

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY CHRISTOPHER REED,
Appellant,
vs.
JESSICA LOVEINE REED,
Respondent.

TIMOTHY CHRISTOPHER REED,
Appellant,
vs.
JESSICA LOVEINE REED,
Respondent.

No. 75268-COA

FILED

FEB 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

No. 76540-COA ✓

ORDER OF AFFIRMANCE

In these related appeals, Timothy Christopher Reed appeals post-divorce decree orders modifying child custody and child support, and awarding attorney fees. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

Pursuant to a decree of divorce, the parties shared joint physical custody of their two minor children. In October 2017, respondent Jessica Reed moved to modify custody, seeking primary physical custody for the purpose of relocating with the minor children to Missouri, and to set child support accordingly. After an evidentiary hearing, the district court granted the motion, awarding Jessica primary physical custody subject to Timothy's parenting time in Las Vegas. Timothy appealed this custody order in Docket No. 75268-COA. At the evidentiary hearing, the district

court did not set the child support amount because Timothy had yet to file his Financial Disclosure Form (FDF), but ordered Timothy to file his FDF and directed the parties to determine the amount of child support based on the statutory formula. The parties were unable to determine the proper amount of child support and Jessica filed a motion requesting the court set the child support amount. After a hearing, the district court ordered Timothy to pay the statutory amount of child support based on his updated FDF, and Timothy appealed this support order in Docket No. 76540-COA. In these appeals, Timothy also challenges two separate orders awarding attorney fees to Jessica.

With regard to the challenge to the district court's order granting Jessica primary physical custody and allowing her to relocate with the minor children, Timothy argues that the district court improperly analyzed the best interest factors, improperly rejected witness testimony, and that the district court demonstrated unfair bias in favor of Jessica.

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). Similarly, we review a district court's decision to grant a motion for relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Ellis*, 123 Nev. 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*, 120 Nev. at 440, 92 P.3d at 1226-27.

When a parent with joint physical custody seeks primary physical custody for the purposes of relocating, the district court must determine whether the relocating parent has a good faith, sensible reason for relocating; that the move is not intended to deprive the non-relocating parent of parenting time; that the best interests of the child are served by allowing the relocation; and that the relocation will result in an actual advantage to the benefit of the child and relocating parent. NRS 125C.007(1). If this threshold standard is met, the district court must consider: whether the move will likely improve the quality of life for the child and relocating parent; whether the relocating parent's motives are to frustrate the non-relocating parent's custodial time; whether the relocating parent will comply with visitation orders; whether the non-relocating parent's opposition to the move is honorable; and whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that preserves and fosters the non-relocating parent's relationship with the child. NRS 125C.007(2).

Here, the district court's order makes numerous factual findings as to the children's best interest, all of which are supported by substantial evidence in the record. For example, the district court found that Jessica is the parent more likely to allow frequent associations and a continuing relationship with the children, while Timothy is an obstructionist whose rigidity has created a huge obstacle for the children to have a relationship with Jessica. Additionally, the district court found that Timothy fails to communicate in a way that promotes a relationship

between Jessica and the children, that his inability to communicate creates additional problems for the children, that there is a high level of conflict between the parties, and that the parties are unable to cooperate to meet the children's needs. Further, the court specifically found that the parties need to minimize their contact and custodial exchanges due to the high conflict and inability to communicate, and that this goal will be served by Jessica's relocation.

As to relocation, the district court found that Jessica has a sensible, good faith reason for seeking relocation—namely, a better career opportunity. The district court also found that the children will realize an actual benefit from the relocation by way of a better school district, less crime, a larger home, a better neighborhood, and an increased standard of living, amongst other things. These factors, along with others, like retirement benefits, healthcare benefits, and student loan forgiveness options, all contributed to a better quality of life for Jessica and the children should the relocation be granted. Additionally, the district court made detailed findings, concluding that Jessica's motives in relocating were honorable and not designed to defeat Timothy's relationship with the children, that Jessica would comply with the court's visitation orders, that Timothy's opposition to the relocation was also honorable, and that the custody order could provide an adequate alternative visitation schedule to preserve Timothy's relationship with the children.

