IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN ANDERSON,
Appellant,
vs.
SARAH N. BLECHA, N/K/A SARAH N. BYRD,
Respondent.

No. 86292-COA

ORDER OF AFFIRMANCE

Brian Anderson appeals from a district court order modifying custody, visitation, and child support. Fourth Judicial District Court, Elko County; Kriston N. Hill, Judge.

Anderson and respondent Sarah N. Blecha, now known as Sarah N. Byrd, are the parents of D.A., a minor child born in 2009.[1] Prior to the order that is the subject of this appeal, Anderson, who resides in Elko, Nevada, had primary physical custody of D.A., while Byrd, who resides in Salem, Oregon, was entitled to parenting time during certain holidays and school breaks. In December 2020, while D.A. was in Byrd's custody, the Nevada Division of Child and Family Services informed Byrd that D.A.'s half-sister had reported to a school counselor that Anderson had been abusing the children and consuming alcohol to excess.

In January 2021, Anderson drove to Byrd's home in Oregon to pick up D.A. pursuant to the existing custody order, but Byrd refused to allow D.A. to leave with Anderson at that time. Anderson returned to Nevada and filed a motion for an order to show cause. The court granted the motion, and Byrd subsequently filed a motion to modify the child custody order, which Anderson opposed.

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

An evidentiary hearing on Byrd's motion was held over two days in October 2022. When the district court asked Anderson if he was ready to proceed, Anderson replied that he objected due to a "[p]ersonal conflict" of "knowing the judge" in high school, more than twenty years ago. The judge noted that there had been no contact between them since high school and also stated, "I certainly harbor no ill will towards you whatsoever." Thereafter, Anderson stated he believed the court and was prepared to proceed with the evidentiary hearing.

The district court heard testimony from multiple witnesses, including Anderson, Byrd, and two of Anderson's ex-girlfriends, Heidi Harter and Robbi Thorn. Byrd testified to Anderson's lack of communication with her regarding D.A.'s needs and activities. According to Byrd, Anderson would not inform her of D.A.'s medical and dental appointments or school meetings. She also testified about an incident that occurred during a custody exchange where Anderson forcibly dragged D.A. "down the driveway and shoved him in [Anderson's] vehicle."

Anderson denied forcibly dragging D.A. down the driveway but acknowledged that he "pushed [D.A.] in the truck, because he began to fight me." Anderson also admitted that he did not inform Byrd about an injury to D.A. that occurred at a football practice, that he used a sledgehammer to destroy a phone that Byrd had purchased for D.A., and that he struck D.A. with a belt.

Harter testified to her observations of the relationship between D.A. and Anderson and to Anderson's alcohol use while they were dating. Harter stated that Anderson's "level of alcoholism" was "the very worst. It's the very worst." Anderson objected to this testimony, claiming that it was inadmissible expert testimony, but the district court overruled his objection.

Following the evidentiary hearing, the district court granted Byrd's motion to modify custody. In its order, the court found that "[Anderson] has demonstrated an absolute inability to co-parent with [Byrd,]" and this inability to co-parent constituted a substantial change in circumstances affecting D.A.'s welfare. The court further analyzed the statutory best interest factors under NRS 125C.0035(4) and concluded that D.A.'s best interest would be served by modifying custody. Specifically, the court noted that Anderson "has a long and consistent history of unreasonably restricting the contact between [D.A.] and [Byrd]" and that Anderson "does his best to cut [Byrd] completely out of [D.A.'s] life." The district court awarded Byrd primary physical custody of D.A., subject to Anderson's right to parenting time on certain holidays and school breaks. This appeal followed.

On appeal, Anderson raises four issues. He first challenges the district court's finding that Anderson demonstrated "an absolute inability to co-parent," which the court relied on as the substantial change in circumstances warranting a custody modification. Second, Anderson contends that the district court abused its discretion when it awarded Byrd primary physical custody because Byrd withheld D.A. after the 2020 winter holidays. Third, Anderson argues the district court abused its discretion when it permitted Harter's testimony regarding Anderson's alcohol use. Fourth, he contends the district court judge erred by declining to recuse herself.

Decisions regarding child custody are reviewed for an abuse of discretion. *See Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous. *Id.* Factual findings are given deference and will be upheld if supported by substantial

evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). We presume that the district court properly exercised its discretion in determining the child's best interest, *Flynn v. Flynn*, 120 Nev. 436, 440 92 P.3d 1224, 1226-27 (2004), and we do not reweigh evidence or credibility determinations on appeal, *see Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

A district court may modify a physical custody arrangement only if (1) there has been a substantial change in circumstances affecting the welfare of the child and (2) the modification serves the best interest of the child. *Romano v. Romano*, 138 Nev. 1, 2, 501 P.3d 980, 981 (2022). In making a custody determination, the district court's sole consideration is the best interest of the child, NRS 125C.0035(1), and the court must consider the best interest factors set forth in NRS 125C.0035(4).

In this case, the district court did not abuse its discretion when it modified the physical custody arrangement. Anderson first contends that the district court's finding that he had an "absolute inability to co-parent" was unsupported by substantial evidence. We disagree. At the evidentiary hearing, Anderson admitted that it was not a "priority" for him to facilitate calls between Byrd and D.A. Moreover, text messages introduced at the hearing showed Anderson repeatedly ignoring Byrd's requests to communicate with D.A. Additionally, Anderson acknowledged that he failed to inform Byrd of an injury to D.A.'s thumb and that he used a sledgehammer to destroy the phone D.A. used to communicate with Byrd.

