IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHERYL ANN SLADER,
Appellant,
vs.
CORY LAWRENCE COLLEY,
Respondent.

No. 87160-COA

ORDER AFFIRMING IN PART AND DISMISSING IN PART

Cheryl Ann Slader appeals from a district court order finally establishing child custody. Eighth Judicial District Court, Family Division, Clark County; Amy Mastin, Judge, and Regina M. McConnell, Judge.[1]

Cheryl and respondent Cory Lawrence Colley were married in 2007 and have one minor child together, who was born in 2007. In 2019, Cory initiated divorce proceedings and requested joint legal and primary physical custody of the child. Cheryl, in her answer and counterclaim, initially requested the same relief, but—as stated in the decree of divorce—later requested joint physical custody of the child in her pretrial memorandum.[2] On June 7, 2022, following trial on issues related to child custody, the district court entered its findings of fact, conclusions of law and

[1]The Honorable Amy Mastin entered the June 7, 2022, decree of divorce, and, following administrative reassignment, the Honorable Regina M. McConnell entered the July 14, 2023, order resolving the remaining child custody issues.

[2]Cheryl did not include her pretrial memorandum or other pretrial documents in her appendices in this appeal. Accordingly, this court adopts the procedural history as stated in the district court's June 7, 2022, divorce decree.

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decree of divorce in this case, ending the marriage and granting the parties' request for joint legal custody, but awarding primary physical custody to Cory, subject to Cheryl's parenting time and setting child support. Notably, the decree did not finally resolve the parties' holiday and parenting time schedule, nor did it resolve the parties' community property claims and debts. Instead, the court reserved jurisdiction to hold a trial and resolve those issues at a later date.

Cheryl appealed from the divorce decree in Docket No. 84847, but the supreme court dismissed that appeal for lack of jurisdiction, concluding that the divorce decree did not constitute a final judgment or a final order resolving child custody and was therefore not appealable. *See Slader v. Colley*, Docket No. 84847, 2023 WL 1453232 (Nev. Jan. 12, 2023) (Order Dismissing Appeal). After administrative reassignment and subsequent proceedings before a different district court judge, the district court entered an order on July 14, 2023, that resolved the remaining child custody issues regarding holidays and parenting time. Cheryl now appeals.

As an initial matter, to the extent that Cheryl seeks to challenge the bifurcation of the underlying trial in order to decide the community property and debt issues at a later date, and the district court's decisions regarding alimony and child support as part of this appeal, we lack jurisdiction to consider those issues because, as Cheryl acknowledges in her fast-track statement, the district court has still not entered a final judgment in this matter. A final judgment is defined as one that resolves all of the parties' claims and rights in the action, leaving nothing for the court's future consideration except for post-judgment issues. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). And here, the division of the parties' assets and debts remains unresolved, such that no final,

appealable judgment has been entered in the underlying case. *Id.* Thus, to the extent Cheryl purports to challenge these aspects of the parties' divorce decree in this appeal, we lack jurisdiction to consider her appeal as to those issues, and thus, we dismiss this portion of her appeal. *See* NRAP 3A(b)(1) (providing for an appeal from a final judgment); *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (stating this court "may only consider appeals authorized by statute or court rule").

With regard to child custody, however, because the district court's July 14, 2023, order resolved the child custody issues regarding the holiday and parenting time schedule left open by the divorce decree, the July 14 order is appealable under NRAP 3A(b)(7) as an order that "finally establishes or alters the custody of minor children," and the child custody rulings set forth in the decree are reviewable in the context of the appeal from the July 14 order. *Cf. Consol. Generator-Nev., Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (holding that interlocutory orders may be considered in appeals from the final judgment).[3]

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[3]We reject Cheryl's request to convert these proceedings to include an original petition for a writ of prohibition or other relief related to the bifurcation of the underlying trial and the district court's decisions regarding alimony and child support as she has failed to provide this court with any authorities supporting her request or demonstrate that such extraordinary relief is warranted in this instance. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued or lack relevant authority). Moreover, Cheryl's requested relief would render her challenges to the child custody order futile because the July 14 order is independently appealable under NRAP 3A(b)(7). *See e.g., Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (holding that "the right to appeal is generally an adequate legal remedy that precludes writ relief").

In her fast track statement, Cheryl argues that the district court erred by providing insufficient time for discovery and only allowing three hours for trial. However, Cheryl failed to provide a copy of any of the district court's discovery or pretrial orders in her appendices, or any motions or transcripts related to her concerns regarding the time for discovery or the length of trial regarding the district court's custody determinations. We conclude that these missing documents are necessary to evaluate whether the district court's interlocutory determinations regarding discovery and the length of the trial were appropriate, and, in their absence, presume that they support the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that the appellant is responsible for preparing an adequate appellate record and that "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing [documents] support[ ] the district court's decision").

We now turn to Cheryl's challenges to the merits of the district court's custody determination and the district court's application of the domestic violence presumption. This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm such determinations if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Further, we presume 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). Under NRS 125C.003, 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," and an award of joint physical custody is presumed not to be in the best interest of the child if "there has been a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that a parent has engaged in one or more acts of domestic violence against . . . a parent of the child." NRS 125C.003(1)(c).

