IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NECHOLE GARCIA,
Appellant,
vs.
EVGENY SHAPIRO,
Respondent.

No. 83992-COA

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

Nechole Garcia appeals a district court order establishing custody, forming a parenting-time schedule, and awarding child support. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Garcia and Evgeny Shapiro met in 2013, dated for a year, broke up, and started dating again in 2017.[1] A year after they restarted their relationship, they had one child together: A.G.-S. (now three years old).[2] A.G.-S. is the subject of this child custody dispute.

In 2019, the parties' relationship deteriorated, which led the parties to break up in 2020. After the parties failed to agree on a custody schedule regarding A.G.-S. and on child support, Shapiro filed both a complaint and motion for custody. In his complaint and motion, he sought joint legal custody, joint physical custody, and child support. Garcia opposed this motion and filed a countermotion seeking primary physical custody and child support arrearages. Garcia did not oppose Shapiro's request for joint legal custody.

As the litigation proceeded, the district court ordered a week one, week two temporary custody schedule. Under this custody schedule,

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

[2]Shapiro has two children from a previous relationship.

Shapiro would have parenting time with A.G.-S. Sunday at 7:00 a.m. through Tuesday at 7:00 p.m. And, during week two, Shapiro's parenting time would shift to Monday at 7:00 a.m. through Wednesday at 7:00 p.m. This custody schedule remained unchanged until the district court's order on appeal in this case.

Sometime later, A.G.-S. was formally diagnosed with autism spectrum disorder (ASD), level one with communication delay. After A.G.-S.'s diagnosis, the parties primarily focused their arguments regarding custody on the ability of either parent to meet A.G.-S.'s needs as a child with ASD. Primarily, Garcia alleged that Shapiro disputed A.G.-S.'s diagnosis and did not take it seriously, and he therefore could not adequately care for A.G.-S.'s many needs. Shapiro, however, disputed Garcia's allegations that he minimized the diagnosis and could not care for A.G.-S.

The district court held a two-day trial on the matter. During this hearing, the parties primarily presented expert evidence regarding the services A.G.-S. receives and the needs of a child in A.G.-S.'s situation. After the first day of the hearing, the parties stipulated to joint physical custody. The parties still, however, could not agree to a specific custody schedule. Garcia wanted the then-existing custody schedule to remain in place because it would reduce the number of custody exchanges, which she argued would reduce the already high conflict between the parties. Shapiro, however, wanted a 2-2-3 custody schedule,[3] in part because he only had

[3]This schedule would have the parties exchange A.G.-S. on the mornings of Wednesday, Friday, and Monday (Monday and Tuesday with one parent, Wednesday and Thursday with the other parent, then Friday, Saturday, and Sunday with the first parent). Garcia would get weekends on the first, third, and fifth weeks, and Shapiro would get weekends on the second and fourth weeks.

parenting time with his other two children every other weekend, and a 2-2-3 schedule would allow A.G.-S. to spend more time with her half siblings.

The parties also requested that the district court set child support, but each presented conflicting evidence regarding Shapiro's income. Garcia alleged that Shapiro was either willfully underemployed or had underreported his income. To support her claim, she offered into evidence Shapiro's bank statements, which she claimed showed that Shapiro deposited more than $90,000 into his account for the 2020 calendar year.[4] This, Garcia claimed, would put Shapiro's gross monthly income closer to $7,700 per month rather than the $2,600 he testified to. Based on Garcia's concerns, the court ordered the parties to submit tax returns for the previous three years.

Both parties also wanted the district court to award them child support arrears. Garcia claimed that, as the de facto primary physical custodian from the time period preceding the litigation, she had provided for almost all of A.G.-S.'s financial needs. She provided the court with exhibits showing medical expenses she had incurred on A.G.-S.'s behalf. Shapiro, however, contended that he had provided over $10,000 in support during that same time period and had provided additional, offsetting services for Garcia, such as watching A.G.-S. while Garcia worked.