Anderson contends that the district court did not adequately consider the testimony of "no less than three . . . witnesses," including

Anderson himself, who he claims established his ability to co-parent. However, the district court was free to reject Anderson's self-serving and conclusory testimony that he believed he was capable of co-parenting. Further, the district court was within its discretion to weigh conflicting evidence, and we do not reweigh evidence or credibility determinations on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244.[2]

In any event, even if the district court erred in finding that Anderson lacked the ability to co-parent, any error was harmless because this finding was used as the basis for the court's conclusion that a substantial change in circumstances existed, and Anderson concedes that a substantial change in circumstances affecting D.A.'s welfare existed in this case. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (stating that an error affects substantial rights and may be reversible if it is shown that "but for the alleged error, a different result might reasonably have been reached").

Next, Anderson argues that the district court abused its discretion when it awarded Byrd primary physical custody after analyzing the best interest factors under NRS 125C.0035(4). In its analysis, the district court found that six of the factors favored Byrd, one favored Anderson, and

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[2]To the extent that Anderson claims that Robbi Thorn and Byrd both opined that he was capable of co-parenting, Anderson takes their opinion testimony out of context. On redirect examination, Thorn was asked, "is it possible in any remote way to co-parent with somebody like Mr. Anderson?" She responded, "if he decides he's going to change, sure. But right at this moment, the way things are going for this, at least, five years, I don't see anything changing." Likewise, Byrd testified that "it doesn't benefit [Anderson] in any way to co-parent." When asked, "is [Anderson] capable of changing?" she responded, "I think anybody is capable of it if they actually want to." Then, when asked if Anderson wanted to change, she stated "I don't think so. I don't think he thinks he's got a problem."

that the remaining five were inapplicable. On appeal, Anderson only challenges these findings insofar as they relate to Byrd's singular act of preventing D.A. from returning to Anderson's custody after the 2020 winter holidays.

The district court addressed each of the required best interest factors and specifically noted that the factor regarding parental abduction, NRS 125C.0035(4)(l), weighed in favor of Anderson due to Byrd withholding D.A. However, the district court also found that several other factors favored Byrd, and Anderson does not argue that these findings were not supported by substantial evidence. Because the district court adequately considered each of the statutory best interest factors under NRS 125C.0035(4) and found that it was in D.A.'s best interest to award Byrd primary physical custody, the court did not abuse its discretion. To the extent that Anderson argues that the district court should have given greater weight to Byrd's purported abduction, as noted above, we do not reweigh evidence or credibility determinations on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Moreover, Anderson has not demonstrated that, had the district court given greater weight to this factor, the result would have been different. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778.

Anderson next argues that the district court abused its discretion by allowing Harter to testify about Anderson's alcohol use, which he contends permitted Harter to erroneously "diagnose" him as an alcoholic "without the qualifications to do so." A district court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *See generally Abid v. Abid*, 133 Nev. 770, 772, 406 P.3d 476, 478 (2017). A lay witness may testify to an opinion that is "[r]ationally based on the perception of the witness" and "[h]elpful to a clear understanding of the testimony of the witness or the determination of a fact in issue." NRS 50.265.

Here, Harter's testimony regarding Anderson's "level of alcoholism" did not call for specialized knowledge outside the scope of Harter's own personal perception. Harter did not, as Anderson argues, provide a medical diagnosis of alcoholism. Through her six-month dating relationship with Anderson, Harter had observed Anderson's alcohol consumption, and her opinion of his alcohol abuse was rationally based on this perception. Therefore, the district court did not abuse its discretion in permitting Harter's testimony. Furthermore, Anderson cannot show that his substantial rights were violated by Harter's testimony where the district court's order did not reference his alcohol use in its analysis of the best interest factors. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778.

Finally, Anderson contends that the district court judge erred when she did not recuse herself from the matter based on her previous familiarity with Anderson. A judge's decision not to recuse herself will not be overturned absent a clear abuse of discretion. *Canarelli v. Eighth Judicial Dist. Court*, 138 Nev. 104, 106-07, 506 P.3d 334, 337 (2022).

"[A] judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification." *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1253, 148 P.3d 694, 700 (2006). Disqualification for personal bias requires an extreme showing of bias that would permit manipulation of the court and significantly impede the judicial process and the administration of justice. *Id.* at 1254-55, 148 P.3d at 701. "[A] disqualifying bias must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from participation in the case." *Whitehead v. Nev. Comm'n on Judicial Discipline*, 110 Nev. 380, 428 n.45, 873 P.2d 946, 976 n.45 (1994).

We note that Anderson did not request the district court judge's recusal in this case. Rather, Anderson stated that he was objecting to the

proceeding based on a "[p]ersonal conflict" as a result of him and the judge attending high school together. The judge stated that she harbored no ill will toward him, and Anderson responded that he believed that. Accordingly, Anderson's argument that the district court judge should have recused herself is arguably waived on appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

Even on the merits, Anderson does not demonstrate that the judge had a personal bias concerning him or that her impartiality might reasonably be questioned, nor does he argue that the judge had formed an opinion on the merits on a basis outside of the proceedings. *Whitehead*, 110 Nev. at 428 n.45, 873 P.2d at 976 n.45. The mere fact that the district court judge and Anderson had gone to school together more than 20 years earlier does not, by itself, constitute an "extreme showing of bias [that] would permit manipulation of the court and significantly impede the judicial process and the administration of justice." *Millen*, 122 Nev. at 1254-55, 148 P.3d at 701 (alteration in original) (internal quotation marks omitted). Therefore, the district court did not abuse its discretion in declining to recuse from the case.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Kriston N. Hill, District Judge
Ben Gaumond Law Firm, PLLC
Evenson Law Office
Elko County Clerk