IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARVIN CARRERA,
Appellant,
vs.
CLAUDIA MONTES,
Respondent.

No. 80457-COA

ORDER OF AFFIRMANCE

Marvin Carrera appeals from a final order in a child custody matter. Eighth Judicial District Court, Clark County; Rhonda Kay Forsberg, Judge.

In the proceedings below, the parties have had a highly contentious custody case, with extensive litigation. As relevant here, the parties entered a stipulated decree of custody in 2012, providing that respondent Claudia Montes would have primary physical custody and the parties would share joint legal custody of their minor child. In 2017, after extensive litigation, the district court entered a new custody order based on the parties' stipulation, whereby Claudia retained primary physical custody and the parties continued to share joint legal custody of their child. The parties continued to litigate and, in 2019, the matter ultimately proceeded to trial on the parties' competing motions for sole physical and legal custody. Notably, the parties both made allegations of abuse throughout the litigation and numerous hearings were held regarding the child's need for therapy. After trial, the district court denied Marvin's motion to modify custody, finding that he failed to demonstrate a substantial change in circumstances warranting modification, and granted Claudia's motion to

modify legal custody, awarding her sole legal custody. In granting Claudia sole legal custody, the district court found that such modification was in the child's best interest in light of the parties' inability to co-parent and inability to work together to select a therapist for the child. The district court also awarded Claudia her attorney fees and costs, and subsequently denied Marvin's motion for reconsideration. This appeal followed.

On appeal, Marvin challenges the district court's orders, asserting that the district court improperly admitted certain evidence and improperly excluded other evidence, and challenges the award of fees. Child custody matters rest in the sound discretion of the district court. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Accordingly, this court reviews a child custody decision for a clear abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody decisions, this court will affirm the district court's child custody determinations 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.* Additionally, this court reviews the district court's evidentiary determinations for an abuse of discretion. *Abid v. Abid*, 133 Nev. 770, 772, 406 P.3d 476, 478 (2017).

As to Marvin's assertion that the district court improperly admitted witness testimony from Donna Gosnell, MFT because she was not credible, this court does not reweigh witness credibility on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. To the extent Marvin argues that the district court should have precluded Gosnell's testimony because Claudia allegedly chose Gosnell as the child's therapist unilaterally, contrary to a prior court order, and because a prior court order allegedly stated that "Gosnell was not to be used for anything regarding the court," the record

does not support Marvin's assertions and we discern no abuse of discretion in the district court's decision to allow Gosnell to testify. *See Abid*, 133 Nev. at 772, 406 P.3d at 478. Moreover, we note that Marvin failed to object to Gosnell testifying at the time of trial; thus, he has waived any such argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

Marvin's assertion that the district court improperly admitted Claudia's evidence because he received it for the first time on the morning of trial is also without merit. The district court found that the proposed evidence was properly disclosed to Marvin's prior counsel. Notably, Marvin's counsel moved to withdraw on the eve of trial and at the hearing on that motion, the district court indicated it was not inclined to grant the motion to withdraw on the eve of trial, but Marvin insisted that he did not want his counsel to represent him at trial. Based on this, the district court allowed counsel to withdraw and indicated that Marvin would be required to obtain the file from his counsel and determine what evidence was disclosed and when, and Marvin indicated he would do so the same day. Thus, we discern no abuse of discretion in the district court's admission of evidence on this basis. *See Abid*, 133 Nev. at 772, 406 P.3d at 478.

Marvin also contends that the district court improperly excluded his evidence demonstrating that Gosnell and Claudia were not credible, and evidence of the parties' conflict that predated the 2017 stipulated custody order, which he alleges would establish a "pervasive pattern of behavior" by Claudia. The district court excluded Marvin's evidence because it found that Marvin failed to properly produce the evidence prior to trial, that Marvin failed to establish foundation for the evidence, and that it could not properly consider evidence predating the last

custody order, from 2017, pursuant to *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P.2d 742 (1994). Although Marvin summarily asserts that the district court improperly excluded his evidence, he has failed to provide any cogent argument addressing the district court's basis for excluding the evidence. *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). Regardless, as noted above, this court does not reweigh witness credibility on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Moreover, we note that substantial evidence in the record supports the district court's conclusion that Marvin failed to demonstrate that he properly produced the evidence and that he failed to lay any foundation for the proffered evidence at trial. Thus, we discern no abuse of discretion in the district court's exclusion of Marvin's evidence. *See Abid*, 133 Nev. at 772, 406 P.3d at 478.

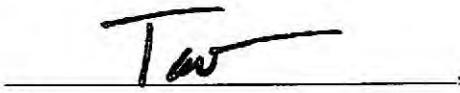
Finally, Marvin challenges the district court's order awarding Claudia her attorney fees and costs. In particular, Marvin contends that the district court improperly awarded Claudia fees pursuant to NRS 18.010 because his claim was not brought without reasonable grounds or to harass Claudia. This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). As an initial matter, we note that the district court did not expressly cite the rule it relied upon in awarding attorney fees and its findings are not detailed. But the district court concluded that Claudia prevailed at trial, and found that an award of fees was warranted based on the pleadings, the testimony at trial, and the arguments made. The district court also repeatedly found that a modification of legal custody was required because of the parties' inability to co-parent and cooperate, particularly as

it related to selecting a therapist for the child. Based on these findings and our review of the record, substantial evidence would support an award pursuant to NRS 18.010(2)(b) or EDCR 7.60(b). Regardless, the district court has discretion to award attorney fees in child custody matters pursuant to NRS 125C.250. And from our review of the record and the parties' arguments as to the award of fees, we cannot conclude that the district court abused its discretion in determining an award of attorney fees was warranted. *See Miller*, 121 Nev. at 622, 119 P.3d at 729.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons



_____, J.
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cc: Hon. Rhonda Kay Forsberg, District Judge
Marvin Carrera
Robison, Sharp, Sullivan & Brust
Eighth District Court Clerk

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[1]Insofar 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.