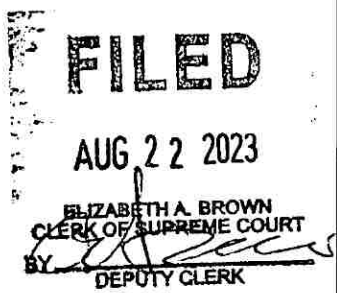
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REBECCA MARY FRANE,
Appellant,
vs.
CHRISTOPHER MICHAEL FRANE; PAULA WALL; AND WILLIAM WALL,
Respondents.

No. 85498-COA



ORDER OF AFFIRMANCE

Rebecca Mary Frane appeals from a decree of divorce involving child custody. Eighth Judicial District Court, Family Division, Clark County; Charles J. Hoskin, Judge.

Rebecca and Christopher Michael Frane were married in Clark County, Nevada in November 2016.[1] Prior to their marriage, the parties had one child together, P.F., born September 4, 2013. However, from the time P.F. was approximately three weeks old, he resided primarily with his paternal grandparents, Paula and William Wall (collectively, "the Walls").

Rebecca filed a complaint for divorce in December 2020. The district court entered a temporary custody order granting Christopher primary physical custody and joint legal custody of P.F., which maintained the status quo and allowed P.F. to remain with the Walls during the proceedings.

In May 2022, the Walls filed a motion to intervene, seeking permanent custody of P.F. They claimed that P.F. was in their full-time care, and that "arrangement has essentially been the de facto arrangement

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

until now." The district court granted the motion to intervene and set trial for September 2022. In her pre-trial memorandum, Rebecca amended her custody request and sought sole legal and primary physical custody of P.F., with visitation to the Walls. However, on the day of trial, Rebecca filed an amended pre-trial memorandum, and this time requested sole legal and sole physical custody. In his pre-trial memorandum, Christopher requested primary physical and joint legal custody and nominated the Walls "to act in his place and stead, and continue to care for the minor child, [P.F.], as they have been doing."

Following a one-day trial, in October 2022, the district court entered its findings of fact, conclusions of law and decree of divorce. The court found that the Walls had overcome the parental preference presumption and that joint custody was not in P.F.'s best interest. It granted primary physical custody of P.F. to the Walls, with all parties sharing joint legal custody. Both Rebecca and Christopher were required to pay monthly support to the Walls pursuant to the custody determination. The district court further divided the community property between Rebecca and Christopher, with Christopher required to pay Rebecca an offset of $3,250 to equalize the property distribution. Rebecca timely appealed.

On appeal, Rebecca raises three issues. She contends the district court abused its discretion when it (1) awarded the Walls primary physical custody of P.F., (2) granted child support as a result of the primary physical custody order, and (3) divided community assets and debts. We address each argument in turn.

The district court did not abuse its discretion when it awarded the Walls primary physical custody

Rebecca makes two arguments to support her claim that the district court abused its discretion in awarding the Walls primary physical

custody. First, she contends the district court erred in finding that the Walls had overcome the parental preference presumption. Second, she contends the district court erred in finding that joint custody was not in P.F.'s best interest based on the court's determination that the Walls were the only ones who could adequately care for P.F. for at least 146 days out of the year.

"[T]he district court enjoys broad discretionary powers in determining questions of child custody," *Locklin v. Duka*, 112 Nev. 1489, 1493, 929 P.2d 930, 933 (1996), and this court will affirm such determinations if they are supported by substantial evidence, *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007). Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* at 149, 161 P.3d at 242. Further, the district court's order will be upheld if "the district court's decision was based upon appropriate reasons," which requires an examination of the underlying rationale for the court's decision rather than the specific phraseology used. *Locklin*, 112 Nev. at 1493, 929 P.2d at 933 (citing *Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993)). We conclude that the district court did not abuse its discretion in awarding the Walls primary physical custody in this case.

The district court made sufficient findings that the Walls had overcome the parental preference presumption

Nevada has adopted a "parental preference doctrine," which is a rebuttable presumption that a child's best interest would be served by awarding custody to the biological parents over a nonparent. NRS 125C.004(1); *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995). The parental preference doctrine "is a rebuttable presumption that must be overcome either by a showing that the parent is unfit or other extraordinary

circumstances." *Litz*, 111 Nev. at 38, 888 P.2d at 440; *see also* NRS 128.018 (defining an "unfit parent" in the context of termination of parental rights). Extraordinary circumstances are those that "result in serious detriment to the child." *Locklin*, 112 Nev. at 1495-96, 929 P.2d at 934.