Regarding the child custody schedule, the district court found that Shapiro's proposed custody schedule was in A.G.-S.'s best interest primarily because the parties had the same work schedules and Shapiro's schedule allowed A.G.-S. to spend more time with her half siblings, with whom she had a close bond. Regarding child support, the court used the

[4]Although she offered Shapiro's bank deposits into evidence, she only asked him one question about one of those deposits, and he revealed that the money came from the COVID-19 pandemic-related enhanced unemployment assistance.

parties' most recent tax returns to set the parties' gross monthly income. From those tax returns, it found that Shapiro had a gross monthly income of $1,970.42 and that Garcia had a gross monthly income of $9,466.58. The court set Garcia's child support obligation at $882.67 per month. Regarding child support arrears, it denied Shapiro's request and further found that Garcia had not requested any child support arrears. This appeal followed, which raised numerous issues; we address each in turn.

The district court did not admit evidence of settlement negotiations

Garcia argues that the district court abused its discretion by admitting evidence of settlement negotiations into evidence on two occasions. First, she claims that the court improperly admitted evidence of settlement negotiations when the court failed to strike the motion for sanctions that Shapiro filed. Second, she claims that the court improperly admitted evidence of settlement negotiations during trial when the court overruled her objection to Shapiro's question asking her about a custody schedule she presented during negotiations.

On appeal, we review a district court's decision to admit evidence for an abuse of discretion. *Abid v. Abid*, 133 Nev. 770, 772, 406 P.3d 476, 478 (2017). A court abuses its discretion if "no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014).

Regarding Garcia's first claim, she has failed to cite any authority showing that a court admits evidence of settlement negotiations when it fails to strike an earlier-in-time motion containing those negotiations. Therefore, we need not consider this argument. *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 an appellant's argument that is not cogently argued or lacks the support of relevant authority). Regardless, motions, statements and allegations within them, and exhibits

attached to them do not necessarily constitute evidence. *See Mizrachi v. Mizrachi*, 132 Nev. 666, 678 n.12, 385 P.3d 982, 990 n.12 (Ct. App. 2016) ("We note that arguments of counsel are not evidence."); *see also* EDCR 5.205(g) ("Exhibits . . . shall not be considered substantive evidence until admitted.").[5] And Garcia has not provided this court with any citation to the record showing that the court did admit that motion as evidence into the record. *See* NRAP 28(e) ("A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, *and received or rejected*." (emphasis added)). Garcia's first claim therefore fails.

Garcia's second claim also fails, because the district court never admitted oral testimony as evidence of the parties' settlement negotiations during trial. Each time that Shapiro questioned Garcia about those negotiations, Garcia objected and the court sustained those objections. The court, therefore, did not admit this evidence. *Floyd v. Fid. Union Cas. Co.*, 24 S.W.2d 363, 365 (Tex. Comm'n App. 1930) ("A litigant has the right to object to the introduction of improper evidence, and, when objections are sustained, it is not before the jury for any purpose."); *see, e.g., Stultz v. Bellagio, LLC*, No. 56164, 2011 WL 4527928 (Nev. Sept. 29, 2011) (Order of Affirmance) (the Nevada Supreme Court recognized that when a district court sustained an objection to a litigant's attempt to introduce improper evidence, no evidence was admitted).

Garcia herself concedes this in her briefing on appeal. In the only instance in which the district court did not sustain one of Garcia's

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[5]*See also* 56 Am. Jur. 2d *Motions, Rules, and Orders* § 2 ("[M]otions are not evidence. . . . A motion cannot prove itself; representations, arguments of counsel, allegations and statements made in motions are not evidence, and allegations in motions do not amount to any proof of the facts stated." (internal citations omitted)).

objections, it sua sponte struck that information shortly after Garcia objected again to the line of questioning. The court therefore cured any prejudice that could have resulted when it struck the evidence from the record. *Bongiovi v. Sullivan*, 122 Nev. 556, 576, 138 P.3d 433, 447 (2006) (noting that striking testimony is curative); 75 Am. Jur. 2d Trial § 370 ("[E]rror in admitting evidence is frequently cured by striking out the evidence. Once evidence is stricken from the record, it may not be used to further support a party's legal argument." (internal citation omitted)). Consequently, both of Garcia's claims that the court improperly admitted evidence of settlement negotiations lack merit because, in both cases, the court never admitted that evidence. Garcia's claim therefore fails.

