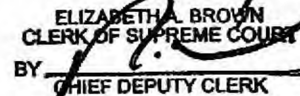
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KORY GARVER,
Appellant,
vs.
CRYSTAL GARVER, N/K/A
CRYSTAL COLEMAN
Respondent.

No. 82471-COA



ORDER OF AFFIRMANCE

Kory Garver appeals from a district court divorce decree and order determining child custody. Second Judicial District Court, Family Court Division, Washoe County; Chuck Weller, Judge.

Kory Garver and Crystal Coleman married in Reno in 2017.[1] Each party came into the union with children, and they had one additional child together, K.G., during their second year of marriage.

In November 2019, police responded to a domestic disturbance at the marital residence. That day, Crystal and Kory argued, Kory grabbed a knife and threatened to puncture Crystal's car tires, and Kory intentionally threw a pipe that broke Crystal's glass fish tank. A physical altercation then ensued involving Kory, Crystal's adult son Tye Clemmons, and Tye's friends. Afterward, Kory was charged with battery with the use of a deadly weapon and battery by strangulation for allegedly throwing a hockey stick at one of Tye's friends, knocking him to the ground and choking him. This incident resulted in the end of Kory and Crystal's relationship and led to Kory moving out. In January 2020, there was another incident at the marital home, whereupon Kory was charged with domestic battery against Tye for allegedly striking him. Crystal fled from Nevada to Oregon

[1]We recount the facts only as necessary for our disposition.

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with K.G. a few days after that second incident.

Kory then filed pro se for divorce requesting sole legal and physical custody of K.G. Kory did not select parenting time, holiday, or summer schedules in the form complaint, but instead asked for K.G. to stay with him "until Both parents can come to an agreement." Crystal filed pro se a form answer and counterclaim to Kory's complaint for divorce asking for sole legal and primary physical custody. She further asked that parenting time "be determined by [her]" because of Kory's pattern of harassment and threatening behavior. Crystal asked for all holidays and summers until she felt safe around Kory. Soon after, the district court awarded Crystal temporary sole legal and physical custody and ordered virtual parenting time with Kory twice weekly.

After continuing the divorce proceedings several times for resolution of Kory's pending criminal charges, the court set the matter for a November 2020 trial. At the trial conducted via Zoom, the district court heard testimony from Kory, Crystal, Tye, and Crystal's teenage son, L.E. The court then made oral findings as to each enumerated NRS 125C.0035(4) factor and determined that Crystal should have sole legal and primary physical custody. The court attempted to order parenting time but wanted the parents' assistance because they lived in different states, Kory was jobless and geographically isolated, and Crystal did not want to continue Zoom parenting time due to Kory's harassing behavior toward her—such as threatening to kill her and making derogatory comments about her to their son—during video calls. Kory however disparaged the court and refused to communicate about parenting time. Unable to proceed without Kory's input, the court ordered that he have "no contact with the child until he comes back to court and describes to me calmly what he would like to have."

The district court provided notice and held a remote hearing at the end of November 2020 to set Kory's parenting time, which he did not attend.

The district court then issued its divorce decree, making specific best interest findings as to each NRS 125C.0035(4) factor, including that factor (4)(h) (relationship with each parent) favored Crystal because K.G. was more bonded to Crystal than Kory. The court also found under factor (4)(k) (domestic violence) that Kory perpetrated domestic violence against Crystal and Tye by clear and convincing evidence. The court then applied the presumption against domestic violence perpetrators having custody, found that Kory did not rebut the presumption, and concluded that it was appropriate for Crystal to have sole legal and sole physical custody of K.G. The decree did not order parenting time but invited Kory to file a motion with the court to seek a parenting time schedule.[2] The court found that these custody and parenting time arrangements adequately protected the child, the parent, and any other victim of domestic violence as required by NRS 125C.0035(5). It does not appear that Kory filed a motion to seek custody after the district court served him with its decree. Instead, he now raises multiple issues on appeal, each of which we address in turn.

