


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHANIE HATCHER N/K/A
STEPHANIE ELLWOOD,
Appellant,
vs.
GARRETT HATCHER,
Respondent.

No. 88071-COA

FILED
AUG 30 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Stephanie Hatcher, n/k/a Stephanie Ellwood, appeals from a district court order modifying a child custody order. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

Stephanie and respondent Garrett Hatcher were married and share one child in common. Stephanie filed a complaint for divorce and sought joint legal custody and primary physical custody of the child. Garrett answered and requested joint legal custody and that he be awarded primary physical custody of the child.

After an evidentiary hearing, the district court entered a decree of divorce in January 2021. The decree distributed the community property and addressed the child custody issues. The district court made findings as to the appropriate best interest factors under NRS 125C.0035(4) and found that several of those factors favored Stephanie. In particular, the court found that Garrett communicated with Stephanie in an inappropriate manner such that Stephanie should be awarded primary physical custody of the child. The district court further found that Garrett should only have supervised parenting time with the child on Saturdays and Sundays from 10:00 a.m. to noon on each day. The district court further ordered that the

supervised parenting time occur under the supervision of Family First Services at Garrett's expense until he can demonstrate through the Talking Parents application that he can communicate in a proper manner with Stephanie. The court also entered a behavior order, requiring the parties to refrain from using abusive or foul language when communicating with each other or the child.

In 2022, Stephanie filed a motion to modify the custody order. In her motion, she requested sole legal custody of the child and contended Garrett had attended few of the scheduled parenting times with the child. Based on Garrett's failure to participate in the scheduled parenting time with the child, Stephanie also sought an order further restricting Garrett's parenting time. In addition, Stephanie sought an order directing Garrett to show cause as to why he should not be held in contempt because he had (1) violated the behavioral order by using inappropriate language when communicating with Stephanie, (2) claimed the child as a dependent on his federal income tax return, and (3) left the parties' marital home in poor condition. Finally, Stephanie sought an award of attorney fees.

Garrett opposed Stephanie's motion and filed a countermotion seeking to modify the custody order to permit him to have unsupervised parenting time with the child. Garrett explained that he was unable exercise his parenting time with the child for a time because he had relocated to California but he had since moved back to Las Vegas. Garrett also contended it was in the child's best interest for him to have additional and unsupervised contact with the child. The parties also filed pre-trial memorandums. In her memorandum, Stephanie urged the district court to award her sole physical custody of the child.

The district court conducted an evidentiary hearing in August 2023, and October 2023. Both parties testified at the hearing and the district court admitted the messages exchanged between the parties via Talking Parents. Stephanie testified to her belief that Garrett had not been communicating with her in an appropriate manner and explained that he had not exercised parenting time very often since they divorced. Garrett countered that he believed his communication style had improved over time. Garrett also explained that he had to move to California for a time due to his economic circumstances and he was therefore unable to participate in parenting time with the child in person during that period. Garrett also testified that he attempted to communicate with the child over the phone when he resided in California but Stephanie refused to facilitate those communications. Garrett testified that he had since returned to Nevada but the high cost of the supervised parenting time sessions left him unable to afford many sessions with the child. Garrett further explained his wish for additional time with the child so as to strengthen their relationship and explained he would also like to have unsupervised parenting time.

After the evidentiary hearing, the district court entered a written order denying Stephanie's motion to modify the custody order to give her sole physical and legal custody and further restrict Garrett's parenting time. Instead, the court granted Garrett's countermotion for additional, unsupervised parenting time. The district court explained that it had reviewed the messages exchanged between the parties and considered the testimony about their exchanges and found that the most recent objectionable message from Garrett had occurred in January 2023. The court further found that, since that time, Garrett's communications with Stephanie had been appropriate. Thus, the district court found that

the change in the nature of Garrett's messages warranted a modification of the parenting time arrangement. The district court also reviewed the best interest factors under NRS 125C.0035(4) and found that they warranted allowing Stephanie to maintain primary physical custody of the child. In addition, the district court found that Garrett's testimony indicating that money was the sole reason he did not exercise visitation was not credible. However, the district court found it was appropriate for Garrett to have unsupervised parenting time with the child for two days per week and for the child to stay overnight with Garrett for one night per week. The district court declined to hold Garrett in contempt as he had made improvements in his communication style with Stephanie. The district court also denied Stephanie's request for an award of attorney fees. This appeal followed.

First, Stephanie argues that the district court abused its discretion by denying her request for sole physical custody of the child. A district court's decision concerning a physical custody order is reviewed for an abuse of discretion. *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 284 (Ct. App. 2023). In reviewing a district court's child custody determinations, we focus on whether the district court "reached its conclusions for the appropriate [legal] reasons" and whether its factual findings were "supported by substantial evidence." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 145, 241-42 (2007); *see also Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993) (stating that we "must be satisfied that the [district] court's determination was made for the appropriate reasons"). Substantial evidence is evidence that a reasonable person may accept as adequate to sustain the judgment. *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Further, we presume the district court properly exercised its discretion in determining

the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

“In a primary physical custody arrangement, a child spends most, but not all, of their time residing with one parent.” *Roe*, 139 Nev., Adv. Op. 21, 535 P.3d at 287. This contrasts with sole physical custody where “the child resides with only one parent and the noncustodial parent’s parenting time is restricted to no significant in-person parenting time.” *Id.* “A district court must only enter an order for sole physical custody if it first finds either that the noncustodial parent is unfit for the child to reside with, or if it makes specific findings and provides an adequate explanation as to the reasons why primary physical custody is not in the best interest of the child.” *Id.* at 288. These findings must be in writing and must be separate from the court’s general best interest findings. *Id.* The district court must “then order the least restrictive parenting time arrangement possible that is within the child’s best interest.” *Id.*

