

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENUS PRIYA RAM F/K/A VENUS
PRIYA KIRAN,
Appellant,
vs.
CLEAVON ROY KIRAN,
Respondent.

No. 87615-COA

FILED

JUN 11 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Venus Priya Ram appeals from a district court decree of divorce. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

Ram and respondent Cleavon Roy Kiran were married in 2008 and have two minor children in common. In 2020, Kiran filed a complaint for divorce and, as relevant to this matter, requested sole legal and primary physical custody of the children. Kiran also stated that he had moved to California but acknowledged that Nevada was the children's home state. Kiran therefore requested an award of primary physical custody so that the children could reside with him in California. Ram filed an answer and raised several counterclaims, including requests for joint legal custody and for primary physical custody of the children.

Ram also filed a motion requesting an order awarding her temporary physical custody of the children until final adjudication of the custody issues. Kiran filed an opposition and countermotion in which he

requested an order awarding him with temporary physical custody of the children. The court subsequently entered a temporary custody order permitting Ram to maintain primary physical custody of the two children during the litigation of this matter and providing Kiran with parenting time during every other weekend.

The district court subsequently conducted an evidentiary hearing and both parents testified at that hearing. Kiran explained that he and Ram have two minor children, one born in 2010 and one in 2013. Kiran acknowledged that both children resided in Nevada with Ram but he wished for an award of primary physical custody so that they could reside in California with him. Kiran also stated that he often talks with the children over the phone but explained that Ram will sometimes swear at him and hang up the phone. In addition, Kiran testified concerning Ram's use of methamphetamine, her acts of domestic violence, and her arrests. Kiran explained that the oldest child has dietary issues that may be related to Crohn's disease and that Ram permits the child to eat foods that impact that condition. Kiran also stated that the oldest child has mental health issues and he expressed his belief that he is best able to facilitate the care needed for those issues. Finally, Kiran stated that he and the children have a good relationship.

Ram testified that the children have resided with her in Nevada and expressed her desire to be awarded primary physical custody of the children. Ram also explained that she attempts to facilitate the children's visitation and communication with Kiran while he is in California. In addition, Ram stated that she takes the oldest child to therapy for her

mental health issues and she watches for signs of Crohn's disease but acknowledged that the child sometimes eats foods that cause her discomfort. Ram further testified concerning her methamphetamine use, her criminal history, and acknowledged that she was serving a term of probation. Ram acknowledged that she had failed two drug tests while on probation but explained that she is working towards sobriety.

After the presentation of the parties' evidence, the district court noted that neither party presented evidence concerning the wishes of either child as to physical custody and stated that neither parent prevented the children from having a relationship with the other parent. The district court also explained that it found that the best interest factors supported an award of primary custody in favor of Kiran.

The district court subsequently entered a written decree containing its findings for the required factors under NRS 125C.0035(4) concerning the best interest of the children. The district court ultimately concluded six of the best interest factors favored awarding Kiran primary physical custody of the children and none of those factors favored Ram.

To that end, the court found: (1) Kiran was more likely to allow frequent associations with Ram if he were awarded primary physical custody as Ram sometimes interferes with Kiran's phone calls with the children; (2) Kiran was more likely to cooperate to meet the needs of the children as Ram often communicates in a vulgar manner and has difficulties communicating with Kiran due to problems with the Talking Parents application; (3) Kiran suffers from Crohn's disease but otherwise had no mental or physical issues that prevented him from parenting the children.

In contrast, Ram struggles with substance abuse and addiction, has been arrested, is serving a term of probation, and is in treatment for depression and her addiction; (4) Kiran is more likely to meet the physical, developmental, and emotional needs of the children as he can help the oldest child with her dietary needs and takes that child to a therapist. In contrast, Ram was not able to meet the physical, developmental, and emotional needs of the children due to her drug addiction; (5) Kiran has a wonderful relationship with the children. While Ram has a great relationship with the children, she acts as more of a friend to the children than a parent and her boyfriends have caused the children concern; and (6) Ram engaged in acts of domestic violence against Kiran. Included with its best interest findings, the court stated that the children, aged 9 and 13, were not of sufficient age and capacity to testify to their preference concerning physical custody.