The district court did not abuse its discretion by awarding Crystal sole legal custody of K.G.

Kory argues that the district court abused its discretion by awarding Crystal sole legal custody because there is a joint legal custody presumption. According to Kory, the court only found that the parents could not "cooperate enough to share legal custody," which he asserts is not substantial evidence necessary to overcome that presumption. Kory claims

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[2]Kory was also ordered to complete a certified batterer's intervention program, but it is unknown if he has done so.

"no evidence" suggests his involvement in legal custody decisions would be against K.G.'s best interest.[3]

Crystal answers that joint legal custody requires that the parents be able to cooperate, communicate, and compromise in the child's best interest, and that we should defer to the district court's credibility, character, temperament, and sincerity determinations of the parents. Therefore, given the court's findings of high conflict, no ability to cooperate, and that Kory perpetrated domestic violence without rebutting the presumption against joint custody, Crystal argued that the district court correctly awarded her sole legal custody of K.G. Kory replies that both parents are responsible for the high level of conflict.[4]

"We have repeatedly recognized the district court's broad

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[3]Kory further argues that, if Crystal was better able to make legal decisions for K.G., *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022), gave the district court authority to order a joint legal custody arrangement wherein Crystal has a greater share of decision-making power. However, *Rivero* does not require a district court to do this, and we will not overturn the district court because it could have ruled differently when substantial evidence supports the way in which it did rule. *See id.* at 421, 216 P.3d at 221.

[4]Kory argues that a substantial portion of the legal custody decision was based on his pending domestic violence charges, which he asserted in his briefing have been dropped since the proceedings ended but agreed during oral argument that this information is not in the record. Because Kory testified at trial that his criminal charges were still pending, we need not consider his argument. *See Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) ("The district court did not address this issue. Therefore, we need not reach the issue."). We also note that the district court would generally not be bound by the outcome of the criminal proceedings if a conviction did not result, particularly given the higher burden of proof in a criminal case.

discretionary powers to determine child custody matters, and we will not disturb the district court's custody determinations absent a clear abuse of discretion." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). And rulings supported by substantial evidence—evidence "which a sensible person may accept as adequate to sustain a judgment"—will not be disturbed on appeal. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

"Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents." *Rivero*, 125 Nev. at 420, 216 P.3d at 221. There is a statutory presumption that joint legal custody would be in the best interest of the child when a parent demonstrates "an intent to establish a meaningful relationship with the minor child." NRS 125C.002(1)(b). However, that presumption is defeated if the parents cannot "cooperate, communicate, and compromise to act in the best interest of the child." *See Rivero*, 125 Nev. at 420, 216 P.3d at 221.

Contrary to what Kory asserts, the district court did not base its legal custody determination solely on its finding that the "parents can't cooperate enough to share legal custody." In analyzing the NRS 125C.0035(4) custody best interest factors, the court specifically found that the parents showed "no ability to cooperate," "an extremely high level of conflict," and that Kory perpetrated domestic violence against Crystal and Tye. *See Monahan v. Hogan*, 138 Nev., Adv. Op. 7, 507 P.3d 588, 596 (Ct. App. 2022) (concluding that the district court's failure to restate actual advantage findings under the best interests relocation provision when they overlap each other was not fatal to the best interests determination under the relocation statute). Therefore, the district court made several findings which support its conclusion that Crystal should have sole legal custody.

Also contrary to Kory's position, these findings alone need not be substantial evidence to rebut the presumption in favor of joint legal custody. Rather, we consider all evidence before the district court to determine whether "substantial evidence in the record" supports the custody decision. *See Devries v. Gallio*, 128 Nev. 706, 711, 290 P.3d 260, 264 (2012); *Rico v. Rodriguez*, 121 Nev. 695, 702, 120 P.3d 812, 817 (2005).

