

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMY GIATTINO,
Appellant,
vs.
WES MCCORD ROBINSON,
Respondent.

No. 76115-COA

FILED

JUL 19 2019

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

ORDER OF AFFIRMANCE

Amy Giattino appeals from a decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

In the proceedings below, the parties were divorced by way of a decree of divorce following trial. Pursuant to the terms of the decree, respondent Wes Robinson was awarded primary physical custody of the parties' minor child and was granted permission to relocate with the minor child to Texas. The district court made best interest findings as to each of the pertinent factors, but as relevant here, the district court found that, at the beginning of the litigation, Amy falsely accused Wes of sexually abusing the parties' minor child to gain an advantage in litigation. The court found that these allegations increased conflict between the parties and negatively affected their ability to communicate. Moreover, Amy's conduct made it less likely that she would encourage frequent associations between the child and Wes because her allegations resulted in Wes having limited, supervised parenting time.

Additionally, Amy was ordered to pay Wes \$23,483.29 to equalize the division of community property and debts. In particular, the district court found that, upon the sale of the parties' marital residence in

Texas, Amy transferred the proceeds of the sale from the parties' joint account into her personal account and subsequently used that money to pay personal loans and attorney fees. One of the purported loans Amy asserted that she repaid with the funds was to her mother and step-father, who had given the parties approximately \$30,000.00 to be used for IVF treatments. However, the district court found that the evidence did not support Amy's assertion that this was a loan, and found that it was a gift that was not expected to be repaid. This appeal followed.

This court reviews the district court's decisions in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Similarly, 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). This court will not disturb a district court's decision that is supported by substantial evidence. *Id.* at 149, 161 P.3d at 242; *Williams*, 120 Nev. at 566, 97 P.3d at 1129. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Ellis*, 123 Nev. at 149, 161 P.3d at 242; *Williams*, 120 Nev. at 566, 97 P.3d at 1129.

On appeal, Amy contends the district court abused its discretion in awarding Wes primary physical custody of the minor child and granting his request to relocate with the minor child to Texas. Specifically, Amy contends that the district court failed to properly consider the best interest factors and instead granted Wes primary physical custody to punish Amy because the court found she falsely accused Wes of sexually abusing the minor child. Amy also argues that the district court made insufficient findings with respect to both the best interest of the child and in permitting Wes to relocate with the minor child. 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).

Here, the district court made numerous best interest findings to support the custody and relocation order, which are supported by substantial evidence in the record. Indeed, the district court expressly addressed each of the factors enumerated in NRS 125C.0035(4) (governing the best interest of the child) and NRS 125C.007 (governing requests to relocate). Additionally, the district court properly took Amy's conduct regarding the abuse allegations into consideration in making its best interest findings. See NRS 125C.0035(4) ("In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, *among other things* . . .") (emphasis added); *Ellis*, 123 Nev. at 152, 161 P.3d at 243 (in determining the best interest of the child, courts should consider the statutory factors, "as well as any other relevant considerations"). Because the district court properly considered Amy's conduct as it related to the best interest factors, we cannot conclude that the district court's order was intended to punish Amy. See *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 531 (2006) (concluding that the district court did not abuse its discretion in finding it was in the child's best interest to award the respondent sole physical custody after the appellant made false allegations of abuse and neglect against respondent).

Moreover, to the extent Amy challenges the weight of the evidence, this court does not reweigh witness credibility or the weight of the evidence on appeal. See *Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on

appeal). Thus, we cannot conclude that the district court abused its discretion in awarding Wes primary physical custody or in allowing him to relocate with the child. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Amy also challenges the district court's order declining to award child support arrears. 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). Here, the decree finds that Wes was ordered to pay \$749.00 per month in child support in 2016 as a result of Wes failing to timely file his financial disclosure form. However, based upon his gross monthly income, his child support should have been set at \$820.00 per month from January through June 2017 and \$837.00 per month from July 2017 through February 2018. Accordingly, Amy sought \$1,130.00 in child support arrears for the period Wes allegedly underpaid from January 2017 through February 2018. Despite this finding, the district court's order does not award Amy any child support arrears.

Amy asserts that she should have been granted child support arrearages because Wes's child support obligation should have been set at a higher amount than was actually ordered. However, Amy does not contend that Wes failed to pay the amount he was ordered to pay; thus, Wes did not owe any accrued arrearages. And to the extent the child support payments were made in the amount ordered prior to Amy properly requesting a modification, the district court could not modify those payments that were already accrued. *See Khaldy v. Khaldy*, 111 Nev. 374, 377, 892 P.2d 584, 586 (1995) (explaining that child support payments, once accrued, "become vested rights and cannot thereafter be modified or voided"). As to any support payments that could have been properly modified by the district court, the district court made findings regarding

Amy's argument, but did not expressly deny her request. As a result, we interpret the district court's order as a denial of the same. *See Rooney v. Rooney*, 109 Nev. 540, 542 n.2, 853 P.2d 123, 124 n.2 (1993) (concluding that, although the district court had not expressly denied a motion, it had effectively done so when it analyzed the parties' moving papers in reaching its decision). And based on our review of the record, we cannot conclude that the district court abused its discretion in denying Amy's request under the particular facts of this case. *See Wallace*, 112 Nev. at 1019, 922 P.2d at 543; *Libro v. Walls*, 103 Nev. 540, 541-42, 746 P.2d 632, 633 (1987) (explaining that the entry of judgment for child support arrearages is discretionary).

Finally, Amy challenges the district court's distribution of community property, asserting that the district court unequally divided the community property without any findings to support the order. This court reviews the district court's division of community property for an abuse of discretion. *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996); *see also Devries v. Gallio*, 128 Nev. 706, 709, 290 P.3d 260, 263 (2012). Pursuant to NRS 125.150(1)(b), the district court "[s]hall, to the extent practicable, make an equal disposition of the community property of the parties" and may make an unequal disposition, if there is a compelling reason to do so.

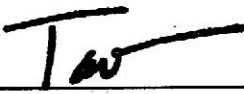
Here, the district court evenly divided the parties' assets and debts. Because Amy transferred the proceeds of the sale of the parties' marital residence in Texas to her personal account and used that money to pay personal loans and attorney fees, the district court ordered Amy to pay Wes \$23,483.29 to equalize the division of community property and debts. Based on our review of the record, we cannot say the district court abused

its discretion in concluding that the debt Amy paid was not community debt, and requiring her to reimburse Wes for his community share of the proceeds from the sale of the home. *See Wolff*, 112 Nev. at 1359, 929 P.2d at 918-19; *Devries*, 128 Nev. at 709, 290 P.3d at 263.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marquis, District Judge, Family Court Division
Pecos Law Group
Pintar Albiston LLP
Eighth District Court Clerk

¹Insofar 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 this appeal.