

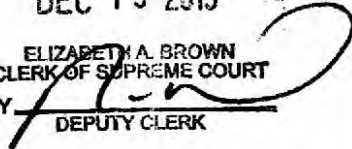
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAJA MITTAL,
Appellant,
vs.
KRISTEN MITTAL, N/K/A KRISTEN
BROWN,
Respondent.

No. 77988-COA

FILED

DEC 13 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Raja Mittal appeals from a post-decree order in a child custody action. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

The parties were divorced by way of a stipulated decree of divorce entered in 2010 and have one minor child in common. Pursuant to the terms of the divorce decree (hereinafter referred to as the custody case), the parties shared joint legal custody and respondent Kristen Mittal (now known as Kristen Brown) was awarded primary physical custody. In 2013, the district court ordered the Department of Family Services (DFS) and Child Protective Services (CPS) to initiate proceedings in the Juvenile Division of the district court to investigate whether the child was suffering abuse and was in need of protection, pursuant to NRS Chapter 432B (hereinafter referred to as the J Case). Raja ultimately entered a nolo contendere plea to an amended petition in the J Case and was provided a treatment plan, which included the requirement that Raja complete the Boundaries program, amongst other things. After he failed to comply with

19-50578

his treatment plan pursuant to his plea, the court entered an order terminating its jurisdiction over the J Case on November 21, 2013. In that order, the court awarded Kristen sole legal and sole physical custody of the minor child until further order of the court and on the condition that Raja complete the requirements of his treatment plan. The order noted that to date, Raja had not enrolled in the Boundaries program that he specifically agreed to and, therefore, awarded Raja not less than one hour per week of supervised parenting time at Donna's House.

In 2016 and 2017, Raja filed several motions in the custody case seeking to modify custody after he allegedly completed his treatment plan requirements from the J Case. The district court denied these requests until Raja submitted to a psychological evaluation, concluding that such an evaluation would benefit the court in determining whether it was in the child's best interest to modify the custodial arrangement. In 2018, Raja filed a motion to enforce the plea agreement entered in the J Case, arguing that pursuant to his plea, his unsupervised custodial time was to be automatically restored upon his completion of the Boundaries program and that he completed the program in December 2015. The district court entered an order holding reunification in abeyance and denying Raja's request for unsupervised custodial time until Raja complied with the court's order directing him to submit to a psychological evaluation. The court also granted Kristen's request to deem Raja a vexatious litigant. This appeal followed.

On appeal, Raja contends that the district court denied him due process by refusing to enforce his plea agreement entered in the J Case, that the district court abused its discretion in deeming him a vexatious litigant,

and that he has a due process right to a neutral judge, such that the presiding district court judge should be disqualified from further involvement in this matter. 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). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is that which "a reasonable person may accept as adequate to sustain a judgment." *Id.*

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). Additionally, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

Here, Raja first challenges the district court's denial of his motion to enforce the plea agreement, arguing that he has a due process right to specific performance under the agreement. As an initial matter, Raja has failed to provide any cogent argument to support his position that he is entitled to collaterally attack the validity or seek enforcement of the plea agreement in the custody case, rather than in the J Case. Thus, this court need not consider his argument as to this issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued).

Moreover, contrary to Raja's assertion, it is not clear from the record that an automatic change in custody was required upon Raja's

completion of his treatment plan, but regardless of the terms, the district court is always required to consider the best interest of the child when making child custody determinations. NRS 125C.0035(1); *Davis*, 131 Nev. at 451, 352 P.3d at 1143; *Litz v. Bennum*, 111 Nev. 35, 38, 888 P.2d 438, 440 (1995); *see also* NRS 432B.460 (providing that NRS Chapter 432B, governing the protection of children from abuse and neglect, does not deprive the district court from determining custody in divorce or domestic relations proceedings). Accordingly, we cannot conclude the district court abused its discretion in declining to modify the custodial arrangement until it obtained the information it deemed necessary to determine the best interest of the child. *Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Raja next asserts that the district court abused its discretion in deeming him to be a vexatious litigant. Vexatious litigants are those “who repeatedly file[] frivolous lawsuits.” *Peck v. Crouser*, 129 Nev. 120, 122, 295 P.3d 586, 587 (2013) (internal quotation marks omitted). And the Nevada Supreme Court has approved the use of orders to limit vexatious litigants’ access to the courts as a sanction to deter such conduct. *Id.* This court reviews restrictive orders limiting vexatious litigants from accessing the courts for an abuse of discretion. *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 62, 110 P.3d 30, 44 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008).

