IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS BROFMAN, Appellant, vs. GINA FIORE, Respondent.	No. 83807
DOUGLAS BROFMAN, Appellant, vs. GINA FIORE, Respondent.	No. 83865

ORDER AFFIRMING IN PART, VACATING IN PART AND REMANDING

These are consolidated appeals from a final decree of custody and orders resolving postjudgment motions. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

The parties share one child. Respondent Gina Fiore filed a motion to establish custody and appellant Douglas Brofman counterclaimed to relocate with the child. After an evidentiary hearing, the district court denied Brofman's motion, awarded the parties joint legal and physical custody, and resolved the issue of school choice. Thereafter, Brofman filed numerous postjudgment motions, including one for a new trial. The district court denied all Brofman's motions, awarded Fiore attorney fees and costs, and sanctioned Brofman. Brofman appealed from the custody order and the postjudgment orders. The court of appeals affirmed in part and dismissed in part. We granted Brofman's subsequent petition for review under NRAP 40B and now vacate the court of appeals' order.

First, Brofman asserts that the district court abused its discretion when it denied his motion to relocate to Ohio with the child. When a parent seeks to relocate with a child, the parent must first demonstrate: (1) there is a sensible, good faith reason for the move and it is not to deprive the other parent of that parent's time with the child, (2) the move serves the child's best interest, and (3) the child and the relocating parent will benefit from the move. NRS 125C.007(1). The record supports the district court's finding that Brofman failed to demonstrate these three things as he had no plan for after he relocated, he kept changing the reason he sought to relocate, and he had no job offer for after he relocated. Thus, the district court did not abuse its discretion in denying Brofman's motion to relocate. *See Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009) (providing that this court reviews custody decisions for an abuse of discretion). Additionally, to the extent Brofman challenges the district court's admission of Fiore's text messages at the evidentiary hearing, we conclude the district court did not abuse its discretion in doing so as Brofman did not object to the text messages before the hearing, Fiore authenticated them at the hearing, and Brofman was unable to demonstrate they were fraudulent. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 236, 445 P.3d 846, 850 (2019) (explaining that this court reviews an admission of evidence for an abuse of discretion).

Second, Brofman challenges the district court's decision regarding school choice. In *Arcella v. Arcella*, 133 Nev. 868, 872-73, 407 P.3d 341, 346 (2017), this court provided a non-exhaustive list of factors a

court should consider when determining school choice. Because Brofman was seeking to relocate, he did not provide evidence regarding school choice at the evidentiary hearing, and even though the district court provided him with an opportunity to file a supplemental brief regarding school choice, he did not do so. Because Brofman failed to provide evidence or argument regarding school choice, the district court had limited evidence before it. Nevertheless, it considered the *Arcella* factors based on that limited evidence, which supports the district court's decision. Thus, we conclude the district court did not abuse its discretion in determining school choice.[1] *Id.* at 870, 407 P.3d at 344 (providing that this court reviews a decision regarding school choice for an abuse of discretion).

Third, Brofman argues the district court abused its discretion when it imputed an income to him in determining child support. "[W]here evidence of willful underemployment preponderates, a presumption will arise that such underemployment is for the purpose of avoiding support. Once this presumption arises, the burden of proving willful underemployment for reasons other than avoidance of a support obligation will shift to the supporting parent." *Minnear v. Minnear*, 107 Nev. 495, 498, 814 P.2d 85, 86-87 (1991). The record supports the district court's findings that Brofman was not struggling to meet his $4,514.31 in claimed monthly expenses during the period he asserted he was unemployed and that he had

[1]To the extent Brofman argues the district court determined school choice based on Fiore's brief without an attached affidavit, the record belies this argument as the district court determined school choice after considering evidence at the hearing.

previously earned the same as Fiore before his unemployment. Thus, the district court did not abuse its discretion in imputing an income to Brofman.[2] *See Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (providing that this court reviews a child support decision for an abuse of discretion). Accordingly, we affirm the district court's decision regarding child custody, relocation, school choice, and child support.

Fourth, Brofman challenges the district court's denial of his request for reimbursement from Fiore for loans he allegedly made to her. At the evidentiary hearing, the district court stated it would not hear the matter because Brofman did not properly plead such a claim and that a claim regarding such debts was precluded under the statute of limitations. It is unclear from the record before this court the debts for which Brofman was requesting reimbursement, as the district court did not permit Brofman to submit evidence or argument on the issue. Thus, we cannot say that an action on those debts is precluded by the statute of limitations. Further, to the extent that the district court denied Brofman's claim because it was not adequately pleaded, the district court erred as Brofman's pleading was adequate to put Fiore on notice that he sought reimbursement for loans he claimed he made to her. *See W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (providing that pleadings are liberally

[2]While Brofman asserts the district court should have awarded him arrears for the period before it ordered child support, doing so would have been improper since the district court had previously ordered neither party to pay child support for that period.

construed for sufficient facts to put the defending party on notice of the claim and relief sought). Thus, we vacate the custody order on this issue alone and remand for the district court to consider Brofman's financial claims.

Lastly, we conclude that Brofman's arguments regarding his postjudgment motions lack merit. The district court properly denied his motion for a new trial, as that motion was based on alleged fraudulent text messages that the district court concluded were immaterial to its decision. *See Lioce v. Cohen*, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008) (reviewing an order denying a motion for a new trial for an abuse of discretion). The district court did not abuse its discretion in awarding Fiore attorney fees associated with opposing the motion for a new trial, as the record demonstrates she was the prevailing party and had to respond to a frivolous motion. *See Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006) (providing that this court reviews an award of attorney fees for an abuse of discretion). The district court also did not abuse its discretion in sanctioning Brofman for failing to comply with the Parenting Coordinator's order to sign documents for the child's passport, as the parties agreed that the Parenting Coordinator would "have the general authority to resolve disputes arising from the areas in which the parents share joint legal custody." *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (generally providing that this court reviews the imposition of a sanction for an abuse of discretion). Thus, we affirm the district court's postjudgment orders. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[3]

_____, C.J.
Cadish

_____, J.
Stiglich

_____, J.
Pickering

_____, J.
Herndon

_____, J.
Lee

_____, J.
Parraguirre

_____, J.
Bell

cc: Hon. Dawn Throne, District Judge, Family Division
McFarling Law Group
Chesnoff & Schonfeld
Eighth District Court Clerk

[3]To the extent this order does not address Brofman's additional arguments, we conclude those arguments lack merit. In light of this order, we deny Brofman's motion to consolidate these matters with Docket No. 86673 and Fiore's motion for a limited remand.