

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHERRIE FARANCE,
Appellant,
vs.
SCOTT FARANCE,
Respondent.

No. 68988

FILED

MAY 30 2017

ELIZABETH A. CROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Sherrie Farance appeals from a district court order distributing marital property and denying a motion to modify custody in a family law matter.¹ Eighth Judicial District Court, Family Court Division, Clark County; Denise L. Gentile, Judge.²

When the parties divorced, respondent Scott Farance was awarded certain property, including the marital home, as well as primary physical custody of the parties' child. The divorce decree also contained a provision that "[e]ach party shall preserve any property under their care

¹To the extent Sherrie's arguments relate to the district court's pre-judgment temporary custody orders, those orders were superseded by the final custody order. As a result, the temporary orders are moot, and we do not consider them in the context of this appeal. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("The question of mootness is one of justiciability. This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment.")

²The order finding Sherrie liable for the damages was entered by former district court judge William Gonzalez and the order determining the amount of damages and awarding respondent primary physical custody was entered by the Honorable Denise L. Gentile.

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and control until such time it is exchanged. Neither shall harm it, damage it, give it away, or dispose of it in any way.”

After the divorce decree was entered, Scott moved for an award of damages based on his allegations that Sherrie had damaged or given away certain marital property that was awarded to him. Also after the decree was entered, Sherrie moved for joint physical custody. Following a joint hearing on the motions, the district court denied Sherrie’s motion to modify custody and awarded Scott \$65,560 in damages. This appeal followed.

First, Sherrie argues that the district court should not have left Scott with primary physical custody because doing so was not in the child’s best interest. But in denying Sherrie’s motion, the district court made specific findings as to each of the best interest factors, which it determined supported denying the motion to modify and leaving Scott with primary physical custody, and those findings were supported by substantial evidence in the form of trial testimony and were not clearly erroneous. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 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 asking this court to conclude that the factors weighed in her favor, Sherrie is essentially asking us to reconsider the parties’ credibility, which we cannot do. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (“[W]e leave witness credibility determinations to the district court and will not reweigh credibility on appeal.”). Furthermore, the parties presented conflicting testimony regarding the best interest factors, which the district court resolved, and we will not disturb that decision as

it is supported by substantial evidence.³ *See Barelli v. Barelli*, 113 Nev. 873, 880, 944 P.2d 246, 250 (1997) (recognizing that an appellate court will not disturb a trial court's resolution of conflicting evidence if substantial evidence supports the trial court's decision). Thus, as Sherrie has not presented a basis for reversing the district court's custody order, we affirm the district court's denial of her motion to modify custody.⁴


Turning to the property damage award, the district court found that Sherrie failed to safeguard the property in her possession that was awarded to Scott as ordered in the divorce decree and that she was therefore liable for the damages to that property in the amount of \$65,560. On appeal, Sherrie contends that the district court's decisions in this regard lack substantial evidentiary support, or that she provided contradictory evidence, and therefore the finding of liability and award of damages should be reversed. Having reviewed the record and transcripts filed with this appeal, we disagree with Sherrie's appellate contentions. During the hearings related to these decisions, Scott gave ample testimony and evidence, and also provided additional witness testimony, regarding

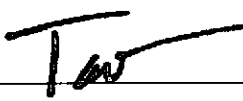
³Additionally, Sherrie failed on appeal to argue that a substantial change in circumstances warranted changing the primary physical custody order to a joint physical custody order. *See Ellis*, 123 Nev. at 150, 161 P.3d at 242 (providing that modification of primary physical custody is only warranted when "there has been a substantial change in circumstances affecting the welfare of the child" and the best interest factors support modification).

⁴To the extent Sherrie alleges that the award of primary physical custody to Scott was the result of bias on the part of the district court, we have reviewed the record on appeal and find no evidence supporting such a claim. Thus, this argument does not provide a basis to reverse the district court's custody determination.

the property under Sherrie's possession and control that was damaged or missing, as well as the cost to repair or replace that property, which constitutes substantial evidence supporting the district court's decision. *See Ogawa*, 125 Nev. at 668, 221 P.3d at 704. And while Sherrie did provide some conflicting evidence and testimony, the district court weighed the conflicting evidence and found Scott's testimony and his evidence to be more credible than Sherrie's and we will not revisit those decisions. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244; *Barelli*, 113 Nev. at 880, 944 P.2d at 250. Accordingly, we perceive no abuse of discretion in the district court's decision and we therefore affirm the award of damages to Scott. *See Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996) (reviewing the division of marital property in a divorce action for an abuse of discretion).

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Denise L. Gentile, District Judge, Family Court Division
Sherrie Farance
Scott Farance
Eighth District Court Clerk