IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATY HUNEYCUTT,
Appellant,
vs.
WESLEY EUGENE HUNEYCUTT,
Respondent.

No. 76980-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Katy Huneycutt appeals from a district court divorce decree. First Judicial District Court, Carson City; James Todd Russell, Judge.

Respondent Wesley Eugene Huneycutt, who lives in Nevada, commenced the underlying divorce action against Katy, who lives in Washington, seeking, as relevant here, joint physical custody of their minor child. The district court granted that request. But because the district court found that the best interest factors favored Wesley or were otherwise neutral or inapplicable, it directed that the child live with him in Nevada during the school year and with Katy in Washington during most of the Thanksgiving, Christmas, and Easter holidays and during the summer on a schedule to be determined by the parties.[1] This appeal followed.

On appeal, Katy challenges the district court's findings that she attempted to alienate the child from Wesley and that, as a result, she was not the parent most likely to foster the child's continuing relationship with the other parent or to support the child's physical, developmental, or

[1]The divorce decree also stated an alternate timeshare arrangement that would govern if Katy moved back to Nevada, but this appeal does not directly concern that portion of the decree.

emotional needs. *See* NRS 125C.0035(4)(c), (g) (providing that, when the court assesses physical custody, it must consider "[w]hich parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent" as well as the child's physical, developmental, and emotional needs). In particular, Katy contends that the district court's finding is unsupported by substantial evidence. But the record includes testimony from Wesley that Katy limited or otherwise interfered with his video communications with the child; that Katy, who was living with the child in Washington during the relevant period, relocated the child within that state without his knowledge or permission; that Katy refused to return the child to Nevada; and that these issues persisted despite the district court entering orders authorizing Wesley to retrieve the child and prohibiting the parties from interfering with each other's communications with the child. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (providing that the district court's factual findings are entitled to deference and will not be disturbed unless clearly erroneous and unsupported by substantial evidence); *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007) (defining substantial evidence as "evidence that a reasonable person may accept as adequate to sustain a judgment").

Katy attempts to overcome this testimony by directing us to other testimony, which purportedly demonstrates that she did not attempt to alienate the child from Wesley and that Wesley was unlikely to foster her continuing relationship with the child. But this court's role is not to reweigh the evidence or revisit witness credibility. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Moreover, while Katy contends that her conduct was proper based on a temporary protection order (TPO) that she obtained from a

Washington court, we need not resolve the parties' dispute as to the TPO's propriety and effect, as Wesley testified that the alienation occurred both before Katy obtained the TPO and after the Washington court refused to extend it, and that testimony was sufficient to support the findings at issue here. *See Ogawa*, 125 Nev. at 668, 221 P.3d at 704.

Katy also disputes the district court's finding that NRS 125C.0035(4)(f), which requires the court to consider the parties' mental and physical health in making custody determinations, weighed against her. In particular, Katy contends that the district court improperly found that she had a mental health issue because she started a new relationship shortly after separating from Wesley. But while the divorce decree referenced the timing of that relationship, the transcript from the relevant hearing reveals that the district court was concerned with Katy's decision to move herself and the parties' minor child in with a man that she was dating within less than two weeks of when she started dating him. Moreover, the district court did not find that undertaking that living arrangement was indicative of a mental health issue in the clinical sense. To the contrary, the district court simply determined that Katy, in moving the parties' child into the home of a man who was essentially a stranger, displayed poor judgment that was reflective of her overall mental state. And given that nuanced determination, we reject Katy's assertion that the district court effectively rendered a moral judgment regarding the timing of her relationship.

Although the district court found that the above factors favored Wesley, Katy still disputes whether those findings supported its decision on the ground that the court did not sufficiently tie them to the child's best interests by explaining how her conduct affected the child. *See Davis v.*

Ewalefo, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015) ("[T]he decree . . . must tie the child's best interest, as informed by specific, relevant findings respecting the [best interest factors] to the custody determination made."). But the district court's findings regarding these factors were sufficiently specific to explain its custody decision. *See id.* at 452, 352 P.3d at 1143 (requiring custody orders to include "[s]pecific findings and an adequate explanation of the [district court's] reason[ing]"). Moreover, the record includes Wesley's testimony that the circumstances at issue here negatively affected the child as well as Katy's concession that the living arrangement described above was not in the child's best interest. Thus, Katy failed to demonstrate that these findings warrant reversal.

Katy next challenges the district court's finding that Wesley did not commit domestic violence against her, which caused the court to treat that factor as inapplicable in its physical custody analysis. *See* NRS 125C.0035(4)(k) (requiring the district court, in assessing physical custody, to consider whether either parent has engaged in an act of domestic violence). But while Katy argues that testimony in the record demonstrates that Wesley physically abused her, the record also includes contrary testimony regarding the nature of the purported incidents of physical abuse that could support the district court's finding that Wesley did not commit domestic violence, and as discussed above, it is not for this court to reweigh the evidence or reevaluate witness credibility. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. And although Katy asserts that the district court ignored evidence that Wesley was physically and emotionally abusive, the divorce decree does not support that assertion. Indeed, the district court specifically found that the parties were verbally abusive to each other, which prompted the court to describe their relationship as abusive in nature. But the district

court also concluded that the abuse did not rise to the level of domestic violence, and we will not disturb that conclusion, as it is supported by the record. *Ogawa*, 125 Nev. at 668, 221 P.3d at 704.

Lastly, Katy challenges the district court's finding that, based on the living arrangement discussed above, Wesley was the parent most likely to cooperate to meet the child's needs. *See* NRS 125C.0035(4)(e) (providing that, when the court assesses physical custody, it must consider the parents' ability "to cooperate to meet the needs of the child"). Initially, although the divorce decree does not explain the relationship between the living arrangement and the parties' ability to cooperate, the district court's finding on this point presumably related to Wesley's allegations that Katy undertook the new living arrangement with the child without his knowledge or permission. But we need not dwell on this factor since Katy failed to demonstrate that the district court incorrectly found that the remaining best interest factors favored Wesley, were neutral, or were inapplicable. Indeed, based on those findings alone, the district court could properly exercise its discretion by directing that the child spend the majority of his time in Nevada with Wesley. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241 (recognizing the district court's broad discretion to determine child custody matters), and as a result, we affirm that portion of the court's decision.

Nevertheless, although the parties do not raise the issue, we note that the divorce decree only states a general outline of the parties' custody arrangement—in particular, the order states that Wesley will have the child during the school year while Katy will have the child during most of the Thanksgiving, Christmas, and Easter holidays and the summer on a schedule that they must determine. This statement of the parties' timeshares violates the district court's obligation to state with particularity

the custody arrangement being awarded. *See* NRS 125C.010(1) (providing that orders awarding visitation rights must include specific times and define the right with "sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved"); NRS 125C.0045(5) (stating identical requirements for orders awarding limited custody rights). Thus, we conclude that the district court abused its discretion by failing to define with particularity the custody arrangement being awarded, *see Ellis*, 123 Nev. at 149, 161 P.3d at 241, and we therefore reverse and remand that portion of the divorce decree with instructions for the district court to precisely define the parties' timeshares.[2]

It is so ORDERED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

[2]Pending further proceedings on remand to precisely define the parties' timeshares consistent with this order, we leave in place the custody arrangement set forth in the district court's order. *See Davis*, 131 Nev. at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand). As a result, we vacate the stay of that arrangement imposed by our October 5, 2018, order.

[3]Given our disposition of this appeal, we need not consider the parties' remaining arguments.

cc: Hon. James Todd Russell, District Judge
David Wasick, Settlement Judge
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