IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SPRING ENGLISH,
Appellant,
vs.
ADAM ENGLISH,
Respondent.

No. 75539-COA

ORDER OF AFFIRMANCE

Spring English appeals from a district court order denying a post-judgment motion to modify custody. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

Matthew English already had a son from a prior relationship when he married appellant Spring English with whom he had a daughter. Following Matthew's death, Spring was left with custody of their daughter, and along with Matthew's brother, respondent Adam English, Spring commenced the underlying proceeding, which resulted in them being awarded sole legal and primary physical custody of Matthew's son who mainly resided with Spring thereafter.

Adam later moved in the underlying proceeding for sole physical custody of Matthew's son, alleging that Spring was neglecting the child as a result of her substance abuse issues and involvement in an abusive relationship. And based on the same allegation, Adam commenced a separate proceeding in which he effectively sought sole physical custody of Matthew and Spring's daughter until Spring could resolve her personal issues. The district court eventually consolidated the proceedings and, pursuant to a stipulation between the parties, awarded Adam sole legal and

physical custody of the children, with any parenting time by Spring to be at Adam's discretion.

Approximately one year later, Spring moved to modify custody, arguing that, because she had resolved her personal issues and the order awarding Adam sole legal and physical custody was only temporary, she was entitled to custody of the children based on the parental preference doctrine. *See* NRS 125C.004(1) (requiring that, before the district court awards custody to a nonparent without the parents' consent, the court must find that "an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interest of the child"); *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995) (explaining that parental preference "is a rebuttable presumption that must be overcome either by a showing that the parent is unfit or other extraordinary circumstances"). At roughly the same time, Spring also moved to establish temporary visitation and telephonic communications with the children. Adam opposed both motions, and the district court denied them. With regard to the custody motion, the district court specifically reasoned that its prior custody award to Adam was final, that the parental preference doctrine therefore did not apply, and that Spring otherwise failed to demonstrate that she was entitled to custody under the standard for modifying primary physical custody arrangements set forth in *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007). This appeal followed.

On appeal, Spring primarily argues that the order awarding Adam sole legal and physical custody of the children was only temporary and that she was therefore entitled to NRS 125C.004(1)'s parental preference presumption under *Locklin v. Duka*, 112 Nev. 1489, 929 P.2d 930 (1996), and *Litz*. But despite the limited scope of Adam's initial custody

request, the district court ultimately awarded him sole legal and physical custody pursuant to a stipulation between the parties on the record, and nothing in the court's written order memorializing that decision indicates that it was only temporary. Moreover, a review of the transcript from the relevant hearing demonstrates that the district court expressly held, without objection from Spring, that the custody award to Adam was final.[1] *Cf. Pease v. Taylor*, 86 Nev. 195, 197, 467 P.2d 109, 110 (1970) (explaining that "even in the absence of express findings, if the record is clear and will support the judgment, findings may be implied"). Thus, the present case is distinguishable from *Locklin* and *Litz*, where the supreme court concluded that the parental preference doctrine was available to a parent who voluntarily relinquished custody to a guardian under the assumption that the arrangement would be temporary, and later sought to have that arrangement reevaluated. *See* 112 Nev. at 1496-97, 929 P.2d at 935; 111 Nev. at 36, 38, 888 P.2d at 439, 440-41; *see also Hudson v. Jones*, 122 Nev. 708, 712, 138 P.3d 429, 431-32 (2006) (discussing the supreme court's rationale for concluding that the parental preference doctrine applied in *Locklin* and *Litz*).

Indeed, given that the district court entered a final order awarding Adam sole legal and physical custody without objection from

---

[1]To the extent that Spring challenges the order awarding Adam sole legal and physical custody, her challenge is not properly before this court, as the district court's order was independently appealable, *see* NRAP 3A(b)(7) (authorizing an appeal from an order finally establishing or altering the custody of a minor child), and Spring did not file a notice of appeal from that decision. *See* NRAP 3(a)(1) (providing that appellate jurisdiction requires the timely filing of a notice of appeal); *In re Duong*, 118 Nev. 920, 922, 59 P.3d 1210, 1212 (2002) (stating the same).