And, regardless, Garcia never demonstrated that even if the court had admitted this information, it amounted to prejudicial error. *See* NRS 47.040 ("[E]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected."). "To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached." *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010).[6]

[6]And in any event, if "inadmissible evidence has been received by the court, sitting without a jury, and there is other substantial evidence upon which the court based its findings, the court will be presumed to have disregarded the improper evidence." *Dep't of Highways v. Campbell*, 80 Nev. 23, 33, 388 P.2d 733, 738 (1964). Consequently, even assuming the court improperly admitted this evidence, Garcia's claim still fails because, as subsequently discussed, substantial evidence supported the district court's custody schedule determination.

The district court did not abuse its discretion in determining the custody schedule[7]

On appeal, Garcia argues that the district court failed to consider the level of conflict between the parties when making its custody-schedule determination. More specifically, she claims that while the court merely *noted* that conflict was high, it provided no analysis on how that specific factor affected its custody-schedule determination. She argues that if the court had properly considered and analyzed this factor, it would have made specific findings that her proposed schedule reduced the number of custody exchanges which could have, in turn, reduced conflict between the parties. Shapiro, in response, contends that the court properly considered and analyzed this factor, and that regardless, substantial evidence supported the court's determination.

We review decisions regarding child custody schedules for an abuse of discretion. *See Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). A district court abuses its discretion if "no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt*, 130 Nev. at 509, 330 P.3d at 5. Furthermore, we will not set aside a district court's factual determination that a custody schedule is in the child's best interest if substantial evidence supports that determination. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Substantial evidence

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[7]Garcia first argues that the district court applied the incorrect legal standard by requiring her to prove something Shapiro did not; namely that her proposed schedule was better than his. But the record belies this claim. The court directed the parties to focus their presentation of evidence and argument on the best proposed parenting time schedule for the child. Importantly, the order itself shows that the district court found that Shapiro's proposed schedule was in A.G.-S.'s best interest, which is the required test, and the legal standard was correctly applied. *See* NRS 125C.0035(1) ("In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child.").

is evidence "that a reasonable person may accept as adequate to sustain a judgment." *Id.* And we presume that district courts properly exercise their discretion in determining a child's best interest. *Culbertson v. Culbertson*, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975).

Garcia's claim is unpersuasive. First, she has provided no authority showing that a district court must make specific factual findings regarding each best interest factor and then explain how each best interest factor impacted the court's custody schedule determination.[8] We therefore need not consider that argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Second, even reviewing Garcia's claim, it lacks merit. As Garcia herself concedes, the court did consider this factor because it expressly found that the level of conflict between the parties was high. It even opined that it would hope[9] the conflict would be reduced going forward given that trial had ended.[10] More importantly, the court's order recognized what Garcia is now arguing it should have done: find that her proposed custody

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[8]It appears that Garcia relies upon *Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015), for this proposition. But while *Davis* does require specific factual findings regarding the best interest factors, it only requires that the court use those factors to provide an "adequate explanation" for its ultimate decision. *See id.* Requiring *Davis* to mean what Garcia insinuates it should mean would impose on courts the burden of identifying the weight it attached to each individual best interest factor—something which may be beneficial, but is not required.

[9]To support that hope, the district court ordered the parties to attend certain parenting courses and use the Family Wizard for scheduling. The court also indicated it would consider appointing a parenting coordinator in the future if the conflict continued.