In its divorce decree, the district court made findings of fact relevant to the best interest of the child factors. The court found that NRS 125C.0035(4)(a) the wishes of the child as to custodial preference, (b) nomination of a guardian, (c) which parent is more likely to allow the child to have frequent associations with the other parent, (d) the level of conflict between the parents, (e) the ability to cooperate, (f) the mental and physical health of the parents, (g) the physical and developmental needs of the child, (j) parental abuse or neglect of the child, and (l) previous attempts at abduction were either equal between Cory and Cheryl, or were inapplicable to the current situation and did not favor an award of custody to either parent.

However, after reviewing the child interview conducted in this case and the evidence presented at trial, the court concluded that NRS 125C.0035(4)(h)—the nature of the relationship of the child with each parent—"is the tiebreaker" in this case. In so doing, the court noted the minor child's report that he feels comforted and validated while staying with his father and that he finds his mom to be "argumentative and unrelenting" and that "he feels accepted by Cheryl only when his opinion is in line with hers and described feeling invalidated by her comments."

Related to Cheryl's domestic violence allegations, Cheryl presented evidence that Cory had been arrested in January 2020 for an alleged incident of battery domestic violence, wherein he purportedly shouted at her and threw a cell phone at her hand. She also presented testimony from a couples' therapist who testified that, during a counseling session, Cory had an aggressive outburst, wherein he yelled at Cheryl, made derogatory remarks to her, and eventually left the session—slamming the door in the process. However, the court ultimately concluded that the domestic violence presumption did not apply because Cheryl did not present clear and convincing evidence that domestic violence occurred, and because Cheryl failed to provide any additional "justification or explanation for why the presumption should impact Cory's request for primary physical custody, but not her request for joint physical custody."

When evaluating the evidence discussed above, the court found that the video evidence of the January 2020 incident did not have audio, did not actually show the incident, and only recorded Cheryl's boyfriend, who did not appear to be concerned or alarmed about the alleged battery occurring off-camera. Further, the court found that the notarized letter describing the incident only stated that a violent incident occurred "without any reference to what is alleged to have occurred at [the minor child's] school." Related to the incident during the couples' counseling session, the court concluded that the testimony and progress notes of the couples' therapist did not constitute clear and convincing evidence that domestic violence had occurred and concluded that the domestic violence factor was neutral and that the presumption against primary physical custody did not apply. Ultimately, the court found that an award of primary physical custody to Cory would be in the child's best interest.

In her fast track statement, Cheryl argues that the district court's award of primary physical custody is not supported by substantial evidence as the district court "cherry picked" evidence to find in favor of Cory and misapplied evidence related to the domestic violence presumption. However, Cheryl failed to provide this court with a copy of her answer and counterclaim, her pretrial memorandum, or any exhibits admitted by the district court during the trial for our consideration in support of her claims, thereby hindering our ability to review her challenge to the district court's decision on the evidentiary, domestic violence and child custody issues.[4] Indeed, her failure to provide the above noted materials, the portions of the trial transcripts containing her opening statements and closing arguments, or other documents setting forth the arguments she presented regarding this evidence and the testimony below makes it impossible to determine which, if any, of these arguments she presented to the district court. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on

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[4]Cheryl did provide a "Submission of Appendix and Exhibit List for Exhibits Supporting Defendant/Counterclaimant's Closing Brief." These materials were filed in the underlying matter in support of Cheryl's closing brief following trial and were ultimately stricken by the district court because they did not contain exhibits admitted during trial. On appeal, Cheryl fails to explain how the district court abused its discretion in striking those materials in light of the court's finding that filing the additional exhibits was improper as "the parties were not given the option of submitting additional exhibits or evidence not already admitted at trial." *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (holding that the court need not consider claims that are not cogently argued). We therefore conclude that the district court's decision to strike these exhibits was not improper, and thus, these materials cannot be used as a basis for relief on appeal.

appeal."). Under these circumstances, we must necessarily presume the missing portions of the record support the district court's decision. *Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

Nevertheless, the limited record before this court—namely the partial trial transcripts—demonstrates that the district court's findings on the domestic violence and child custody issues are supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 152, 161 P.3d at 242, 244 (noting that this court will affirm a child custody determination if it is supported by substantial evidence and refusing to reweigh credibility determinations on appeal); *Flynn*, 120 Nev. at 440, 92 P.3d at 1226-27 (presuming that the district court properly exercised its discretion in determining the child's best interest); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). Thus, Cheryl's challenges related to the district court's weight and consideration of the evidence before it and its resolution of the domestic violence issue do not provide a basis for relief.

Finally, Cheryl alleges that the district court abused its discretion by awarding Cory primary physical custody without expressly finding that she was unable to care for the minor child for over 146 days per year under NRS 125C.003(1)(a). Cheryl accurately notes that the district court did not directly address NRS 125C.003(1)(a) in the divorce decree. Nevertheless, the district court correctly recognized that when making a custody determination, the sole consideration is the best interest of the child, and found that, under the circumstances presented here, an award of primary physical custody to Cory was in the child's best interest. *See* NRS 125C.0035(1); *Davis*, 131 Nev. 451, 352 P.3d 1143. For this reason, and because the language of NRS 125C.003(1)(a) does not require the district

court to find a parent is unable to take care of a child for over 146 days per year to award primary physical custody, we conclude that the district court did not abuse its discretion in making its child custody determination.

In light of the foregoing, we conclude that Cheryl has failed to present any basis for relief and affirm the district court's child custody determination.

It is so ORDERED.[5]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Amy Mastin, District Judge, Family Division
Hon. Regina M. McConnell, District Judge, Family Division
Vaccarino Law Office
Cory Lawrence Colley
Eighth District Court Clerk

[5]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.