We conclude that substantial evidence supports the district court's decision. At trial, Kory called Crystal "a narcissist," said her actions were "selfish, heartless, malicious," and stated that "she should be in prison for [what] she's done. How careless." He testified that he had "a whole lot of conflict against [Crystal]," and that he "shouldn't have to be civil with her." Crystal testified that Kory "cannot have a decent, normal conversation with me; he hates me too much." She further testified that Kory refused to attend coparenting counseling, he threatened to kill her during their last Zoom visit, and she sees the "next 16 years of my life being complete misery and just chaos and torment and harassment and stalking and threatening." The court noted that it observed Kory was unable to control his anger in court "several times."[5] Neither party provided evidence of the parents getting along for any appreciable amount of time since their separation. Therefore, substantial evidence indicated the parents could not cooperate, communicate, and compromise in K.G.'s best interest and that Crystal overcame the joint legal custody presumption. Thus, the district court did not abuse its discretion by awarding Crystal sole legal custody.

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[5]Kory appears to argue this behavior was attributed to the court denying him parenting time. However, Kory demonstrated an inability to control himself before that happened and on issues (such as marital property distribution) that had nothing to do with K.G.

The district court did not abuse its discretion by awarding Crystal sole physical custody of K.G.

Kory argues that the district court abused its discretion by awarding Crystal sole physical custody of K.G. because there is a joint physical custody preference. Kory argues that, based on the totality of the circumstances, substantial evidence did not support the court's conclusion that awarding Crystal sole physical custody was in K.G.'s best interest because the court should have found some of the factors favored him.

Crystal answers that there is a rebuttable presumption against joint physical custody when a parent has perpetrated domestic violence against the child, parent of the child, or any other person residing with the child. Crystal then argues that substantial evidence supports the court's NRS 125C.0035(4) best interest findings.

"When a court is making a determination regarding the physical custody of a child, there is a preference that joint custody would be in the best interest of a minor child . . ." under certain circumstances. *See* NRS 125C.0025(1). However, a court can award sole physical custody to a parent if the court determines that sole custody is in the best interest of the child. *See* NRS 125C.0035(1). "In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things [the best interest custody factors] . . . ." NRS 125C.0035(4).

Kory specifically disputes the district court's finding under NRS 125C.0035(4)(c) (frequent associations)—that neither parent was more likely to allow frequent associations because "there was no evidence presented to suggest [he] would withhold or conceal the child or further prevent [Crystal] from seeing the child in any way." But the court found that neither parent was more likely to allow frequent associations with the other, not that both parents were unlikely to allow it. And indeed, Crystal

and Kory both testified that they allow their other children to have relationships with their other parent. Therefore, substantial evidence supports the district court's neutral finding on the frequent associations custody factor.

Next, Kory disputes the district court's finding under NRS 125C.0035(4)(e) (ability to cooperate)—that the parents "displayed no ability to cooperate to meet" K.G.'s needs because the court "made this finding without allowing either parent to present an argument." But when the district court elicited argument regarding the NRS 125C.0035(4) factors, it had already heard testimony from the parents about K.G.'s best interest. From that testimony, the court determined that the parents were unable to cooperate and that further argument on this factor was unnecessary. At trial, both parents admitted to their conflict, and neither gave any indication that they could cooperate. In fact, the parents were arguing over the judge when he decided that he did not need to elicit argument from them on the cooperation factor. Therefore, substantial evidence supports the district court's neutral finding on the cooperation custody factor.

Next, Kory disputes the district court's finding under NRS 125C.0035(4)(f) (parents' mental and physical health)—that it had "insufficient evidence to determine anything actionable about either parents' physical or mental health" because both parents alleged "the other is mentally unstable." This may be true—Crystal testified that Kory was "unstable" and threatened suicide multiple times, and Kory testified that Crystal had past "mental instabilities and anger issues." But neither presented any evidence of a diagnosed mental illness nor articulated how these alleged issues impaired the other parent's ability to care for K.G.

