless they are clearly erroneous or not supported by substantial evidence." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018). The district court made a finding of fact that Vanessa failed to prove that Francis had possession of her jewelry. We note that the only evidence presented on this topic was the testimony of Vanessa and Francis. There were no documents or photographs admitted into evidence that showed Francis had possession of her jewelry, or that the jewelry even existed. The

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[6]Vanessa was responsible for making an adequate appellate record; since the record is missing information, we "presume that the missing portion supports the district court's decision." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

district court's factual finding is not clearly erroneous since the district court had to evaluate the testimony of each party and determine which party was more credible. As we will not reweigh the credibility of witnesses on appeal, *Castle*, 120 Nev. at 103, 86 P.3d at 1046, we conclude that the district court did not abuse its discretion when it determined that Francis did not need to reimburse Vanessa for her alleged missing jewelry.

Seventh, Vanessa makes the conclusory statement that the district court erred by failing to find that Francis was not a credible witness when he abandoned his claim for the Lodge Pole property halfway through the trial. Francis responds that the district court did not abuse its discretion when it determined that he was more credible throughout the trial. As previously stated, appellate courts do not reweigh the credibility of witnesses on appeal. *Castle*, 120 Nev. at 103, 86 P.3d at 1046. Additionally, the credibility of a witness rests "within the trier of fact's sound discretion." *Id.* Therefore, we conclude that the district court did not abuse its discretion when it determined Francis was credible.

The district court did not abuse its discretion when it determined child custody

Vanessa raises several arguments that the district court abused its discretion in its child custody order. We address each argument in turn.

Child custody decisions are reviewed for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). A district court abuses its discretion when its decision is clearly erroneous. *See Bautista*, 134 Nev. at 336, 419 P.3d at 159. Additionally, we will not set aside child custody determinations if they are supported by substantial evidence. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Evidence is substantial if a reasonable person would accept it as adequate to sustain a judgment. *Id.*

First, Vanessa argues that the district court abused its discretion in awarding joint physical custody as it failed to consider the best interest of the children, failed to consider the children's preference, and failed to consider the level of conflict between the parties. Francis responds that the district court properly evaluated each factor in the best interest of the child analysis and determined that joint physical custody was in the best interest of the children.

The district court is required to consider the best interest of the child when determining physical custody. NRS 125C.0035(1). In its order for child custody, the district court analyzed each of the best interest of the child factors enumerated in NRS 125C.0035(4). It found that four factors did not apply, seven factors were neutral, one factor favored Francis, and none favored Vanessa. In its analysis, the district court found that the children were "not of sufficient age and capacity to form an intelligent preference as to physical custody."

Vanessa argues that the preferences of the children should have been considered by the district court, however, she only makes a conclusory statement that the children were old enough to form an intelligent opinion and fails to cite any legal authority to support this statement. Therefore, we need not consider her argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Additionally, on the merits, Vanessa has not demonstrated how it is clearly erroneous that two children under the age of nine were found not to be able to intelligently determine which parent they would prefer to have physical custody; therefore, the district court did not abuse its discretion. *See Bautista*, 134 Nev. at 336, 419 P.3d at 159.

Vanessa also argues that the district court failed to consider the level of conflict between the parties and the ability of the parties to

communicate regarding co-parenting. However, the district court thoroughly discussed the level of conflict between the parties and their ability to communicate with each other and determined that the level of conflict between the parties was high, and they both failed to communicate with each other about the children. This determination is supported by substantial evidence, and accordingly, we conclude that the district court did not abuse its discretion. *Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Second, Vanessa makes the conclusory argument that the district court erred when it did not admit A.P.'s therapy records. Because Vanessa provides no authority to support this argument, we need not consider it. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. However, if we consider the merits of Vanessa's argument, the district court did not abuse its discretion. The record reveals that the therapy records were excluded because the proper witness was not called to introduce and authenticate them. *See Abid v. Abid*, 133 Nev. 770, 772, 406 P.3d 476, 478 (2017) (stating that we review a district court's evidentiary decisions for an abuse of discretion). Alleged errors in the exclusion of evidence are reviewed to determine if the error substantially affected the rights of the appellant. NRS 47.040(1)(b); *Hallmark v. Eldridge*, 124 Nev. 492, 505, 189 P.3d 646, 654 (2008). Vanessa does not argue that her substantial rights were affected by this decision, and a careful review of the record does not reveal how the records would have impacted the case. Accordingly, we conclude that no reversible error occurred.

Third, Vanessa makes the conclusory statement that the district court erred when it did not inquire into childcare during working hours. Vanessa provides no legal authority or cogent argument that the district court was required to inquire into childcare, nor does she cite to the

record where she asked the district court to do so. Therefore, the argument is waived, and we will not consider it. *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"); *see also Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; NRAP 10(A).

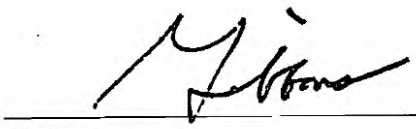
Finally, Vanessa states that the district court failed to consider the emotional, developmental, and physical needs of the children when it ordered the week on/week off schedule because the children have never been away from her for an entire week at a time. Vanessa fails to provide any legal authority or cogent argument in support of this position and therefore we do not need to consider her argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

However, even considering the merits of Vanessa's argument, we conclude the district court did not abuse its discretion. The district court considered the emotional, developmental, and physical needs of the children in its child custody order and determined that the children require committed parenting and a stable home environment. The court determined that Vanessa and Francis were both capable of meeting these needs and that a week on/week off schedule was in the best interest of the children due to the level of conflict between the parties and their inability to co-parent. The court found that this schedule would minimize the number of physical custody exchanges needed and would allow the parties to practice parallel parenting instead of co-parenting. Substantial evidence supports this decision as both parties testified to problems with exchanges and problems communicating with the other party. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. Therefore, we conclude that the district court's

determination that reducing exchanges will reduce the potential for conflict between the parties is not clearly erroneous. *See Bautista*, 134 Nev. at 336, 419 P.3d at 159.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[7]



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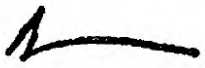

_____, J.
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_____, J.
Westbrook

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Isso & Hughes Law Firm
Bellon Law Group Ltd.
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 do not present a basis for relief or need not be reached given the disposition of this appeal.