Based on those findings, the court concluded that it was in the children's best interest to award Kiran primary physical custody. In addition, the district court awarded the parties joint legal custody of the children. The district court also distributed the community property and granted the parties' request for divorce.

Ram later filed a motion for reconsideration of the district court's custodial decision. Ram contended that the district court permitted Kiran to relocate the children to California without first considering the appropriate relocation factors. Ram also contended that the district court did not appropriately review the best interest factors and that it improperly allowed the parties to discuss Ram's arrests and to discuss hearsay

statements at the evidentiary hearing. Further, Ram asserted that Kiran failed to timely enroll the children in school after their relocation to California. Kiran did not oppose the motion for reconsideration.

The district court subsequently entered an order denying the motion for reconsideration. The court found that neither party presented evidence concerning the children's wishes. Moreover, the district court found that it was not required to consider the relocation factors because it had not issued a final custody order prior to the decree. In addition, the court reiterated that, in light of Ram's addiction-related issues, it was in the children's best interests to award Kiran primary physical custody. Finally, the court found that, to the extent any failure to timely enroll the children in school in California constituted a substantial change in circumstances, it did not warrant modification of primary physical custody. This appeal followed.

First, Ram argues that the district court abused its discretion at the evidentiary hearing by admitting prejudicial and irrelevant testimony concerning Ram's arrests and by admitting inadmissible hearsay statements. Ram contends that information regarding her arrests was not relevant and was unduly prejudicial. Ram further contends that the inadmissible hearsay statements concerning Ram's arrests and other statements purportedly made by the children improperly influenced the district court's custody decisions.

"NRS 47.040(1)(a) requires a party who objects to the admission of evidence to make a timely objection or motion to strike . . . stating the specific ground of objection." *Thomas v. Hardwick*, 126 Nev. 142, 156, 231

P.3d 1111, 1120 (2010) (internal quotation marks omitted). Moreover, “[t]he failure to specifically object on the grounds urged on appeal precludes appellate consideration on the grounds not raised below.” *Id.* (internal quotation marks and brackets omitted); *see also In re Parental Rights as to Dumais*, 76 Nev. 409, 414, 356 P.2d 124, 126 (1960) (stating “[i]f evidence secondary or hearsay in its character be admitted without objection, no advantage can be taken of that fact afterwards” (internal quotation marks omitted)).

Here, Ram raised no objections at the evidentiary hearing regarding the aforementioned issues, and instead only raised challenges to the district court’s evidentiary decisions in her motion for reconsideration. Because Ram failed to make timely, contemporaneous objections at the evidentiary hearing, we decline to review these claims of error on appeal. Therefore, Ram is not entitled to relief on these grounds.

Second, Ram argues that the nature of the district court’s questioning during the evidentiary hearing indicated it was improperly biased against her. We conclude that relief is unwarranted on this point because Ram has not demonstrated that the court’s actions in the underlying case were based on knowledge acquired outside of the proceedings and the court’s actions do not otherwise reflect “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on

facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); see *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); see also *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Therefore, Ram is not entitled to relief based on this claim.

Third, Ram argues that the district court abused its discretion by awarding Kiran primary physical custody of the parties’ children because its findings were not supported by the evidence, its analysis of the best-interest factors was flawed, and the factual findings contained within the written decree differ somewhat from the court’s oral statements at the evidentiary hearing. Ram further contends that the district court abused its discretion by relying upon evidence that put Kiran in the best light while discounting positive information about Ram when the court evaluated the six factors that it ultimately found favored Kiran.

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). 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). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Ellis*, 123 Nev. at 149, 161 P.3d at 242 . 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). A court may award one parent primary physical custody if it determines that joint physical custody is not in the best interest of the child. NRS 125C.003(1). This court is not at liberty to reweigh the evidence or the district court's credibility determinations on appeal, *see Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal), and this court presumes that the district court properly exercised its discretion in determining the best interest of the child if it made substantial factual findings, *see Culbertson v. Culbertson*, 91 Nev. 230, 233-34, 533 P.2d 768, 770 (1975).

