IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEWEL TAYLOR,
Appellant,
vs.
ALEX ROUSE,
Respondent.

No. 68579

FILED

AUG 11 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a fast track child custody appeal from a district court child custody order. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

Appellant Jewel Taylor and respondent Alex Rouse have a minor child together. Jewel initiated a child custody action in September 2013. During the pendency of that case, Child Protective Services ("CPS") removed the child from Jewel's care following an incident where Jewel became intoxicated. At trial, the court admitted the related CPS report over Jewel's objections and made findings that Jewel was an alcoholic and that there was no evidence of domestic violence by Alex against Jewel. The district court ultimately awarded Alex primary physical custody of the child and granted Jewel parenting time once a week.[1]

On appeal, we first consider whether the district court erroneously admitted the CPS report.[2] Jewel contends that the report

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[1]We do not recount the facts except as necessary to our disposition.

[2]Jewel additionally claims that the district court erred by failing to make specific findings on the record as to why it denied her request for child support arrears and unreimbursed medical expenses. Because Jewel failed to cite any relevant authority or cogently argue this claim, we

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contained inadmissible hearsay.[3] We agree the district court erred by admitting the report, but conclude this error was harmless.

District courts have broad discretion in child custody matters. *Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1142 (2015). We defer to the district court's determination unless there is legal error or "findings so conclusory they may mask legal error." *Id.* We review a district court's "determination regarding the admissibility of evidence for an abuse of discretion." *In re J.D.N.*, 128 Nev. ___, ___, 283 P.3d 842, 846 (2012).

Hearsay is "a statement offered in evidence to prove the truth of the matter asserted," NRS 51.035, and is generally inadmissible unless the statement falls within a recognized exception, NRS 51.065. Hearsay

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decline to consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

[3]Further, while Jewel claims that the CPS report was confidential under NRS 432B.280(1), it appears from the record that both parties and their attorneys involved in the custody case received copies of the CPS report from the district court, thereby undermining Jewel's confidentiality argument. We note, however, that the record is unclear if the district court's disclosure of the CPS report occurred in the juvenile case or in the custody case.

Additionally, although NRCP 16.205(b)(8) requires parties to disclose copies of documents or exhibits expected to be offered as evidence, NRCP 16.205(a) authorizes a court to "exempt all or any portion of a case from the application of this rule." Because the court found that Jewel's former attorney received a copy of the CPS report prior to trial, the court acted within its discretion in concluding good cause existed to exempt Alex from formally disclosing the report prior to trial as Jewel could not establish prejudice by its admission.

Moreover, the CPS report, which resulted from an allegation of child neglect, is relevant to the district court's determination in the current child custody case. *See* NRS 125C.0035(4)(j); *see also* NRS 48.015.

within hearsay is admissible "if each part of the combined statements conforms to an exception to the hearsay rule." NRS 51.067.

The Nevada Supreme Court has clarified that case files from juvenile court do not "automatically form part of the family division of the district court record" and are subject to Nevada's rules of evidence. *In re J.D.N.*, 128 Nev. ___, ___, 283 P.3d 842, 847 (2012). Thus, although the report was included in the separate juvenile case record, it was still required to conform to the Nevada rules of evidence before being admissible here. *See id.* at ___, 283 P.3d at 847.

The CPS report contained the CPS case manager's recitation of out-of-court statements from Jewel and her now-deceased mother Denice, as well as the case manager's conclusions concerning Jewel's alleged child neglect. The recitations of Jewel's and Denice's statements and the statements themselves constitute hearsay within hearsay and must fall into a recognized exception to be admissible, except when not offered for the truth of the matter asserted or as a party's own statement offered against the party. *See* NRS 51.035and NRS 51.067. Although the court admitted Jewel's statements under NRS 51.035(3)(a) and Denice's statements as impeachment, these principles do not enable the court to admit the report as a whole. The case manager did not testify and the recitation of the statements in the report did not fall within a recognized exception to hearsay, and accordingly, each part of the conformed statement did not qualify as nonhearsay or come within an admissible exception as required by NRS 51.067. Thus, we conclude it was error for the district court to admit the report.

Nevertheless, we conclude this error is not reversible here, as Jewel has not demonstrated the outcome of the case would have changed had the court excluded the report. *See* NRCP 61; *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (providing that in order to

establish that an error is prejudicial and therefore warrants a reversal, "the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"). Specifically, the district court was aware of the circumstances surrounding the juvenile court case for almost a year prior to trial because the incident described in the CPS report occurred while the custody case was ongoing, and the district court even stayed the custody proceedings pending resolution of the juvenile case. Additionally, Jewel testified to much of the information contained within the CPS report. Thus, the district court had other substantial evidence upon which to base its findings. *See Dep't of Highways v. Campbell*, 80 Nev. 23, 33, 388 P.2d 733, 738 (1964) ("where inadmissible evidence has been received by the court, sitting without a jury, and there is other substantial evidence upon which the court based its findings, the court will be presumed to have disregarded the improper evidence").[4]

We next turn to whether the district court erred by finding that Jewel is an alcoholic and that there was no evidence Alex committed domestic violence against Jewel. We give great deference to the district court's factual findings, and we will uphold a district court's factual findings if they are supported by substantial evidence and not clearly

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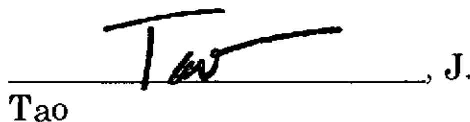
[4]Additionally, we conclude the court's erroneous admission of the report was harmless because the district court had access to the contents of the CPS report from various other sources. In particular, the juvenile court order recited a substantial portion of the CPS report. Thus, the district court in the custody case could have obtained the information contained within the CPS report by taking judicial notice of the juvenile court record. *See Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009) (noting that a court may take judicial notice of records in a separate case when the two cases are related and "a valid reason present[s] itself").

erroneous. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). It is the district court's role when acting as the fact finder to weigh evidence and determine witness credibility. *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007).

Our review of the record compels our conclusion that substantial evidence supports the district court's findings. The district court properly weighed the evidence, including witness testimony and a video of the alleged domestic violence incident, prior to making its findings. Although the court inaccurately used the phrase "no evidence" in its order, its overall conclusion was still correct.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_________________________, C.J.
Gibbons



_________________________, J.
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cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Lansford W. Levitt, Settlement Judge
Noggle Law PLLC
Anthony A. Zmaila Limited PLLC
Schwab Law Group
The Law Offices of Mandy J. McKellar
Eighth District Court Clerk

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[5]Even if the district court erred by finding no evidence supported Jewel's contention that Alex engaged in domestic violence, this error is harmless because the presumption under NRS 125C.0035(5) is rebuttable and the district court considered all of the requisite best-interest-of-the-child factors and thereafter found that the child would be adequately protected in Alex's custody. *See* NRS 125C.0035(5)(b).