Because vexatious litigant orders limit a litigant’s right to access the courts, the orders must meet four factors: (1) the litigant must first receive notice and an opportunity to oppose such a sanction, to protect the litigant’s due process rights; (2) the district court must create an

adequate record for review by including a list of the cases and documents, or an explanation of the reasons a restrictive order was needed to stop repetitive or abusive conduct; (3) the district court must make substantive findings as to the frivolous or harassing nature of the conduct; and (4) the order must be narrowly drawn to address the specific problem. *Jordan*, 121 Nev. at 60-62, 110 P.3d at 42-44. The restrictions imposed by a vexatious litigant order may include prohibiting the litigant from filing future actions against a particular party or from filing new actions without first demonstrating to the court that the proposed case is not frivolous. *Peck*, 129 Nev. at 123, 295 P.3d at 587.

Here, the district court's order includes a detailed recitation of the history of the case and all of Raja's filings. In addition to listing the numerous filings, the order finds that Raja's conduct was frivolous, harassing, and impeded the ability of the court to conduct its business, such that his multitude of filings amounted to an abuse of process. *See Jordan*, 121 Nev. at 61, 110 P.3d at 43 (explaining that, as to the third factor, the litigant's conduct must be repetitive or abusive, and without an arguable factual or legal basis or filed with an intent to harass). Additionally, the order restricts Raja from filing any motions to modify custody without first obtaining leave of court to do so, which is narrowly tailored to address the specific problem—Raja engaging in repetitive filings ultimately seeking to modify custody. *See id.* at 62, 66, 110 P.3d at 44, 46 (explaining that restrictive orders can prohibit a litigant from filing new actions against a specific defendant or from filing without first demonstrating to the court that the proposed action is not brought for an improper purpose, and that the order should be limited to the district court in which the order is

entered). Thus, the district court's order included the required findings and is sufficiently limited to address the specific problem at hand. *See id.* at 60-62, 110 P.3d at 42-44.

However, in addition to the forgoing requirements, under *Jordan*, the district court's order "must explicitly set a standard against which the presiding judge should measure potential new filings." *Id.* at 66, 110 P.3d at 46. Accordingly, although the district court did not abuse its discretion in declaring Raja a vexatious litigant and issuing a restrictive order, the order should be modified to include an appropriate standard for measuring any potential new filings and we necessarily remand the matter for that limited purpose. *Id.*

As to Raja's allegations that the district court's rulings exhibited bias against him throughout the proceedings by ruling against him, such that the matter should be reassigned to another district court judge upon remand, "rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification." *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). Moreover, to the extent Raja asserts the bias stemmed from an extrajudicial source, district court judges have "a duty to sit and preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary." *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1253, 148 P.3d 694, 699 (2006) (internal quotation marks omitted). And we presume judges are unbiased. *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009). Here, the presiding district court judge filed an affidavit in response to Raja's motion addressing the issues raised therein. The Chief District

Judge then denied Raja's motion and his motion for reconsideration. Based on our review of the record, Raja's contention that the district judge assigned is biased or unable to act fairly is not supported. Thus, we cannot conclude that Raja has overcome the presumption that judges are unbiased and shown that reassignment is warranted. *See id.* at 439, 216 P.3d at 233.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Raja Mittal
The Law Offices of Frank J. Toti, Esq.
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.