

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELA GALINDO, N/K/A ANGELA
GARDNER,
Appellant,
vs.
GIOVANY GALINDO-GUTIERREZ,
Respondent.

No. 76740-COA

FILED

MAY 28 2019

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

ORDER OF AFFIRMANCE

Angela Galindo appeals from a district court order denying a motion to relocate and modify child custody. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

Angela and Giovany Galindo-Gutierrez divorced in 2014 and have two minor children. The divorce decree granted them joint legal and physical custody of the children. In 2018, Angela moved for primary physical custody for the purpose of relocating from Las Vegas to Reno because her husband accepted a job promotion that required his relocation. Giovany opposed Angela's motion and filed a countermotion for primary physical custody. After the evidentiary hearing, the district court denied Angela's relocation motion, concluding that she had not met her burden of proving that the move would be an actual advantage for the children, was in their best interests, or would improve their quality of life. Because the relocation motion was denied, the district court ordered joint custody to remain in effect if Angela remained in Las Vegas; but if Angela moved to Reno, Giovany would then be awarded primary physical custody. The district court did not expressly grant or deny Giovany's countermotion for primary custody.

On appeal, Angela argues that the district court abused its discretion by (1) concluding relocation was not in the children's best interests when there was conflicting evidence and by making conflicting findings of fact, (2) misapplying NRS 125C.007(2)(a) by imposing a more exacting standard, (3) not ruling on the issue of primary physical custody as an independent ground separate from the relocation motion, and (4) excluding evidence of events that occurred prior to the divorce decree. We disagree.

This court reviews a district court's decision regarding relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 444, 92 P.3d 1224, 1229 (2004). The district court's determination will be upheld if it is supported by substantial evidence. *See id.* at 440, 92 P.3d at 1227. "Substantial evidence 'is evidence that a reasonable person may accept as adequate to sustain a judgment.'" *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009) (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007)).

Under NRS 125C.007(1), the parent seeking relocation must first demonstrate (a) "a sensible, good-faith reason for the move, and [that] the move is not intended to deprive" the nonmoving parent of parenting time, (b) that "[t]he best interests of the child are served by allowing the relocating parent to relocate with the child," and (c) that "[t]he child and the relocating parent will benefit from an actual advantage" from the move. If the parent demonstrates all three factors, then the district court must weigh the additional factors listed in section (2).

Angela asserts that the district court abused its discretion by finding there was not an actual advantage for the children in relocation and that it was not in their best interests when there was evidence conflicting

with the court's findings and the order had conflicting findings of fact. The district court fully considered the conflicting evidence and concluded that relocation was not in the children's best interests nor was there an actual advantage. These decisions were supported by substantial evidence. Specifically, the district court found that the children have strong connections to their community, church, and neighborhood and the children have good relationships with their stepmother, neighbors, and extended family in Las Vegas. The district court also found that the differences between Reno and Las Vegas will have little impact on the children's daily lives and that it would be more agreeable for the children to visit their mother in Reno during the summers rather than their father in Las Vegas.

Because substantial evidence supported these findings, the district court did not abuse its discretion by concluding that there was not an actual advantage for the children in relocation and that relocation was not in the children's best interests. *See Fletcher v. Fletcher*, 89 Nev. 540, 542, 516 P.2d 103, 104 (1973) ("Where a trial court, sitting without a jury, has made a determination upon the basis of conflicting evidence, that determination should not be disturbed on appeal if it is supported by substantial evidence."). Further, we conclude that the purported conflicting findings of fact were not conflicting, but even if they were, there still was substantial evidence supporting the conclusion without these findings.

Angela also asserts that the district court did not apply NRS 125C.007 correctly and imposed a more exacting standard as to subsection (2)(a) of the statute by requiring her to show that a relocation would

improve the quality of life for the children.¹ We note that the district court did not apply NRS 125C.007(1) and (2) in the correct order, and we emphasize that district courts should follow the statutory structure when considering relocation motions. Nevertheless, while the methodology was incorrect, the district court did ultimately analyze all of the elements identified in NRS 125C.007(1) and made findings for this section based upon substantial evidence to conclude that Angela had not established it would be in the best interests of the children or an actual advantage for them to relocate. Thus, the district court need not have considered the factors in section (2), and any error that the court may have committed therein was therefore harmless. See NRS 125C.007(2) (“If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh the following factors”); cf. NRCP 61 (stating that the court disregards all errors and defects that do not affect the substantial rights of either party at all stages of the proceeding).² We note, however, that the analysis of the rest of the factors in section (2) supports our conclusion that the district court did not abuse its discretion by finding Angela had not proven that relocation should be granted.