[10]In making findings regarding the ability of the parents to cooperate to meet the needs of the child, the court specifically found that despite the parties' high conflict, the parties failed to produce evidence showing it kept them from meeting A.G.-S.'s needs.

schedule would reduce the number of exchanges between the parties, which *may* reduce conflict. But, while recognizing that Garcia's schedule may do exactly as she had requested, the court balanced that fact against other important facts in its analysis: "[Garcia's] foremost reasoning . . . about [Shapiro's] proposed schedule is it will require 1-2 more exchanges which may exacerbate the parties' conflict. Fact is it gives [Shapiro] 1 less day over a 2 week period and he never has [A.G.-S.] on Saturdays." Thus, even assuming Garcia had provided authority to support her claim, that claim would still fail because the district court both made specific findings regarding the level of conflict between the parties and expressly analyzed that factor in considering which custody schedule to order, finding that it did not favor either party.

Third, regardless, substantial evidence supports the district court's custody-schedule determination. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242 (holding that the court will not set aside a district court's determination that a custody arrangement is in the child's best interest when substantial evidence supports that determination). In its decision and order, the court specifically found that Shapiro's proposed parenting-time schedule was in A.G.-S.'s best interest. It also made the following specific findings supporting that determination, none of which Garcia contests on appeal. It found that (1) the parties have identical Monday-Thursday work schedules, (2) Garcia's schedule would reduce Shapiro's time with A.G.-S. by one day over a two-week period, (3) Shapiro's schedule would allow A.G.-S. more time with her half siblings on the four days a month Shapiro had them at his home,[11] (4) both parents are good parents who sought what was best for A.G.-S., (5) while conflict had been high, the parties presented

[11]And multiple persons, including Garcia, testified that A.G.-S. had a bond with her half siblings and appeared to love them.

insufficient evidence that it kept them from meeting A.G.-S.'s needs,[12] and (6) Shapiro agreed to let Garcia have every fifth weekend with A.G.-S. in months that have five weekends. Because a reasonable judge could accept that these reasons justify the decision made, the district court did not abuse its discretion.

Fourth, Garcia's claim fails for another fundamental reason: she has failed to explain how the district court's failure to do what she proposes prejudiced her. In civil cases, the party asserting error must demonstrate not only error but prejudicial error. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778. To show prejudice, appellant must show that the error "affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached." *McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 495-96 (2016) (quoting *Wyeth*, 126 Nev. at 465, 244 P.3d at 778) (internal quotations omitted). When the party asserting error fails to demonstrate that, this court will deem such an error harmless and must disregard it. *Cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

The level of conflict between the parties is just one of many factors the district court considers in making a best interest determination. *See* NRS 125C.0035(4) (providing a nonexhaustive list of factors for courts to consider in determining a child's best interest). Because this court will

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[12]Indeed, while Garcia attempted to claim that Shapiro rejected A.G.-S.'s diagnosis, Shapiro testified against this fact. And multiple persons testified that Shapiro appeared to be supportive of A.G.-S. and her needs and that Shapiro would both attend required meetings and actively participate in them. A.G.-S.'s sessions were held in the home of the parent who had A.G.-S. in their home at the time, and there were no allegations Shapiro restricted those visits. Moreover, Garcia even acknowledged that Shapiro had agreed to certain services.

not reweigh evidence on appeal, *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000), an appellant's argument criticizing just one of the many factors at play in a best interest determination will generally result in harmless error unless it is shown that the absence of the court's erroneous application of that factor would have changed the result. *See Rico v. Rodriguez*, 121 Nev. 695, 702, 120 P.3d 812, 817 (2005) (recognizing that a parent's immigration status is merely one factor and that, on balance, if substantial evidence supports the court's findings regarding best interest, then the court does not abuse its discretion); *see also Monahan v. Hogan*, 138 Nev., Adv. Op. 7, 507 P.3d 588, 596 (Ct. App. 2022) (noting that an appellant's failure to argue which factors, if considered anew, would have supported his relocation request constituted a failure to demonstrate the best interest factors affected his substantial rights and thus resulted in harmless error, if error at all).

