

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIFFANY LYNN OLSON, N/K/A
TIFFANY LYNN HAMILTON,
Appellant,
vs.
CHRISTIAN PATRICK OLSON,
Respondent.

No. 86237-COA

FILED

FEB 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tiffany Lynn Olson (now Tiffany Lynn Hamilton) appeals from a district court order denying a motion to modify child custody. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Tiffany and respondent Christian Patrick Olson divorced in 2014.¹ As part of their divorce decree, they agreed to joint legal custody and for Tiffany to have primary physical custody of their two minor children, A.O., born in October 2006, and L.O., born in November 2010. At that time, the parties and their children lived in Fallon, Nevada. In 2015, Christian became employed as a deputy by the Washoe County Sheriff's Office and moved to Reno. Tiffany and the children continued to live in Fallon. Each party filed motions to modify Christian's parenting time schedule and in May 2016, the district court issued an order regarding custody which confirmed Tiffany as the primary physical custodian and determined Christian's parenting time.

In 2018, Tiffany married Jeff, who had custody of his two daughters. In 2019, Christian left the sheriff's office and purchased a house cleaning franchise in the Reno/Sparks area. In 2021, Christian married

¹We recount the facts only as necessary for this disposition.

Jennifer, who had joint physical custody of her two daughters. In June 2021, Christian filed a motion seeking primary physical custody of A.O. and L.O., which Tiffany opposed. The district court held an evidentiary hearing and learned that both parties had remarried; that L.O.'s school performance had severely declined; that Christian had discovered that 14-year-old A.O. had been using her cellphone without supervision and posting and/or sending sexually inappropriate photos of herself on social media platforms; and that Christian's new employment gave him considerable flexibility and allowed him to spend much more time with the children.

In December 2021, the district court issued an order finding that substantial changes had occurred that affected the Olson children's welfare, and that it would serve their best interest for Christian to have primary physical custody, while the parties continued to share joint legal custody. The district court did not order child support. However, in early April 2022, the child support master recommend that Tiffany pay approximately \$900 per month in child support and set child support arrears. The district court adopted the master's recommendation.

Less than four months later, in mid-April 2022, Tiffany filed an ex parte emergency motion to temporarily modify custody, claiming that Christian physically abused A.O. two days earlier when A.O. refused to give him the passcode to her cellphone. Tiffany further alleged that when the police became involved, Christian told A.O. to lie to them. A.O. later signed an affidavit describing the altercation, which was attached to the motion. Christian opposed the motion, asserting that what occurred amounted to "a small struggle" that arose when he discovered a second cellphone that Tiffany surreptitiously provided to A.O. and told her to keep secret. Christian contended that it was apparent that Tiffany was attempting to

cause a situation in retaliation for her losing custody and having to pay child support. Moreover, he noted that the Washoe County's Sheriff's Office and Child Protective Services investigated the allegations and did not remove A.O. from Christian's care.

The district court denied the motion on an ex parte basis but treated it as a notice of motion for change of custody and set an evidentiary hearing. The parties stipulated to continue the evidentiary hearing twice, until January 2023, but Tiffany never filed an amended or new motion for a permanent change of custody, or a motion related to L.O. At the outset of the hearing, Christian's attorney represented that, although the ex parte motion appeared to pertain only to A.O. and only requested temporary custody, Christian would waive his right to "adequate cause" under *Rooney* and would consent to a final custody determination for both children.² A.O., Tiffany, and Christian testified. Sheriff's Deputy Ron Harvey, who interviewed A.O., also testified. Christian's wife, Jennifer—the only eyewitness to the incident—testified as well.