¹Angela also argues that requiring a more exacting standard violated her due process rights. Angela does not cite to any authority or adequately explain her constitutional argument. Therefore, this court need not consider this issue. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that an appellate court need not consider issues that are not cogently argued or supported by relevant authority).

²We again note that NRS 125C.007 does not require district courts to apply section (2) unless the relocating parent demonstrates all of the factors in section (1). Nevertheless, we encourage district courts to analyze and apply the entire statute in close cases for purposes of a complete record.

Angela next argues that the district court abused its discretion by failing to rule on the issue of primary physical custody separately from the relocation motion. Angela's motion for primary physical custody for the purpose of relocation did not clearly indicate that she sought primary physical custody separately from her relocation motion. Indeed, the title of her motion used the language from the relocation statute. See NRS 125C.0065(1)(b) ("If . . . one parent intends to relocate . . . the relocating parent shall, before relocating . . . [,] petition the court for primary physical custody for the purpose of relocating."). While her motion included a proposed new parenting time plan should her relocation motion be granted, it did not contain one should her motion be denied and she remained in Las Vegas.

Further, at the evidentiary hearing, Angela testified that (1) she was seeking primary physical custody because she wanted to move to Reno to be with her husband, (2) there were two options before the court—she remains in Las Vegas and the kids get both parents, or she moves to Reno and receives primary custody—and, (3) she was not trying to take parenting time away from Giovany. Based on Angela's imprecise motion and her testimony, we conclude that Angela "invited" the supposed error about which she now complains, and under these circumstances, we further conclude that the district court did not err by not ruling on primary physical custody separately from relocation. See *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (discussing the doctrine of invited error: "a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit" (internal quotation marks omitted)). Because Angela invited any error that the court

may have committed by ruling on primary physical custody and relocation as a single issue, we decline to further consider her argument.³

Lastly, Angela argues that evidence showing that Giovany was an absentee father and she had de facto primary custody before the 2014 divorce decree should not have been excluded because *McMonigle*⁴ does not apply. She argues that *McMonigle* applies only when a parent seeks to change primary physical custody to joint custody, while she seeks to change joint to primary. This proposed narrow reading of *McMonigle* is not persuasive based upon its language and its progeny. Res adjudicata prevents “persons dissatisfied with custody decrees [from filing] immediate, repetitive, serial motions until the right circumstances or the right judge allows them to achieve a different result, based on essentially the same facts.” *Mosley v. Figliuzzi*, 113 Nev. 51, 58-59, 930 P.2d 1110, 1114-15 (1997) (recognizing *McMonigle* for the proposition that pre-decree issues cannot be relitigated), *overruled on other grounds by Castle*, 120 Nev. at 105 n.20, 86 P.3d at 1047 n.20; *see also Castle*, 120 Nev. at 104, 86 P.3d at 1047 (stating that *McMonigle* included “broad language suggesting that important facts relevant to the child’s best interests, if they existed at the time of the prior custody determination, cannot be introduced at a later

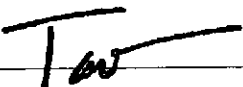
³Our decision here should not be construed as limiting Angela’s ability to file a motion for primary physical custody should she choose to remain in Las Vegas.

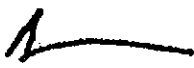
⁴*McMonigle v. McMonigle*, 110 Nev. 1407, 1408-09, 887 P.2d 742, 743-44 (1994) (concluding that evidence of pre-decree events is not admissible and issues cannot be relitigated), *overruled on other grounds by Castle v. Simmons*, 120 Nev. 98, 105, 86 P.3d 1042, 1047 (2004).

proceeding”).⁵ Therefore, we conclude that the district court did not abuse its discretion by excluding the evidence. *See M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008) (explaining that this court reviews the admission or exclusion of evidence for an abuse of discretion). For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Vincent Ochoa, District Judge
Ara H. Shirinian, Settlement Judge
Michael A. Root
Ghandi Deeter Blackham
Eighth District Court Clerk

⁵Furthermore, even if the district court abused its discretion by excluding this evidence, it would not have changed the outcome of this case because the custody designation does not impact the relocation analysis. *See* NRS 125C.007(1) (“In every instance of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 [primary custody] or 125C.0065 [joint custody], the relocating parent must demonstrate” the factors set forth in subsections (a)-(c.); *see also* 125C.007(3) (“A parent who desires to relocate with a child pursuant to NRS 125C.006 [primary custody] or 125C.0065 [joint custody] has the burden of proving that relocating with the child is in the best interest of the child.”).