"The so-called parental preference doctrine recognizes that a parent has a constitutionally protected liberty interest in the care, custody and control of his or her child." *Hudson v. Jones*, 122 Nev. 708, 711, 138 P.3d 429, 431 (2006). Therefore, Nevada "requires that the court make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interest of the child before the district court awards custody to a nonparent without the consent of the parents." *Id.* (internal quotation marks omitted); *see also* NRS 125C.004(1).[2]

Although there is no statutory definition of "detrimental," the Nevada Supreme Court in *Locklin* provided a list of factors to "determine whether there is sufficient detriment to the welfare of the child to overcome the parental presumption." *Locklin*, 112 Nev. at 1495-96, 929 P.2d at 934-35. When a district court is applying NRS 125C.004(1) to determine whether extraordinary circumstances exist to overcome the parental preference presumption, the court may consider the following factors:

> abandonment or persistent neglect of the child by the parent; likelihood of serious physical or emotional harm to the child if placed in the parent's custody; extended, unjustifiable absence of parental custody; continuing neglect or abdication

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[2]Following its parental preference analysis, the district court also made extensive findings on the best interest factors including that eight of the factors favored the Walls and none favored Rebecca, and Rebecca does not challenge these findings on appeal.

> of parental responsibilities; provision of the child's physical, emotional and other needs by persons other than the parent over a significant period of time; the existence of a bonded relationship between the child and the non-parent custodian sufficient to cause significant emotional harm to the child in the event of a change in custody; the age of the child during the period when his or her care is provided by a non-parent; the child's well-being has been substantially enhanced under the care of the non-parent; the extent of the parent's delay in seeking to acquire custody of the child; the demonstrated quality of the parent's commitment to raising the child; the likely degree of stability and security in the child's future with the parent; the extent to which the child's right to an education would be impaired while in the custody of the parent; and any other circumstances that would substantially and adversely impact the welfare of the child.

Id.

Rebecca contends that the district court erred by applying a dictionary definition of "detrimental" when determining that the Walls had overcome the parental preference presumption. Yet, even if the district court erred by utilizing that definition, we conclude that any error was harmless because the court adequately considered the *Locklin* factors. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("When an error is harmless, reversal is not warranted.").

The district court made several particularized findings that relate to the *Locklin* factors, including finding that Rebecca had neglected P.F. since his birth, that Rebecca failed to put forth efforts to maintain a meaningful relationship with P.F., and that P.F. exhibited emotional and behavioral problems after unsupervised visitation with Rebecca. Additionally, the court found that Rebecca had chosen to live separate from

P.F., that she had been disinterested in P.F., and that she did not attempt to effectively parent P.F. for the entirety of his life until filing the divorce action. Finally, the district court found that P.F. has been stable, safe, and cared for by the Walls. Rebecca does not contend that these findings were unsupported by substantial evidence. Rather, Rebecca contends that the district court did not find that Rebecca was "unfit" or that "extraordinary circumstances existed."

Although the *Locklin* factors were not explicitly referenced in the district court's decree, and although the court did not utilize the words "unfit" or "extraordinary circumstances," we examine the underlying rationale for the court's decision rather than the court's specific phraseology. *Locklin*, 112 Nev. at 1493, 929 P.2d at 933. The court did ultimately determine, based on its findings, that awarding custody to Rebecca would be "detriment[al] to the child." *Id.* at 1495-96, 929 P.2d at 934. Contrary to Rebecca's suggestion, the court's decision was not based solely on the Walls having custody of P.F. for an extended period of time; rather, the court considered Rebecca's neglect of P.F. since birth, her disinterest in P.F., and her choice to live separate and apart from her own child since P.F. was three weeks old.[3] The district court did not abuse its

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[3]The court's findings of lifelong neglect and disinterest distinguish this case from *Locklin*, where the district court found that extraordinary circumstances did not exist because the mother "exhibited concern for [the child] during the period of sporadic contact" and "never showed an intent to abandon [the child]." 112 Nev. at 1497, 929 P.2d at 935. The court's findings also distinguish this case from *Litz*, where the supreme court found that, "because [the mother] is a fit parent *and has continually played an active role in [the child's] life*, the fact that the [grandparents] have had custody of [the child] for an extended period of time does not amount to an extraordinary circumstance that could overcome the parental preference doctrine." 111 Nev. at 38, 888 P.2d at 440-41 (emphasis added).

discretion when it concluded that the Walls had overcome the parental preference presumption.[4]

The district court made sufficient findings that joint physical custody was not in P.F.'s best interest

"The policy of Nevada is to advance the child's best interest by ensuring that after divorce minor children have frequent associations and a continuing relationship with both parents . . . and [t]o encourage such parents to share the rights and responsibilities of child rearing." *Rivero v. Rivero*, 125 Nev. 410, 423, 216 P.3d 213, 223 (2009), *overruled in part by Romano v. Romano*, 138 Nev. 1, 501 P.3d 980 (2022) (internal quotation marks omitted). To that end, joint physical custody is generally preferred to be in the best interest of the child if the parties agree to it or if a parent "has demonstrated, or has attempted to demonstrate but has had [her] efforts frustrated by the other parent, an intent to establish a meaningful relationship with the minor child." NRS 125C.0025(1); *Rivero*, 125 Nev. at 423, 216 P.3d at 223; *see also Bluestein v. Bluestein*, 131 Nev. 106, 112, 345 P.3d 1044, 1048 (2015). Here, the parties did not agree to joint physical custody nor has Rebecca argued that Christopher frustrated her intent to

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[4]Rebecca also argues that the district court improperly shifted the burden to her to show that awarding her custody would not be detrimental to P.F. However, Rebecca does not provide any legal authority in support of her position, but rather only asserts a bare conclusion that the district court erred, and therefore we need not consider it. *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). To the extent that we do consider it, Rebecca has not demonstrated a different result would have occurred but for this error. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778 ("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.").

establish a meaningful relationship with P.F. *See* NRS 125C.0025(1). Therefore, it is unclear that the joint custody preference under NRS 125C.0025(1) even applies.