The January 2023 evidentiary hearing

Testimony regarding the April 2022 incident varied greatly between witnesses. A.O. testified outside the presence of the parties. According to her, the incident unfolded substantially as follows: After finding a second cell phone in A.O.'s possession, Christian confronted her in her bedroom and demanded that she tell him its passcode. She refused, and he grabbed her by the chin in order to unlock the phone using facial

²*Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993) (requiring that a district court hold an evidentiary hearing on a motion to modify custody if the moving party demonstrates "adequate cause" for the hearing, which is "something more than allegations which, if proven, might permit inferences sufficient to establish grounds for a custody change").

recognition. Christian then straddled her and pulled her head up by the hair in order to open the phone. Christian hit her in the face with a closed fist and put his arms around her neck, holding her on the floor for approximately five minutes, making it difficult to breathe. A.O. stated that Christian twisted her arm backward and threatened to break it and told A.O. that he could kill her. Once the physical altercation ended, A.O. testified that Christian said he called his lawyer, who told him to call law enforcement to obtain a police report in case Tiffany tried to use this incident to regain custody of the children. A.O. testified that Christian then told her not to tell the police that “anything physical happened” because she “could go to juvie” and he “could go to jail.”

Christian’s testimony differed substantially from A.O.’s. He testified that it was approximately dinnertime when he went to check on A.O. in her bedroom. He opened her bedroom door after she did not respond to his knocking, and he saw her sleeping on the bed next to two cellphones—one which he provided to her and another which he recognized as a cellphone A.O. used at her mother’s house. He took the second cellphone downstairs and showed it to Jennifer. The cellphone was locked by a passcode. He went back upstairs and knocked loudly on A.O.’s bedroom door to wake her up. When A.O. woke up, he asked her for the passcode as he stood in the doorway. After A.O. refused to give Christian the code, he walked closer to her and held the phone approximately three feet away from her face in an attempt to unlock the phone with facial recognition. A.O. then grabbed Christian’s wrist to get the phone back. Christian was thrown off balance because he was suffering from a flare-up caused by a previous back injury and is heavy set, and fell on top of A.O. on her bed.

Christian testified that A.O. then began punching, kicking, screaming, and scratching his face and back. Christian stated that A.O. scratched his face with her fingernails and “got her heel up in between me and her and she heel dropped me in the face.” Christian tried to pin her arms down but was unable to do so because the mattress was very soft, and he was unable to hold her still. Christian stated that he had to pick her up and move her to the floor, where he was able to have a solid foundation underneath her to grab her wrists and pin them to her chest. He kept her in this position until she calmed down. Christian then called the police and provided a written statement.³ Christian testified that he did not remember ever grabbing her face and adamantly denied striking her or placing his hands on her neck.

Jennifer testified that she entered A.O.’s bedroom only a few seconds after the altercation began. She saw A.O. punching, kicking, and scratching Christian, who had just fallen over. She testified that the struggle lasted several minutes and she ultimately grabbed the phone from Christian so that he could use both hands to pin down A.O.’s hands until

³The police report states that sheriff’s deputies interviewed Christian, Jennifer, and A.O., and describes the incident as told by each of them. Additionally, it states that deputies observed a small scratch under Christian’s left eye and another small red mark on his body. Deputies observed no injuries or redness on A.O.’s arms, legs, face, or neck (A.O. testified that deputies “shined a light in [her] face”). The report notes that A.O. stated that she was not sure if she scratched or kicked her dad, but she did not intentionally hurt him. A.O. also told deputies that they apologized and hugged each other after the incident. The report states that CPS was notified of the incident and did not respond. It also notes that Christian did not want A.O. cited, and wanted a report taken for the possibility of future custody hearings.

she was subdued. She denied seeing Christian strike A.O., putting his hands on her neck, or hearing Christian threaten to kill her.

On the evening of the encounter, A.O. spoke with police—outside the presence of Christian and Jennifer—and provided a written statement describing the incident. In that statement, she wrote, “my dad . . . grabbed my face and tried to force my face I.D. into my phone and after I tried to grab my phone he grabbed my arms and tried to make me stop grabbing it.” The report made no mention of Christian striking A.O. with his fist, choking her, or twisting her arm.