Therefore, substantial evidence supports the district court's neutral finding on the mental and physical health factor. *See, e.g., Bandiero v. Bandiero*, No. 80756, 2020 WL 7396056, at *5 (Nev. Ct. App. Dec. 16, 2020) (Order of Affirmance) (affirming the district court's finding that the mental and physical health factor was neutral because both parties alleged the other was mentally ill but neither presented a formal diagnosis; also noting mom failed to explain how dad's alleged mental illness was detrimental to the child's best interest).

Next, Kory disputes the district court's finding under NRS 125C.0035(4)(h) (relationship with each parent)—that K.G. had a "closer bond" with Crystal. Kory argues that this finding was "erroneous" because Kory had no access to K.G. since Christmas 2019; he "did not willingly avoid physical contact." Again, Kory does not appear to dispute that K.G. is closer to Crystal, he is providing an explanation as to why. That is not what this custody factor is necessarily concerned with. *See* NRS 125C.0035(4)(h). Therefore, Kory failed to demonstrate that substantial evidence does not support the district court's finding in favor of Crystal under the relationship with each parent factor.

Next, Kory disputes the district court's finding under NRS 125C.0035(4)(j) (abuse or neglect)—that each parent claimed the other "assaulted and abused their children" because "[t]here is no evidence to suggest, and at no time did anyone allege, that [he] has abused or neglected the minor child at issue." But NRS 125C.0035(4)(j) does not only contemplate abuse or neglect of the child—the statute also considers abuse or neglect of a sibling. Crystal testified that Kory assaulted Tye twice (K.G.'s half-brother). Kory testified that Crystal assaulted his daughter (K.G.'s half-sister). Therefore, substantial evidence supports the district

court's neutral findings on the abuse or neglect factor.

Next, Kory disputes the district court's finding under NRS 125C.0035(4)(k) (domestic violence against parent, child, or person residing with the child)—that he perpetrated domestic violence against Crystal and Tye. Kory makes multiple arguments regarding this finding. First, Kory argues that, according to his version of the November 2019 incident, Crystal broke the fish tank and he did not intend for it to break. But at trial, Crystal and L.E. both gave firsthand testimony regarding the fish tank. Crystal testified that her and Kory were arguing about money when Kory threw a marijuana pipe at her fish tank, causing it to break and flood the living room. L.E. testified that he was in the living room during the incident and saw Kory throw a pipe at the fish tank causing it to shatter and "water went on the ground." Therefore, substantial evidence supports the district court's finding that Kory committed domestic violence by breaking the fish tank and Kory's argument fails.

Kory then argues that threatening to puncture Crystal's car tires does not fall within the domestic violence statute. Assumedly, Kory makes this argument because NRS 33.018(1), which defines domestic violence, only enumerates the destruction of private property as an offense, not *threatening* to destroy property. However, NRS 33.018(1)(e)—the heading under which destruction of property is listed—states that any "knowing, purposeful or reckless course of conduct intended to harass the other person" constitutes domestic violence. The list of examples is nonexhaustive. *See id.* So, the district court did not abuse its discretion in finding that Kory perpetrated domestic violence by threatening to puncture

Crystal's tires.[6]

Kory also argues that Crystal, Tye, and L.E.'s testimony as to the January 2020 incident was not credible. But we do not reweigh credibility determinations on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Further, substantial evidence supports the district court's finding that Kory perpetrated domestic violence during the January 2020 incident. Crystal testified that she dumped Kory's belongings in January 2020 in preparation for her move to Oregon. On the day of the incident, Crystal testified that Kory saw his belongings in a dumpster in the yard, came into the home, and assaulted Tye in front of her and K.G. Tye testified that after helping load the dumpster, he was sitting on the couch with Crystal and K.G. watching TV when Kory "ripped open" the front door. Kory then charged him, ripped him off the couch, and beat him with closed fists. Tye testified that L.E. ran into the kitchen to call the police, Kory ran after him, and Kory then came back into the living room and smashed the TV. Tye testified that he lived with Crystal at the time. L.E. testified that he was sitting on the couch watching TV after helping load the dumpster when the