As previously explained, in its written order the district court expressly considered Ram's testimony concerning her care of the children and found that she had a great relationship with the children. However, based on the evidence presented at the evidentiary hearing, the court evaluated the required best interest factors from NRS 125C.0035(4) and found that six factors favored awarding Kiran primary physical custody. The district court noted the evidence presented at the evidentiary hearing demonstrated that the parties had communication difficulties that were largely caused by Ram. *See* NRS 125C.0035(4)(c), (e). The court also made detailed findings concerning Ram's addiction issues, mental health issues,

and lifestyle choices, and how those issues negatively impacted her ability to care for the children. *See* NRS 125C.0035(4)(f), (g), (h). The district court further found that Ram committed acts of domestic violence in 2014 and 2019. *See* NRS 125C.0035(4)(k). The district court ultimately decided, based on the circumstances at issue in this matter, that the children's best interest favored awarding Kiran primary physical custody of the children.

The district court's written factual findings made in support of these determinations are supported by substantial evidence in the record, *see Ellis*, 123 Nev. at 149, 161 P.3d at 242, and this court will not second guess a district court's resolution of factual issues involving conflicting evidence or reconsider its credibility findings, *see id.* at 152, 161 P.3d at 244; *Quintero*, 116 Nev. at 1183, 14 P.3d at 523. To the extent that the district court's oral pronouncements at the evidentiary hearing differ from its written order, the written order controls. *See Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) ("An oral pronouncement of judgment is not valid for any purpose."). Accordingly, we discern no abuse of discretion by the district court in awarding Kiran primary physical custody of the children. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

We note that Ram also argues that the district court's finding concerning the NRS 125C.0035(4)(a) factor, that the children were not of sufficient age or capacity to form an intelligent preference as to custody, was not supported by substantial evidence. Ram also contends the court should have ordered the children to be interviewed to ascertain their wishes.

In its order denying Ram's motion for reconsideration, the district court clarified its decision concerning this factor and stated that neither party presented evidence concerning that factor and, if the parties wished to present such evidence, it was their responsibility to do so. When the findings contained within the decree of divorce and order denying the motion for reconsideration are read together, they contain the sufficient findings as to the required best interest factors under NRS 125C.0035(4)(a). Ram does not allege what the children would have stated had they testified or been interviewed and she does not establish that additional findings concerning the children's wishes as to physical custody would have reasonably resulted in a different outcome. Thus, Ram does not meet her burden to demonstrate any failure to make additional findings concerning the children's wishes was prejudicial. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("When an error is harmless, reversal is not warranted."); *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."). Therefore, Ram is not entitled to relief based on this claim.

Fourth, Ram argues that the district court erred by failing to consider the relocation factors when awarding Kiran primary physical custody. However, Ram does not argue that consideration of the relocation factors would have reasonably resulted in a different outcome. Moreover, the district court made detailed findings concerning the best interest factors and, in particular, focused on Ram's addiction-related issues and how those issues affected her ability to appropriately care for the children. Accordingly, even assuming, without deciding, that the failure to consider

the relocation factors in this matter was error, any such error was harmless because it did not affect Ram's substantial rights and she did not establish that but for that error "a different result might reasonably have been reached." *Wyeth*, 126 Nev. at 465, 244 P.3d at 778. Therefore, Ram is not entitled to relief based on this claim.

Finally, Ram contends that the district court abused its discretion by altering its initial, temporary custody order to permit the children to reside with Kiran in California without first considering whether a substantial change in circumstances warranted that modification. However, Ram did not argue before the district court that it had to first find there was a substantial change in circumstances before it awarded Kiran primary physical custody of the children. As a result, this court need not consider this issue. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) ("[P]arties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below." (internal quotation marks omitted)). Accordingly, Ram is not entitled to relief based on this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrock

cc: Hon. Stacy Michelle Rocheleau, District Judge, Family Division
Hofland & Tomsheck
Cleavon Roy Kiran
Eighth District Court Clerk