Two days after the incident, A.O. recounted what had happened to Tiffany and related that Christian threatened her to get her to lie to law enforcement officers. Tiffany drove to A.O.’s school in Reno and called the police. A.O. met with sheriff’s deputy Ron Harvey to complete another police report and to document her bruises. This report states that Christian punched her in the face, grabbed her hair, choked her, and threatened to break her arm. Deputy Harvey testified at the hearing that he saw only “minute” bruising on A.O.’s face that day. He stated that there was no evidence of choking or strangulation, or that A.O. had been punched in the face.

When asked about A.O.’s affidavit that was attached to her mother’s motion, A.O. admitted that she did not write it and had only read the first three or four sentences of the document before signing it. She had not, at that point, read the affidavit in its entirety. She testified that when she signed it, she was told it was for a custody order that would allow her mother to get temporary custody of her. When questioned about the inconsistencies between the two police reports and her testimony, A.O. stated that her initial report was made under duress and that she “lied to

the cops” because her father admonished her that if she told the police that “anything physical happened[,] [she] could go to juvie, [and he] could go to jail.” She testified that the second police report reflected the events more accurately. When questioned about inconsistencies between the second police report and her testimony, she stated that she was confident in her testimony and that any prior statements that were inconsistent with her trial testimony were incorrect.

Christian, Tiffany, and A.O. testified that the incident was reported to CPS, the CPS worker spoke with all parties involved, and the claims were ultimately found to be unsubstantiated. Christian testified that he was never arrested as a result of the incident and had no pending criminal charges. A.O. conceded that she told the CPS worker she felt safe in her father’s home and she was confident a similar incident would never happen again. She testified that nothing similar had happened again in the nine-month period between the April 2022 incident and when she testified in January 2023. Indeed, she conceded that she did not think that “something to that extent is going to happen again.”

The district court properly denied Tiffany’s motion to modify custody

Following the evidentiary hearing, the district court denied Tiffany’s motion to modify custody. In its order, the court found that while Christian and A.O. engaged in a physical altercation in April 2022, Christian did not use unlawful force against A.O., and the altercation was an isolated incident that did not amount to a substantial change in circumstances. Further, the best interest of the children favored maintaining the existing custody arrangement. Tiffany appeals.

Tiffany argues the district court abused its discretion when it did not modify physical custody because it ignored a portion of the evidence

she presented to support modification. Tiffany also contends that the district court gave more weight to inconsistencies in A.O.'s testimony and police reports than to inconsistencies between Christian's testimony and police reports. Christian argues the district court, as the trier of fact, considered all the evidence, weighed each witness's credibility, and properly exercised its discretion to deny custody modification. We agree with Christian.

The district court has broad discretion to determine child custody matters and this court will not disturb custody determinations absent a clear abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). "An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). A district court's factual findings will not be set aside "if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Nevada acknowledges that "custodial stability" promotes "the developmental and emotional needs of children," and therefore, "courts should not lightly grant applications to modify child custody." *Id.*

A modification of a physical custody arrangement is only warranted when the movant demonstrates 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 v. Romano*, 138 Nev. 1, 4, 501 P.3d 980, 982 (2022), *abrogated in part by Killebrew, Tr. of Killebrew Revocable Tr., 5TH ADM 1978 v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). "[T]he party seeking a modification of custody bears the burden of satisfying both

prongs.” *Ellis*, 123 Nev at 151, 161 P.3d at 242-43. When making a custody determination, the district court is required to set forth specific findings concerning the best interest of the child, looking to each of the factors set forth in NRS 125C.0035(4), and to any other factors that may apply. *Id.* at 149, 161 P.3d at 242. Moreover, the district court’s “order must tie the child’s best interest, as informed by specific, relevant findings respecting the [best interest factors] and any other relevant factors, to the custody determination made.” *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

In this case, the district court’s finding that the April 2022 incident did not constitute a substantial change in circumstances was based on substantial evidence in the record. The court’s lengthy order thoroughly details its findings and considerations based on evidence presented during the evidentiary hearing. The order also states that the court assessed the credibility of the witnesses and their testimony regarding the incident.

