

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARINETTE FITZPATRICK,
Appellant,
vs.
THOMAS FITZPATRICK,
Respondent.

No. 56803

FILED

NOV 21 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingersoll*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order modifying a child custody arrangement. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

On appeal, appellant contends that the district court abused its discretion by awarding respondent primary physical custody of the parties' minor child based on improperly admitted expert testimony. Upon review of the record and appellant's arguments, we conclude that the district court did not abuse its discretion by admitting the expert testimony, as the court was aware of the time frame when the expert was involved in the case and considered the testimony within an appropriate context.¹ See Hallmark v. Eldridge, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008) (providing that "[t]his court reviews a district court's decision to allow expert testimony for abuse of discretion").

We further conclude that the district court did not abuse its discretion by awarding respondent primary physical custody of the minor

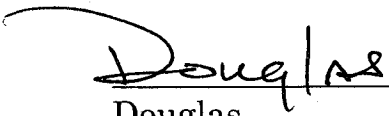
¹To the extent that appellant argues that this court previously held that the expert witness's testimony was properly excluded from an earlier hearing, she is incorrect. This court dismissed the prior appeal arising from the underlying case for lack of jurisdiction, and thus, did not reach the merits of any arguments regarding admission or exclusion of testimony.

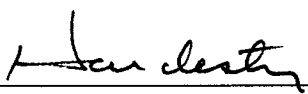
child. Rivero v. Rivero, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009) (explaining that this court reviews the district court's custody decisions for an abuse of discretion and noting that custody decisions must be supported by substantial evidence). Here, substantial evidence supports the district court's conclusion that it was in the child's best interest to live with respondent because appellant had effectuated a pattern of alienating the child from respondent. See id. at 430, 216 P.3d at 227 (explaining that the district court must apply a best-interest-of-the-child standard when modifying a joint physical custody arrangement); see also NRS 125.480(4)(c) (directing the district court to consider, as one of the factors for determining the best interest of the child, "[w]hich parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent").

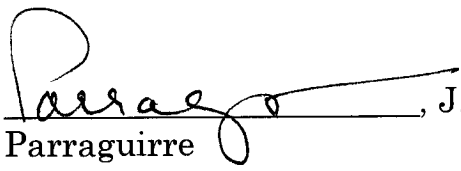
Finally, as to appellant's contentions regarding discovery violations, the district court did not abuse its discretion by declining to consider appellant's motion for sanctions and default judgment, as appellant did not present her discovery disputes to the discovery commissioner prior to filing the motion. See EDCR 2.34(a) ("Unless otherwise ordered, all discovery disputes (except disputes presented at a pretrial conference or at trial) must first be heard by the discovery commissioner.").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Douglas, J.


Hardesty, J.


Parraguirre, J.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Marinette Fitzpatrick
Mark A. Jenkin
Eighth District Court Clerk