Spring, her subsequent custody motion was effectively a request to modify that arrangement. And because the supreme court has held that "parental preference applies only to initial custody orders, and not to custody modifications," the district court did not err in refusing to apply the parental preference doctrine in evaluating Spring's request to modify custody.[2] *See Hudson*, 122 Nev. at 709, 714, 138 P.3d at 429, 433 (reviewing the district court's decision to apply the parental preference doctrine de novo).

Given the foregoing, the district court correctly determined that Spring's request for custody of the children was governed by *Ellis*' standard for modifying primary physical custody arrangements. 123 Nev. at 150, 161 P.3d at 242 (holding that a modification of primary physical custody is warranted only when there has been both a substantial change of circumstances affecting the child's welfare and the child's best interest is served by the modification). But although Spring generally argues that she resolved her personal issues and that the district court improperly focused on her past, thereby raising *Ellis*' changed circumstances prong as an issue, she makes no effort to explain why the best interest factors favored her.[3]

---

[2]As further support for our decision, we note that Spring's reliance on the parental preference doctrine in seeking custody of Matthew's son was misplaced, as she is not the child's natural mother. *See* NRS 125C.004(1); *Litz*, 111 Nev. at 38, 888 P.2d at 440 (referring to a "natural parent presumption" in discussing the parental preference doctrine).

[3]Insofar as Spring contends that the district court improperly dwelled on her past, her argument is unavailing, as it is sometimes necessary to consider the parties' history in assessing whether modifying custody is in a child's best interest, particularly in cases involving allegations of domestic violence or abuse such as this one. *See Nance v. Ferraro*, 134 Nev. 152, 159, 418 P.3d 679, 681 (2018) (explaining that the district court's "evaluation of whether modification is in the child's best interest will necessarily be

See Powell v. Liberty Mut. Fire Ins. Co., 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). As a result, although Spring contends that the district court's failure to award her custody of the children or to at least provide her with parenting time going forward that was not subject to Adam's discretion was improper, we cannot conclude that the district court abused its discretion by denying her motion to modify custody.[4] *See Ellis*, 123 Nev. at 149, 161 P.3d at 241 (recognizing the district court's broad discretion to determine child custody matters). Indeed, to the extent Spring contends on appeal that she was at least entitled to a permanent parenting time award, her argument is unavailing since she did not seek that relief below, instead arguing only that she was entitled to full custody under the parental

---

informed by the findings and conclusions that resulted in the prior custody determination").

Nonetheless, we note that while Spring primarily sought to modify custody based on her assertion that she resolved her substance abuse issues and terminated her abusive relationship, the district court's order denying that motion focused instead on ancillary matters such as whether her employment and living situations had changed. While the district court's apparent failure to evaluate these points is troubling, our decision in this matter is constrained by Spring's failure to address the best interest prong of *Ellis*' standard for modifying primary physical custody arrangements on appeal.

[4]Insofar as Spring contends that the district court abused its discretion by failing to provide temporary parenting time pending resolution of her motion to modify custody, this issue is moot given that the custody motion has been resolved. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (explaining that appellate courts generally will not consider moot issues).

preference doctrine.[5] *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Linda Marquis, District Judge, Family Court Division
Israel Kunin, Settlement Judge
Robert W. Lueck, Ltd.
Pecos Law Group
Walsh & Friedman, Ltd.
Eighth District Court Clerk

---

[5]This order does not limit Spring's ability to seek relief in the district court in the first instance. Nevertheless, as the record reflects that Adam is willing to work with Spring towards gradually reunifying her with the children, we encourage the parties to explore that option.

[6]Following entry of the order denying Spring's motion to modify custody, Adam sought attorney fees and costs, which the district court granted. Spring now challenges that award. But Spring's challenge is not properly before us, as the order awarding Adam attorney fees and costs was independently appealable, *see* NRAP 3A(b)(8) (authorizing appeals from special orders entered after final judgment); *Gumm v. Mainor*, 118 Nev. 912, 919, 59 P.3d 1220, 1225 (2002) (recognizing that post-judgment orders awarding attorney fees and costs are appealable under the predecessor to NRAP 3A(b)(8)), and Spring did not file a notice of appeal from that decision. *See* NRAP 3(a)(1); *In re Duong*, 118 Nev. at 922, 59 P.3d at 1212.