Based on these findings, we cannot conclude that the district court abused its discretion in granting Jessica's motion for primary physical custody and relocation. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241-42. And to the extent that Timothy argues the new custody schedule limits his time

with the children, whereas he previously saw the children weekly, we note that “the district court may not deny a motion to relocate solely to maintain the existing visitation pattern, even if relocation entails a shift away from consistent day-to-day contact.” *McGuinness v. McGuinness*, 114 Nev. 1431, 1437, 970 P.2d 1074, 1078 (1998). We likewise cannot conclude that the district court abused its discretion in determining Timothy’s witness, Ms. Longbons, was not credible. *Ellis*, 123 Nev. at 152, 161 P.3d at 244 (“[W]e leave witness credibility determinations to the district court and will not reweigh credibility on appeal.”).

Turning to Timothy’s challenge to the order setting child support, he argues that the district court’s decision was improper for a variety of reasons. This court reviews a child support order for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996); *see also Flynn*, 120 Nev. at 440, 92 P.3d at 1227. Although a district court has discretion in awarding child support, the district court must follow the statutory guidelines when calculating the initial child support award and when deviating from the statutory calculations. *See* NRS 125B.080(6); *Wallace*, 112 Nev. at 1021, 922 P.2d at 544–45.

Here, in determining Timothy’s child support obligation, the district court concluded that 25 percent of his gross monthly income was \$1,750, and then modified the amount to \$1,674 per month, based on the statutory presumptive maximum. Thus, based on our review of the record, the district court properly established Timothy’s child support obligation pursuant to the statutory requirements. *See* NRS 125B.070. Additionally, the district court ordered Jessica to pay all of the costs for the children to travel to and from Las Vegas for Timothy’s parenting time, and required

Jessica to pay the entirety of the children's health insurance premium. And our review of the record indicates that the district court considered the parties' incomes and all other relevant factors based on the evidence before it; thus, we cannot conclude the district court abused its discretion in denying Timothy's request for additional offsets in his child support obligation, including any costs Timothy may incur if he chooses to spend additional parenting time with the children in Missouri. *See Wallace*, 112 Nev. at 1019, 922 P.2d at 543; NRS 125B.080(6) (allowing, but not requiring, the district court to modify the statutory child support amount, and requiring specific findings of fact if the court deviates from the statutory formula). We similarly discern no abuse of discretion in the district court's decision to order the new child support obligation effective February 1, 2018, the month the district court entered its custody order, and several months following Jessica's motion to modify custody and set child support. *See Ramacciotti v. Ramacciotti*, 106 Nev. 529, 532, 795 P.2d 988, 990 (1990) (explaining that while child support cannot be modified retroactively, modifications can be ordered effective as of the date a motion to modify the decree is filed or the date the order modifying the decree is entered, or any time in between).

Timothy also contends that the district court abused its discretion by failing to hold Jessica in contempt of court for her failure to file an updated FDF and her failure to comply with the right of first refusal. Based on our review of the record, we discern no abuse of discretion and no reason to disturb the district court's decision as to that matter. *See In re Water Rights of the Humboldt River*, 118 Nev. 901, 906-07, 59 P.3d 1226, 1229-30 (2002) (explaining that the district court has "inherent power to

protect dignity and decency in its proceedings, and to enforce its decrees” and because it has particular knowledge of whether contemptible conduct occurred, its contempt decisions are reviewed for an abuse of discretion).

As to Timothy’s allegations in both appeals that the district court’s rulings exhibited bias against him throughout the proceedings, we presume judges are unbiased. *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009). Additionally, “rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification.” *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). Here, Timothy fails to establish that there was a bias stemming from an extrajudicial source or that the court’s rulings were based on something other than what the judge learned from participating in the case, as he merely asserts a conclusory argument that the judge was biased against him. Thus, based on our review of the record, we see no basis for concluding that the judge was biased.

Timothy also appeals the district court’s award of attorney fees arguing only that his objection to the relocation was honorable and appropriate, and that he objects to the award of attorney fees due to the court’s bias in the matter.¹ This court reviews a district court’s award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). Based on our review of the record,


¹To the extent Jessica argues that this court lacks jurisdiction over the award of attorney fees following the entry of the custody modification and relocation order, that argument is without merit.

substantial evidence supports the district courts award of attorney fees and we cannot conclude that the district court abused its discretion in making its award. *See id.*; NRS 125C.250 (allowing the district court, in its discretion, to award reasonable attorney fees in custody matters).²

Accordingly, we affirm the district court orders at issue in these appeals.

It is so ORDERED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Linda Marquis, District Judge, Family Court Division
Timothy Christopher Reed
Pecos Law Group
Eighth District Court Clerk

²Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of these appeals.