Here, Garcia has failed to allege, let alone cogently argue, that had the court analyzed this factor in the way she proposed that it would have tipped the scales in her favor. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Nor is it likely that it would have done so, considering, as mentioned above, that the court *did* expressly analyze this factor and explicitly weighed that factor against the other relevant factors it considered in this case.[13] The best interest factors findings as a whole

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[13]Garcia relatedly argues that the district court erred when it noted A.G.-S.'s ASD but never considered that fact or analyzed that fact when it made its decision. Thus, she claims, the court ignored expert testimony that supported her proposed schedule. However, as above, she has failed to identify authority requiring the court to tie each fact to its ultimate custody determination; nor has she cogently argued or provided any evidence showing the court failed to consider this evidence. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Further, the record belies her claim. The court mentioned A.G.-S.'s diagnosis multiple times in analyzing the best

revealed that the district court found many of them to be inapplicable or neutral, including conflict, and two factors favored Shapiro. Therefore, even assuming the district court erred, any error would have been harmless given that Garcia has not shown how it affected her substantial rights.

The district court did not abuse its discretion when it set child support

Garcia next argues that the district court abused its discretion and misapplied Nevada child support law by calculating Shapiro's gross monthly income based solely on his most recent tax return. She claims that she provided the court with bank records showing Shapiro deposited more than $90,000 into his account during 2020. According to her, NAC 425.025, which defines gross income, requires the court to consider these deposits as "all other income of a party." In essence, Garcia argues that the court should have used those bank deposits to impute income to Shapiro, which would have decreased her child support obligation considerably.

Shapiro, in response, argues this court should not hear Garcia's argument because she either never presented the issue to the district court or, if she did, the court was never fully briefed on that issue. According to Shapiro, while Garcia moved to admit the bank records, she never asked any questions about those records during the trial. He claims Garcia first presented this issue in her closing brief, and because his closing brief was filed simultaneously with Garcia's closing brief, he never had the chance to contest her allegations. Shapiro now contests that he does not make the amount of money Garcia claims he makes, nor did he make the deposits Garcia claims he made.

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interest factors. And Garcia failed to demonstrate that if this were error, it constituted reversible prejudicial error. *See Rico*, 121 Nev. at 702, 120 P.3d at 817; *Monahan*, 138 Nev., Adv. Op. 7, 507 P.3d at 596.

We review a district court's order regarding child support for an abuse of discretion. *Hargrove v. Ward*, 138 Nev., Adv. Op. 14, 506 P.3d 329, 331 (2022). A court abuses its discretion if "no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt*, 130 Nev. at 509, 330 P.3d at 5.

In Nevada, district courts determine a child support amount by applying an administratively created formula. *See* NRS 125B.080(1); NAC 425.140. To apply this formula in joint custody situations, the court must determine the gross monthly income for each party. NAC 425.140. As relevant here, Nevada requires that the "gross income of each obligor must be determined by . . . the court, after considering all financial or other information relevant to the earning capacity of the obligor." NAC 425.120(b). In defining "gross income," Nevada law provides two sections. *See* NAC 425.025. The first section provides examples of what "gross income" includes and notes twice[14] that this list is nonexhaustive. NAC 425.025(1). The second section excludes specific categories of payments from the "gross income" definition, including child support payments and payments made to the obligor for public assistance benefits. NAC 425.025(2).

Here, to the extent that Garcia claims the district court failed to consider these bank deposits, that claim fails. The court itself acknowledged in the order that "Deposits into [Shapiro's] bank accounts does *not* automatically equate to free and clear income and this court cannot

[14]Those two examples include a lead-in clause ("'Gross income' includes, *without limitation*" (emphasis added)) and a catchall provision at the end ("Except as otherwise provided in subsection 2, *all other income of a party, regardless of whether such income is taxable* (emphasis added)).

speculate."[15] Thus, the court did consider Shapiro's bank deposits that Garcia provided for this purpose.

