IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AARON DICUS,
Appellant,
vs.
OXANA DICUS,
Respondent.

No. 66958

ORDER OF AFFIRMANCE

This is an appeal from a district court order regarding child custody. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

The district court awarded primary physical custody of the parties' minor child to respondent Oxana Dicus. On appeal, appellant Aaron Dicus argues that the district court abused its discretion by failing to properly apply the statutory best interest factors to determine the best interest of the child.[1] A review of the record demonstrates, however, that the district court did consider the best interest factors, and specifically set forth its findings as to those factors in its initial temporary custody order.[2]

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[1]In 2015, the Legislature repealed NRS 125.480, which previously set forth the non-exhaustive list of statutory best interest factors to be considered when making a child custody decision. *See* 2015 Nev. Stat., ch. 445, § 19, at 2591. At the same time, the Legislature replaced NRS 125.480 with an as-yet undesignated statute containing substantially similar best interest factors. *See id.* § 8, at 2583-85.

[2]Although the permanent order did not separately address the best interest factors, that order was essentially a finalization of the temporary order. And when read together, these two orders provide the "[s]pecific findings and an adequate explanation of the reasons for the custody determination" necessary for us to conduct our review of this appeal. *See Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1143 (2015).

In considering the factors, the court found that they generally weighed in favor of granting joint physical custody, but that concerns regarding Aaron's angry and aggressive behavior needed to be addressed before an award of joint physical custody would be permanently granted. The district court further held that, until its concerns were addressed, Oxana would have primary physical custody with Aaron to have parenting time (supervised by his current wife) two days per week.

To address these concerns, the district court ordered Aaron to take a co-parenting class and an anger management class. The court emphasized that its order was temporary and that Aaron's failure to take the classes would impact the court's final decision. Although Aaron did eventually take the classes, he only did so more than a year after the district court entered its order and only after Oxana filed a motion to finalize the custody order based on his failure to take the classes. Moreover, the district court held an evidentiary hearing on Oxana's motion, at which the court heard evidence regarding Aaron's behavior after completion of the classes.

Having considered the record and Aaron's arguments on appeal, we conclude that substantial evidence supports the district court's finding, in the order entered after the hearing on Oxana's motion, that the anger management class did not remedy the court's concerns regarding Aaron's behavior.[3] *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699,

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[3]We note that Aaron's characterization of the district court's final order as changing physical custody is not accurate. Because the district court's initial temporary order conditioned an exercise of joint physical custody on Aaron's completion of the classes, and because Aaron did not complete those classes before Oxana's motion to finalize the custody order came before the court, the parties never exercised a joint physical custody arrangement.

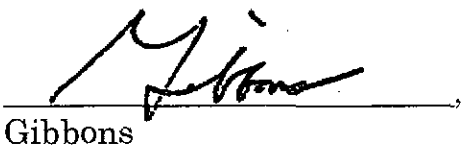
704 (2009) (explaining that a district court's factual findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence). In particular, there was testimony that, even after completing the classes, Aaron was disruptive at child exchanges by repeatedly failing to follow the procedures set by Donna's House and that he was uncooperative on certain matters when dealing with Oxana. *See Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007) (recognizing that substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment). Thus, the record demonstrates that, contrary to Aaron's argument that the district court awarded Oxana primary physical custody as a punishment for Aaron's failure to complete the classes sooner, the court actually awarded physical custody based on the court's consideration of the best interest factors and the court's evaluation of the parties' overall situation. And we conclude that the district court did not abuse its discretion in awarding Oxana primary physical custody. *See Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (providing that child custody decisions are reviewed on appeal for an abuse of discretion).

Finally, Aaron argues that the district court abused its discretion in setting the child support amount because the court failed to consider that Oxana was willfully underemployed. *See id.* (explaining that child support decisions are reviewed on appeal for an abuse of discretion). Because Oxana was awarded primary physical custody, only Aaron's income was relevant to the child support award. *See* NRS 125B.070 (setting forth the formula for determining child support); NRS 125B.080 (providing additional considerations for determining child support); *Bluestein v. Bluestein*, 131 Nev. ___, ___ n.1, 345 P.3d 1044, 1046 n.1 (2015) ("When one parent has primary physical custody, the noncustodial parent must pay child support based on the statutory formulas."). Thus,

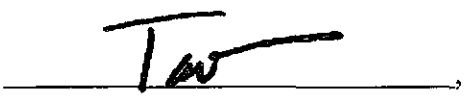
the district court did not abuse its discretion by failing to consider whether Oxana was willfully underemployed.[4]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Vincent Ochoa, District Judge
Aaron Dicus
Leventhal & Associates
Eighth District Court Clerk

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[4]As to Aaron's argument that the district court should have provided him with a downward deviation due to his having two additional children, although NRS 125B.080(9)(e) permits a deviation on this basis, such a deviation is not mandatory, and nothing in the district court record demonstrates that Aaron raised this argument before the district court. Thus, we conclude that he waived the argument, and we do not address it in this order. *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 appeal.").