IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC JOSEPH DUGGER,
Appellant,
vs.
DAYNA ANN MARTINEZ,
Respondent.

No. 78393-COA

ORDER OF AFFIRMANCE

This is a fast track child custody appeal. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Eric Joseph Dugger and Dayna Ann Martinez lived together as an unmarried couple before and after the birth of their five-year-old daughter. They broke up, Dugger moved into a new home, and Martinez allegedly restricted his ability to have parenting time with their daughter. He filed a complaint for joint legal and physical custody, and Martinez counterclaimed for primary physical custody. The district court referred the parties to the Family Mediation Center. *See* EDCR 5.106 and 5.303. At mediation, the parties agreed upon a parenting plan that gave the parties joint legal custody, and the mediator provided a written copy of the agreement to them, via email, with the terms of the plan. Both parties apparently emailed the mediator and stated that they agreed to its terms.

Three weeks later, the district court held a return hearing. The parties signed the parenting agreement before court convened. The district court congratulated them and stated it was adopting the plan as an order and the case would be closed. Dugger, acting pro se, stated that he was unsure whether the plan gave him joint physical custody. The district court

explained that (1) the plan gave Martinez primary physical custody based on the time allocation, even though it did not expressly state a physical custody designation, and (2) both parties had signed the plan they reached at mediation. Dugger did not ask to withdraw from or amend the agreement, nor did he request an evidentiary hearing before the district court adopted the plan as an order.

Dugger later hired an attorney, and moved under EDCR 2.24 and NRCP 60(b)(1), arguing that his mistaken belief that the plan gave him joint physical custody was a sufficient ground to warrant relief from the judgment. His post-judgment motion for relief was denied.

On appeal, Dugger argues that the district court (1) abused its discretion in adopting the parenting plan as an order, and (2) erred in failing to hold an evidentiary hearing before adopting the plan. We disagree.

"Decisions regarding child custody rest in the district court's sound discretion, and this court will not disturb the decision absent a clear abuse of that discretion." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). "[T]here is a presumption on appeal in child custody matters that the trial court has properly exercised its judicial discretion in determining what is for the best interests of the child." *Howe v. Howe*, 87 Nev. 595, 597, 491 P.2d 38, 40 (1971). "[P]arties are free to agree to child custody arrangements and those agreements are enforceable if they are not unconscionable, illegal, or in violation of public policy." *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 227 (2009). "[P]ublic policy favors parenting agreements." *Mizrachi v. Mizrachi*, 132 Nev. 666, 671, 385 P.3d 982, 985 (Ct. App. 2016). "[T]he court 'will generally recognize the preclusive effect of such agreements if they are deemed final.'" *Id.* (quoting *Rennels v. Rennels*, 127 Nev. 564, 569, 257 P.3d 396, 399 (2011)). "The

courts may enforce [custody] agreements as contracts." *Rivero*, 125 Nev. at 417, 216 P.3d at 219. "[U]nilateral mistake is not a ground for rescission unless the other party knows or has reason to know of the mistake." *Gen. Motors v. Jackson*, 111 Nev. 1026, 1032, 900 P.2d 345, 349 (1995).

Before and during the hearing to receive the mediated parenting plan, Dugger did not move to amend or reject its terms on the ground that he never agreed to them, or that they were unconscionable, illegal, or in violation of public policy, nor did he request an evidentiary hearing. To the contrary, he signed the agreement. Further, there was no allegation that Martinez knew of Dugger's mistaken knowledge of the plan before he signed it. Thus, under the authorities cited above, the district court acted within its wide discretion to adopt the plan that both parents signed before the hearing, and we presume that the district court acted in the child's best interest.

In addition, public policy favors private custody agreements for co-parenting. We are hesitant to interfere with the mediation process on the ground that one parent later alleges to have been confused, or expresses remorse as to the terms that were mutually agreed upon.[1] Thus, we

[1]Dugger fails to cite any authority that requires the district court to *sua sponte* order an evidentiary hearing when one parent states that he or she is uncertain as to the legal significance of the parenting agreement. Thus, we need not consider this argument on appeal. *See* NRAP 3E(d)(1)(E) (noting that the fast track statement shall include "[l]egal argument, including authorities, pertaining to the alleged error"); *see also Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 795 (2017) (explaining that appellate arguments should be supported with citations to relevant authority).

conclude that the district court did not abuse its discretion in adopting the agreement Dugger and Martinez reached during mediation.[2]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Mathew Harter, District Judge
Smith Legal Group
Kyle A. King
Rosenblum Law Offices
Eighth District Court Clerk

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[2]On appeal, Dugger does not challenge the denial of his post-judgment motions under EDCR 2.24 or NRCP 60(b). Thus, we conclude that he has waived any such arguments. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that an issue not raised on appeal is deemed waived).

[3]We note that this order does not prevent Dugger from filing a future motion to modify the child custody order if there has been a substantial change in circumstances and it is in the best interest of the child. *See Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007).