Tiffany’s evidence of a substantial change in circumstances was almost exclusively centered on the April 2022 incident, which she alleged consisted of Christian choking A.O. and striking her in the face with a closed fist over a cellphone.⁴ Although Tiffany challenges several of the court’s

⁴Tiffany also presented evidence that A.O. wished to live with her in Fallon. However, the district court’s December 2021 custody order specifically stated that it had considered A.O.’s desire to live in Fallon in determining her best interest. Therefore, A.O.’s preference had not changed; thus, it did not provide a basis for finding a change in circumstances. *See Ellis*, 123 Nev. at 151, 161 P.3d at 243 (reiterating that any change in circumstances must generally have occurred since the last custody determination because the “‘changed circumstances’ prong ‘is based on the principle of res judicata’ and ‘prevents “persons dissatisfied with custody decrees [from filing] immediate, repetitive, serial motions until the

specific factual findings, at its core, her argument is that she presented sufficient evidence to demonstrate Christian committed acts of violence against A.O. and the court ruled against her because it improperly weighed or misinterpreted the evidence. The flaw in this argument is that Christian presented extensive evidence at the evidentiary hearing that conflicted with Tiffany's evidence and the court considered this in resolving the parties' custodial dispute.

In its order, the district court stated that, in assessing the credibility of the witnesses and their testimony, it also considered the actions of the parties preceding and following the event. Particularly, A.O. testified that Tiffany told her on numerous occasions that she would find a way to obtain custody of A.O. again. A.O. testified she wanted to return to live with her mother in Fallon and she missed her friends who lived there. A.O. also testified that she had a good relationship with her father, but she expressed some frustration that he wanted her to spend more time with family than with her friends. Jennifer further testified that A.O. "gets free range at her mother's house to do whatever she wants without any repercussions."

The district court stated that Tiffany's claim of changed circumstances arose out of what she considered to be an act of domestic violence. While the court found that it is undisputed that Christian and A.O. engaged in a physical altercation in April 2022, the incident did not constitute domestic violence. The court also found that the testimony was sufficient to establish that Christian pinned A.O. on the ground and held

right circumstances or the right judge allows them to achieve a different result, based on essentially the same facts"" (quoting *Castle v. Simmons*, 120 Nev. 98, 103-04, 86 P.3d 1042, 1046 (2004)).

her hands down, however, the evidence was insufficient to establish that Christian choked A.O. or struck her in the face with a closed fist. Further, Christian's act of pinning A.O. to the ground and holding her arms down did not constitute battery because it was not an unlawful use of force by virtue of the parental privilege⁵ and the altercation was an isolated incident that did not amount to a substantial change in circumstances.

Additionally, A.O. told the CPS case worker that she felt safe in her father's home and she was confident that a similar incident would never happen again. She testified that nothing similar to that altercation happened again in the nine-month period between the April 2022 incident and when she testified in January 2023. Indeed, she stated that she did not think that "something to that extent [was] going to happen again." Therefore, the district court's finding of no substantial change in circumstances was supported by substantial evidence. Accordingly, a best interest analysis was not warranted. Nevertheless, the district court

⁵Tiffany also argues that because the district court extended the parental privilege defense to Christian, it necessarily made a finding that his actions amounted to battery. She contends that under *Newman v. State*, 129 Nev. 222, 298 P.3d 1171 (2013), the district court was required to make a specific finding of Christian's intent when he pinned A.O. to the ground. However, NRS 200.481(1)(a) defines battery as "willful and unlawful use of force or violence upon the person of another." Because the district court made a specific finding that Christian's act of pinning A.O. to the ground to stop her from kicking and scratching him was not an unlawful use of force, and that an act of domestic violence was not established, Christian's actions did not amount to battery. See *Newman*, 129 Nev. at 232-33, 298 P.3d at 1178-79 (explaining that the parental privilege justifies battery when it constitutes the "use [of] reasonable and moderate force to correct [one's] child []") (quoting *State v. Wright*, 593 N.W.2d 792, 801 (S.D.1999)). Therefore, the district court sufficiently found Christian lacked the necessary intent to commit battery. See generally NRS 193.230(1) (a party about to be injured may resist an offense).