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[6]Kory further asserts that the district court stated, "there is some question about domestic violence of November 17, 2019" and that Tye bringing friends to the November 2019 incident "was certainly provocative." He argues that "[c]lear and convincing evidence requires a finding of more likely than not. This cannot rise to the high level of clear and convincing evidence as the court itself was unsure of what occurred during the incident." However, the court made this finding regarding whether Kory perpetrated domestic violence against Tye when Tye, his friends, and Kory brawled at the November 2019 incident. This finding was unrelated to Kory destroying Crystal's fish tank or threatening to destroy her tires—both of which occurred before Tye and his friends arrived. The court did not find that Kory perpetrated domestic violence against Tye during the November 2019 incident. Therefore, this argument fails.

door came "swinging open." L.E. testified that Kory then came in, punched Tye "full fist, closed," "charged" L.E. when he ran to the kitchen, ran back to the living room, broke the TV, and ran out. Therefore, Kory's argument fails in light of this evidence.

Kory then appears to dispute the district court's finding that he perpetrated domestic violence by harassing Crystal. However, the district court only made oral domestic violence findings regarding Kory's harassment of Crystal. In the decree, the court stated that it "observed Father in court on several times when Father has been unable to control[ ]his anger." But the decree did not make domestic violence findings based on harassment, therefore we need not consider Kory's argument because his alleged harassing behavior was not used against him. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) ("The district court's oral pronouncements from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose and cannot be appealed.").

We also note that, at trial, Kory behaved disorderly on several occasions. He used profanity over the court's objection, ranted about his hatred for Crystal, accused the court of siding with her, and became so upset with the ruling that the court had to continue the trial. As such, substantial evidence supports the court's finding that Kory had been unable to control his anger during court proceedings. Therefore, considering all Kory's aforementioned domestic violence arguments, we hold that the district court did not abuse its discretion in concluding that Kory perpetrated domestic violence against Crystal and Tye.

We further note that substantial evidence supports the district court's finding that Kory failed to rebut the presumption against him having

custody. *See* NRS 125C.0035(5) (indicating that the presumption against a domestic violence perpetrator having sole or joint physical custody can be rebutted by the perpetrator); NRS 125C.230(1) (same). Indeed, Kory did not dispute Crystal's testimony that, between their separation and trial, Kory engaged in "nonstop anger and violence." Kory did not dispute that he refused to go to counseling. He displayed anger issues in court. And he had not completed batterer's intervention classes prior to trial. So, Kory failed to show that his behavior improved or that he otherwise rebutted the presumption.

Finally, Kory asserts that he "repeatedly claimed" Crystal abused him and her other children, which the district court should have taken into consideration. Kory asserts that, because both parents perpetrated domestic violence and the court did not determine who was the primary physical aggressor, the court should have applied a rebuttable presumption against both parents having custody of K.G. *See* NRS 125C.0035(6) (indicating that when both parents commit domestic violence, the presumption only applies to the primary aggressor and, when the court cannot determine which party was the primary aggressor, the presumption applies to both parents); NRS 125C.230(2) (same).

Reviewing the record, Crystal did admit to an assault charge for spanking her "son" in 2001. However, 125C.0035(6) does not appear to apply in this case because the statute refers to violence between the parties, not a prior incident with an unrelated person. Here, the district court made no finding that Crystal engaged in domestic violence against Kory. Therefore, there was no need to determine a "primary aggressor." And the act from almost 20 years prior was not shown to have outweighed the current violence perpetrated by Kory, particularly when Kory agreed that

Crystal had completed an 18-month anger management program. As such, substantial evidence supports the finding that NRS 125C.0035(4)(k) favored Crystal. And, having considered all Kory's physical custody arguments, we conclude that the district court did not abuse its discretion in concluding that it was in the best interest of K.G. to grant Crystal sole physical custody.[7] *See* NRS 125C.0035(4) & (5).