Further, primary physical custody may be awarded if joint physical custody is determined not to be in the best interest of the child, *see* NRS 125C.003(1), and joint physical custody is *presumed not* to be in the best interest of a child if the district court "determines by substantial evidence that a parent is unable to adequately care for a minor child for at least 146 days out of the year," *see* NRS 125C.003(1)(a).[5]

In determining that an award of joint custody was not in P.F.'s best interest, the district court found that, given the evidence presented, Rebecca could not adequately care for P.F. for at least 146 days out of the year, and thus the presumption against joint custody in NRS 125C.003(1)(a) applied. Rebecca challenges this finding by pointing out that she had been *trying* to seek custody of P.F. since the initiation of the divorce proceedings. Rebecca claims the court's denial of her request for custody "prevent[ed] her from showing her ability to care for her minor child." However, Rebecca's recent attempts to seek custody have no bearing on her ability to adequately care for P.F. for at least 146 days out of the year going forward under NRS 125C.003(1)(a).

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[5]Additionally, if it is established by clear and convincing evidence that a parent committed an act of domestic violence against the other parent, it is presumed that sole or joint physical custody with the perpetrator is not in the best interest of the child. *See* NRS 125C.0035(5) (creating this rebuttable presumption). Here, while the district court did not make specific findings under this statute, it did find that Rebecca was convicted of battery constituting domestic violence and that conviction involved Christopher.

Rebecca also argues that "she has adequate housing and employment to be able to care for the child." Yet, Rebecca does not cogently explain why housing or employment, in and of themselves, establish that she can adequately care for P.F. for at least 146 days of the year when she has never cared for P.F. for any substantial length of time and the court found that she could not, which was based on substantial evidence. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Further, even if the district court did err in presuming that joint custody was not in P.F.'s best interest under NRS 125C.003(1)(a), the court ultimately found that it *was* in P.F.'s best interest to award the Walls primary physical custody based on the best interest factors under NRS 125C.0035(4), and Rebecca does not challenge those findings on appeal. NRS 125C.003(1) ("A court may award primary physical custody to a parent if the court determines that joint physical custody is not in the best interest of a child."). Therefore, we cannot conclude that the district court abused its discretion when it found the Walls had overcome the joint physical custody preference, even assuming the preference under NRS 125C.0025(1) applied at all. *See Schwartz v. Schwartz*, 126 Nev. 87, 91, 225 P.3d 1273, 1276 (2010) (explaining that under an abuse of discretion standard, "we will not substitute our judgment for that of the district court").

The district court did not abuse its discretion in equally dividing community property

On appeal, Rebecca claims there was a $10,500 disparity in the community property award between herself and Christopher and that the court failed to make factual findings to support the unequal distribution of community property. We disagree.

The divorce decree equally distributed community property between the parties, and therefore the district court did not abuse its

discretion. In divorce proceedings, the district court must equally distribute the parties' community property or must set forth in writing any compelling reasons for making an unequal distribution. NRS 125.150(1)(b). Appellate courts review a district court's disposition of community property deferentially, for an abuse of discretion. *See Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 919 (1996).

Excluding the joint debt on the parties' Ford truck, valued at $16,833 and split equally, the district court awarded Christopher individual assets totaling $24,600 and assigned him debts totaling $11,500, resulting in a net gain of $13,100 to Christopher. The district court awarded Rebecca individual assets totaling $14,000 and assigned her debts totaling $7,400,[6] resulting in a net gain of $6,600 to Rebecca. Thus, Christopher was awarded $6,500 more than Rebecca. The court then ordered Christopher to pay half this amount, or $3,250, as an offset to Rebecca to equalize the distribution. Therefore, because the court equally distributed the community property between Rebecca and Christopher, the court did not abuse its discretion. Accordingly, we

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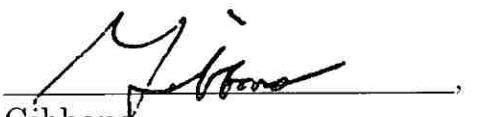
[6]Rebecca claims that "the debt on the 2010 Dodge Challenger is $11,000," whereas the decree listed that debt as $7,000. However, Rebecca offers no argument as to why the district court's valuation of the Dodge Challenger was incorrect or not supported by substantial evidence, nor did she provide a reference to the record on appeal in support of her valuation. NRAP 28(a)(10), (e); *see also Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) ("This court need not consider the contentions of an appellant where the appellant's opening brief fails to cite to the record on appeal."). In the absence of transcripts or supporting documentation in the record on appeal, we presume the missing record supports the district court's findings. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Charles J. Hoskin, District Judge, Family Division
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