The district court considered the evidence presented at the evidentiary hearing and made findings concerning the child’s custody. The district court also considered the information presented concerning the parties’ communications with each other, including their testimonies and the messages exchanged by the parties via Talking Parents. Based on the testimony and the messages, the court found that Garrett had ceased making inappropriate statements in January 2023. The court further found that Garrett demonstrated the ability to communicate with Stephanie in a proper manner and that he was thus in compliance with the behavioral order. The court noted that the supervised parenting time was ordered out of concerns stemming from Garrett’s inappropriate communications, but because Garrett had demonstrated he can communicate with Stephanie in

a proper manner, there was no further need for supervised parenting time. The court also found that unsupervised parenting time with Garrett posed no safety risk to the child. Based on the aforementioned findings, the district court concluded it was in the child's best interest to allow Stephanie to retain primary physical custody of the child but it declined to award her sole physical custody of the child.

The district court's 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 Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). Accordingly, we discern no abuse of discretion by the district court in declining to award Stephanie sole physical custody and instead allowing her to retain primary physical custody of the child. *See Roe*, 139 Nev., Adv. Op. 21, 535 P.3d at 284.

Second, Stephanie argues that the district court abused its discretion by denying her request for sole legal custody of the child. This court reviews district court decisions concerning child custody, including decisions concerning legal custody, for an abuse of discretion. *Ellis*, 123 Nev. at 149, 161 P.3d at 241; *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 531 (2006) (reviewing a district court's decision to modify legal custody for an abuse of discretion). 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. There is a statutory presumption that joint legal custody would be in the best interest of the child when a parent "has demonstrated, or has attempted to demonstrate but has had his or her efforts frustrated by the

other parent, an intent to establish a meaningful relationship with the minor child.” NRS 125C.002(1)(b). “Joint legal custody requires that the parents be able to cooperate, communicate, and compromise to act in the best interest of the child.” *Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *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).

Here, the district court considered and evaluated the evidence presented by the parties concerning their communications. The court ultimately found that the evidence demonstrated that Garrett ceased the inappropriate communications with Stephanie. In consideration of that information, the court found that the parties could communicate effectively for the best interest of the child. The court therefore rejected Stephanie’s request for an award of sole legal custody of the child. In light of the aforementioned circumstances, we discern no abuse of discretion by the court in doing so. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241; *Mack-Manley*, 122 Nev. at 858, 138 P.3d at 531. Therefore, we conclude that Stephanie is not entitled to relief based on this argument.

Third, Stephanie argues that the district court abused its discretion by modifying the custody order to allow Garrett to receive unsupervised and additional parenting time despite Garrett’s failure to communicate with Stephanie in an appropriate manner. Stephanie further contends that the court should have granted her request for a more restrictive parenting time schedule.

We review a district court’s decision concerning child custody, including parenting-time schedules, for an abuse of discretion. *Rivero*, 125 Nev. at 428, 216 P.3d at 226. When making such a determination, “the sole

consideration of the court is the best interest of the child.” NRS 125C.0035(1); *see also* NRS 125A.045(1) (defining “[c]hild custody determination” in part as an order providing for parenting time).

As previously explained, the district court reviewed the evidence presented by the parties concerning their communications. The court ultimately found that Garrett’s inappropriate communication had ceased and that he was in compliance with the behavioral order. In addition, the court found there was no safety risk to the child such that supervised parenting time was no longer necessary. For the aforementioned reasons, the district court found that Garrett’s change in communication warranted modification of the custody order and it awarded Garrett unsupervised parenting time with the child and two days of parenting time per week, including one overnight.

The district court’s factual findings concerning this issue are supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. While Stephanie challenges the district court’s findings and contends the district court should not have found that Garrett changed the nature of his communication with her, this court is not at liberty to reweigh the evidence or the district court’s credibility determinations on appeal. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. In light of the district court’s finding that Garrett changed the nature of his communications with Stephanie—which had been the reason for the initial supervised parenting time order—and that providing Garrett with additional, unsupervised parenting time was in the child’s best interest, we conclude that the district court did not abuse its discretion by modifying the child custody order to award Garrett unsupervised and increased parenting time with the child. *See Romano*, 138 Nev. at 3, 501 P.3d at 982 (noting the party requesting to

modify the child custody order must show that “(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child’s best interest is served by the modification” (internal quotation marks omitted)).

Fourth, Stephanie argues that the district court abused its discretion by declining to find Garrett in contempt for violating the behavioral order. We disagree. “Whether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court’s order should not lightly be overturned.” *Detwiler v. Eighth Jud. Dist. Ct.*, 137 Nev. 202, 206, 486 P.3d 710, 715 (2021). Here, the district court evaluated Stephanie’s motion and the evidence presented at the evidentiary hearing and found that Garrett had corrected his behavior such that he was in compliance with the behavioral order. While Stephanie disagrees with the district court’s findings, this court is not at liberty to reweigh the evidence or the district court’s credibility determinations on appeal. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. Accordingly, we discern no abuse of discretion in the court’s decision to deny her request to hold Garrett in contempt, and therefore we affirm this portion of the district court’s order. *See Detwiler*, 137 Nev. at 206, 486 P.3d at 715.

In light of the foregoing analysis, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Stacy Michelle Rocheleau, District Judge, Family Division
Law Offices of F. Peter James, Esq.
Garrett Hatcher
Eighth District Court Clerk