The district court did not err by denying Kory parenting time and inviting him to seek a parenting-time schedule

Kory argues that the district court erred by denying him parenting time when it awarded Crystal sole physical custody. Specifically, Kory appears to argue that the parenting-time decision violated his constitutional right to parent, that the decision was not supported by substantial evidence, and that it violated public policy.

We decline to consider these arguments, however, because Kory's actions invited any error by the district court.

> The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit. It has been held that for the doctrine of invited error to apply it is sufficient that the party who on appeal complains of the error has contributed to it. In most cases application of the doctrine has been based on affirmative conduct inducing the action complained of, but occasionally a failure to act has

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[7]We do not consider the district court's findings under NRS 125C.0035(4) as to factors (a) ("wishes of the child"), (b) (nomination of a guardian by a parent), (d) ("conflict between the parents"), (g) (child's physical, developmental, and emotional needs), (i) (sibling relationships), or (l) (abduction) because Kory does not appear to meaningfully dispute the findings under those factors. *See Senjab v. Alhulaibi*, 137 Nev., Adv. Op. 64, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present.").

been referred to.

Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (internal quotation marks omitted).

Kory behaved disorderly throughout trial. By the time the court began announcing its ruling, it had to mute both parents to speak uninterrupted. The court announced its decision to award Crystal sole legal and primary physical custody. It then indicated its desire to grant Kory parenting time but wanted suggestions on how to achieve a schedule that accounted for Kory and Crystal living in different states, Kory's unemployed status, and Kory's harassing behavior—such as threatening to kill Crystal and making derogatory and vulgar comments about her to their son—during Zoom visits. The court asked to hear from Kory first, stating, "Sir, I want to let you have contact with your child. I know you're unhappy—" but Kory cut the court off. The court then attempted to communicate with Kory about parenting time, but he refused to cooperate. Kory would not stop his disparaging commentary—such as calling the order "dishonorable" and "garbage"—so the court ordered no contact and ended the proceedings.

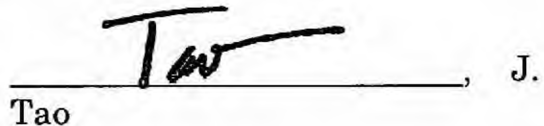
The district court scheduled a follow-up virtual hearing on Kory's behalf to discuss his parenting time about two weeks later. The court provided Kory with notice of the hearing. However, Kory did not attend or respond to the clerk's contact attempts. Thereafter, the court issued its parenting-time decision in the decree, denying Kory parenting time based on Kory's inability to control his anger during the trial and failure to appear at the follow-up hearing, but inviting him to file a motion seeking parenting time. At oral argument, Kory acknowledged that he had not filed any motions requesting parenting time since.

Kory cannot come to this court and request relief from a

parenting-time decision that his actions and inaction induced the district court to make. *Id.* (declining to consider appellant's constitutional challenge to a custody order because she invited any error by the district court); *see also, e.g., Shahrokhi v. Burrow*, No. 81978, 2022 WL 1509740, at *3 (Nev. May 12, 2022) (Order of Affirmance and Dismissing Appeal in Part) (finding that invited error doctrine barred father's argument regarding a delay in resolving child custody where he contributed to such delays via his wavering willingness to participate in the proceedings). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[8]

_______________________, C.J.
Gibbons



_______________________, J.
Tao

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Bulla

cc: Chief Judge, Second Judicial District Court
Hon. Paige Dollinger, District Judge, Family Court Division
JK Nelson Law LLC
O'Mara Law Firm, P.C.
Barbara Buckley, Las Vegas
Kelly H. Dove, Las Vegas
Washoe District Court Clerk

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[8]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.