elected to consider all the relevant best interest factors under NRS 125C.0035(4) based on the evidence presented during the evidentiary hearing, and ultimately concluded that the new evidence also supported the prior findings and favored Christian maintaining primary physical custody.⁶ See *Monahan v. Hogan*, 138 Nev. 58, 65-69, 507 P.3d 588, 594-96 (Ct. App. 2021) (explaining that the district court may include by reference the findings from the preceding custody hearing). The court found that the second cell phone gave A.O. access to social media applications that Christian wished to restrict while in his home because of A.O.'s history of sharing extremely inappropriate content on social media platforms.⁷ Therefore, the district court could properly find that Tiffany's act of giving a second phone to A.O. directly undermined Christian's parental authority and demonstrated a refusal to cooperate with Christian to meet A.O.'s needs.

The district court also noted that while there had been some tension between A.O. and Christian, Christian credibly testified that since

⁶We also note that under *Romano*, 138 Nev. at 5, 501 P.3d at 983, both prongs must be proven by the moving party and Tiffany does not explicitly argue the second prong on appeal (best interest of the children). See NRS 125C.0035(4). Therefore, the district court's finding that Christian maintaining physical custody served the children's best interest is an independent ground for affirmance on appeal. See *Hung v. Genting Berhard*, 138 Nev., Adv. Op. 50, 513 P.3d 1258, 1289 (Ct. App. 2022) (holding that when a district court provides independent alternative grounds to support its ruling, the appellant must properly challenge all of the grounds otherwise, the ruling will be affirmed).

⁷Christian blocked these apps on A.O.'s cellphone when he became the primary physical custodian in December 2021. At the January 2023 evidentiary hearing, Tiffany conceded that she knew A.O. had access to these apps in the second cellphone.

the April 2022 incident, their relationship had been stronger and A.O.'s behavior toward Christian was not surprising in light of her age and maturity. The court commented that the situation did not necessarily weigh against Christian maintaining primary physical custody. Additionally, the court found that L.O. had reached grade level in math and reading since moving to Reno and he made the honor roll for the first quarter of the school year. As to whether any parent has a history of domestic violence, the district court reiterated that it did not find the evidence established an act of domestic violence under both a clear and convincing standard and a preponderance of the evidence standard.⁸ See NRS 125C.0035(5), .0035(4)(k).

While Tiffany may be dissatisfied with the way the district court evaluated and weighed the parties' conflicting evidence, this court will not reweigh the evidence or reevaluate witness credibility on appeal. See *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh the evidence on appeal); see also *Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal). The district court was in the best position to make the custody determination in this case because it saw the parties testify at numerous hearings and reviewed all the evidence in the record. Moreover, this court

⁸Tiffany also argues that the district court abused its discretion by finding that Christian's actions did not amount to (1) assault because pinning A.O. to the ground reasonably caused her apprehension of immediate bodily harm; and (2) coercion because his intent was to compel Alexis to unlock the phone by grabbing her face and forcing it in front of the phone to unlock it through facial recognition. However, the district court acted within its discretion when it made a finding that Christian did not engage in acts of domestic violence. See NRS 33.018(1)(a)-(c) (defining domestic violence to include battery, assault and coercion).

deferentially reviews the district court's custody determination, focusing on whether it "reached its conclusions for the appropriate [legal] reasons" and whether its factual findings were "supported by substantial evidence." *Ellis*, 123 Nev. at 149, 161 P.3d at 241-42. Here, because the district court appropriately considered all the evidence, weighed each witness's credibility, and made findings that were supported by substantial evidence, we conclude that it properly exercised its discretion when it did not modify physical custody.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Thomas L. Stockard, District Judge
Bittner & Widdis Law
Viloria, Oliphant, Oster & Aman L.L.P.
Churchill County Clerk

⁹Insofar as Tiffany has raised arguments that are not specifically addressed in this order, we conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.