Further, the district court did not abuse its discretion in refusing to impute income to Shapiro based on those deposits. Indeed, the parties presented conflicting evidence at the trial regarding Shapiro's income.[16] For example, Shapiro provided multiple financial disclosure forms (FDFs), tax returns for the past three years, and his own testimony regarding how many jobs he has and how much he earns per month.[17] Besides pointing out the variation in income from the sources Shapiro provided, Garcia offered only one piece of evidence to contradict Shapiro's stated income, his bank records. But Garcia asked Shapiro about only one deposit, which Shapiro testified had come from pandemic unemployment

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[15]While this statement was made in connection with the district court's resolution of Garcia's trial claim that Shapiro might be willfully underemployed, the court's finding applies with equal force in this context because, in both circumstances, Garcia wanted the court to do the exact same thing, to use the bank deposits to impute income to Shapiro. And the court's analysis here, that Garcia's production of documents did not give the court sufficient basis to impute income to Shapiro because those deposits do not automatically equate to income, would have controlled both. *See, e.g.*, NAC 425.025(2) (providing that the court cannot consider certain categories of monetary payments for calculating gross monthly income).

[16]Because of this conflicting evidence, the district court used its authority to order the parties to submit tax returns for the previous three years. The court relied upon the most recent year, 2020, which also revealed Shapiro's highest gross income from the three tax returns Shapiro submitted.

[17]While Garcia noted in her closing brief, and the court noted in its order, that Shapiro's gross monthly earnings varied from source-to-source, that variation was relatively small ($1,900 to $3,000 per month, approximately). More importantly, even assuming Shapiro's highest-provided gross monthly income figure, it is still remarkably lower than the amount Garcia suggests he is making (roughly $7,700 per month).

assistance.[18] Only in her closing brief did Garcia attempt to explain for the court the significance of those bank deposits—yet even then she failed to identify the source of the deposits or how they equated to income, and, if they were income, whether or not it was a pandemic-related anomaly that should nonetheless result in imputed income.

Accordingly, after the trial and after all briefs had been submitted, the district court had conflicting evidence regarding Shapiro's income; namely, Shapiro's tax returns, FDFs, and testimony[19] versus bank deposits that had no accompanying testimony. But this court will not second guess a court's resolution of conflicting evidence. *Primm v. Lopes*, 109 Nev. 502, 507, 853 P.2d 103, 106 (1993). Nor will we reweigh evidence or make credibility determinations. *Ellis*, 123 Nev. at 152, 161 P.3d at 244; *Quintero*, 116 Nev. at 1183, 14 P.3d at 523. A reasonable judge could therefore conclude that Garcia had failed to demonstrate that the bank deposits amounted to income which the court could use as a measure to impute income to Shapiro.

Therefore, Garcia's claim is unpersuasive on this record. The district court did consider the bank deposits Garcia provided. And Garcia did not demonstrate that the district court abused its discretion when it refused to impute income to Shapiro.

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[18]It is unclear if the district court could have considered payments from pandemic-related unemployment assistance. *See* NAC 425.025(2)(f) (excluding public assistance benefits from gross income calculations); *but see* NAC 425.025(1)(f) (allowing gross income to include unemployment insurance benefits).

[19]These three forms of evidence also provided substantial evidence to support the district court's child support award. Accordingly, we will not reverse it. *See Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018) (holding that this court will not reverse a child support order that substantial evidence supports).

The district court improperly refused to decide Garcia's request for child support arrears

Garcia lastly argues that the district court abused its discretion when it failed to rule on her request for child support arrears based upon its conclusion that she had not requested any arrears. Shapiro, in response, argues that substantial evidence supported the district court's determination because the evidence showed that he had provided child support during the period in question.

We review a district court's order regarding child support for an abuse of discretion. *Hargrove*, 138 Nev., Adv. Op. 14, 506 P.3d at 331. An abuse of discretion can occur if the district court "bases its decision on a clearly erroneous factual determination or it disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948) (internal quotations omitted)). Finally, a district court abuses its discretion when it has discretion but fails to exercise it. *See Willmes v. Reno Mun. Court*, 118 Nev. 831, 835, 59 P.3d 1197, 1200 (2002) (holding a district court abused its discretion when it failed to make a merits-based determination in deciding civil compromise eligibility for a misdemeanor domestic battery).

Under NRS 125B.030, district courts have discretion to award child support arrears for the "reasonable portion of the cost of care, support, education, and maintenance provided by the physical custodian." *See also Ewing v. Fahey*, 86 Nev. 604, 607, 472 P.2d 347, 349 (1970) (stating that "'[m]ay' is of course generally permissive" when construing a statute). Here,

the district court abused its discretion when it failed to exercise its discretion based on its clearly erroneous finding that Garcia had not requested child support arrears.

In its decision and order, the district court stated that while Shapiro had sought child support arrears, "[Garcia] did not request any arrears." But after Shapiro filed a complaint and motion for custody, Garcia filed a "Countermotion for . . . child support and child support arrears." In that countermotion for child support arrears, Garcia stated that she "reserve[d] the right to seek constructive child support arrears." Shapiro directly confronted this claim in his reply, claiming that Garcia should not "be awarded constructive child support arrears [because he] has been paying [Garcia] and caring for the child since the child's birth."

Garcia again detailed in her pretrial memorandum that she was "prepared to present numerous documents to the Court regarding constructive arrears." More explicitly, she noted that she was "prepared to present evidence at trial regarding the arrears issue and believes that from [A.G.-S.'s] birth until he filed the instant litigation, [Shapiro] owes $16,638.72 in past due child support." She included with her pretrial memorandum an exhibit titled "Constructive Arrears."

The district court admitted this exhibit at trial and heard testimony regarding that exhibit. At the time, the court admitted this exhibit and, in response to Shapiro's objection to its admission, the court stated that it might not award Garcia child support arrears. And when the court ordered closing briefs from the parties on child support, in response to Shapiro's question on the scope of those briefs, the court informed the parties that the scope included "Child support, if you're asking for arrears, et cetera. And that includes the adjustments." Finally, in her closing brief, Garcia argued "that [Shapiro] owes constructive arrears and prior medical expenses incurred on [A.G.-S.'s] behalf . . . as stated in . . . Exhibit G, which

was admitted[.] [Exhibit G shows] that [Shapiro] owes $16,638.72 in past due child support from the period of September 2018 until the litigation was filed."

The district court therefore abused its discretion because it failed to exercise its discretion based on the clearly erroneous finding that Garcia had not requested any child support arrears. *See MB Am., Inc.*, 132 Nev. at 88, 367 P.3d at 1292; *Willmes*, 118 Nev. at 835, 59 P.3d at 1200. Because this court is not suited for making factual determinations, *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."), we will not attempt to exercise a district court's discretion for it.[20] *See* NRS 125B.030 (granting district courts discretion to award child support arrears); *see also Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (declining to address an issue that the district court did not resolve). Consequently, because the district court failed to exercise its discretion to substantively rule on Garcia's claim for child support arrears based on a clearly erroneous finding, we must reverse that part of the order and remand for the court to exercise its discretion.[21] The remainder of the district court's order is affirmed for the reasons stated above. Accordingly, we

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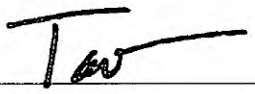
[20]Indeed, in this case, we lack the ability to review the substance of Garcia's claim because the district court failed to make any factual findings regarding the substance of that claim. Without substantive findings, this court cannot determine whether the court made its determination for appropriate reasons. *See Miller*, 134 Nev. at 125, 412 P.3d at 1085.

[21]Insofar as the parties have raised 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.

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

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Mathew Harter, District Judge
McFarling Law Group
Isso & Hughes Law Firm
Eighth District Court Clerk