IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WENDY ROWLAND,
Appellant,
vs.
BARRY YZAGUIRRE,
Respondent.

No. 88386-COA

ORDER AFFIRMING IN PART AND DISMISSING IN PART

Wendy Rowland appeals from a district court order denying motions seeking to modify a child custody order. Second Judicial District Court, Family Division, Washoe County; Sandra A. Unsworth, Judge.

Rowland and respondent Barry Yzaguirre have one minor child in common. The child was born in Alabama and Yzaguirre sought to establish paternity in that state. However, Rowland soon thereafter took the child to New Zealand and Yzaguirre lost contact with the child.

Rowland later relocated with the child to Nevada. Rowland was subsequently arrested and convicted in Nevada of an offense of child abuse and neglect involving the child. As a result, Child Protective Services (CPS) took custody of the child and contacted Yzaguirre. CPS later returned the child to Rowland's care.

Rowland subsequently filed a petition to establish custody in the district court and requested sole legal and physical custody. Yzaguirre answered and acknowledged that he resided in Illinois and had been unable to have much contact with the child. Yzaguirre therefore requested remote parenting time with the child to enable him to establish a relationship with her. The district court subsequently entered a temporary custody order

awarding Rowland sole legal and physical custody but provided Yzaguirre with supervised, remote parenting time through the Family Peace Center.

The district court later held an evidentiary hearing concerning the custody issues and the parties testified at that hearing. The district court thereafter entered a written order in which it addressed the appropriate best interest factors from NRS 125C.0035(4). The district court found that Rowland had been convicted of an offense of child abuse and neglect involving the child and permitted an ex-boyfriend to harm the child and she thus had committed an act of domestic violence against the child. The court also found she had repeatedly frustrated Yzaguirre's relationship with the child, including abducting the child after initiation of the Alabama custody proceedings.

The district court also noted that Rowland's acts of domestic violence and abduction created a presumption that joint physical custody was not in the child's best interest. The district court ultimately concluded that it was in the child's best interest to award Yzaguirre sole legal and primary physical custody of the child. The district court also concluded it was in the child's best interest for the child to relocate to Illinois to live with Yzaguirre. In addition, the district court directed Rowland to have no contact with the child for the following 30 days but provided that, thereafter Rowland would have weekly supervised remote parenting time with the child and that the child would call Rowland on major holidays.

Rowland subsequently filed several motions seeking to modify the district court's custody decisions. In her motions, Rowland requested additional supervised parenting time and the ability to contact the child's school and medical providers in Illinois. Yzaguirre opposed Rowland's

requests to modify the parenting time schedule and urged the district court to maintain the previously ordered custody arrangement.

Rowland also filed a motion requesting that the district court issue an order to show cause as to why Yzaguirre should not be held in contempt, as she asserted that he violated the custody order by failing to permit Rowland to engage in a telephone call with the child on President's Day. Yzaguirre opposed the motion and contended that President's Day is not a major holiday.

The district court issued an order informing the parties of its intent to hold an evidentiary hearing concerning Rowland's requests to modify the custody order. The court subsequently conducted the hearing and both parents testified at that hearing. Rowland testified and expressed her desire for additional remote parenting time and more time for the child to communicate with her half-siblings in Nevada. Rowland also requested modification of legal custody to award her joint legal custody so that she would have the ability to contact the child's school and medical providers because she did not believe that Yzaguirre provided her with enough information or ensured that the child received her medication. Yzaguirre also testified and stated his belief that he provided Rowland with the child's medical information but acknowledged that he had not always provided Rowland with all of the information concerning the child's school. Yzaguirre also testified that the child communicated with her half-siblings approximately every other week but explained that the child's therapist believed that it may be overwhelming for the child to communicate with them more often.

In addition, the district court questioned Rowland concerning a report issued by the Family Peace Center indicating that Rowland had

made inappropriate comments to the child concerning the court proceedings during their supervised communications. Rowland responded and expressed her belief that the staff at the Family Peace Center had misconstrued the nature of her conversation. However, the court explained that it had reviewed the report and concluded that Rowland's discussions with the child had not been proper. The district court also explained that Rowland had not demonstrated that a substantial change in circumstances warranted modification of the custodial order. In addition, the district court explained that President's Day was not a major holiday and stated it would not hold Yzaguirre in contempt for violating the custody order.

The district court subsequently issued a written order denying Rowland's requests to modify the custody order, finding that Rowland failed to meet her legal burden to demonstrate that modification of the custodial arrangement was warranted. The district court also denied Rowland's request to hold Yzaguirre in contempt. This appeal followed.

Initially, Rowland seeks reversal of the underlying initial custody decree filed on October 2, 2023, arguing that the district court failed to properly evaluate the child's best interest when reaching its custody decisions. However, Rowland did not timely appeal from the custody decree, *see* NRAP 4(a)(1) (providing that a notice of appeal must be filed no later than 30 days after service of written notice of entry of the challenged judgment or order), and thus, this court lacks jurisdiction to consider Rowland's challenges to the custody decree, *see Healy v. Volkswagenwerk Aktiengesellschaft*, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987) (stating an untimely notice of appeal fails to invoke this court's jurisdiction). Accordingly, we dismiss this appeal with regard to Rowland's untimely challenges to the initial custody decree.

Next, Rowland challenges the district court's decision to deny her motions to modify the custody order. First, Rowland contends that the court abused its discretion by denying her request to modify the legal custody arrangement to joint legal custody, as she argues Yzaguirre failed to keep her informed of the child's school and medical information. Rowland also contends that Yzaguirre failed to ensure that the child received her medication.

This court reviews district court decisions concerning child custody, including decisions concerning legal custody, for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007); *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 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*, 123 Nev. at 149, 161 P.3d at 241-42; *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).

"Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing." *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). "Joint legal custody requires that the parents be able to cooperate, communicate, and compromise to act in the best interest of the child." *Id.*

To establish that a custodial modification is appropriate, the moving party 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." *Romano*, 138 Nev. at 5, 501 P.3d at 983 (internal quotation marks omitted).

At the evidentiary hearing, the parties discussed the child's school and medical issues, and Rowland expressed her concern that the child was not receiving appropriate care and that Yzaguirre did not provide her with sufficient information. Yzaguirre stated at the evidentiary hearing that the child receives appropriate medical treatment and stated he provided Rowland with the information concerning the child's medical care. Yzaguirre also acknowledged that he failed to keep Rowland informed concerning all of her school activities. And the court noted that the parties communicate concerning the child's activities.

In resolving Rowland's motion to modify legal custody, the district court reviewed the evidence submitted by the parties at the hearing and concluded that Rowland failed to meet her burden to demonstrate that modification of legal custody was warranted. *See id.* Nonetheless, the court directed Yzaguirre to provide Rowland weekly updates on issues involving the child and to include letters or other documents provided by the child's teachers, doctors, or other care providers with those communications.

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 modify the legal custody award. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Second, Rowland argues the district court abused its discretion by denying her request to modify the 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, and 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.

As stated previously, to establish that a custodial modification is appropriate, the moving party 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." *Romano*, 138 Nev. at 5, 501 P.3d at 983 (internal quotation marks omitted). The changed-circumstances prong of the foregoing test "is based on the principle of res judicata and prevents persons dissatisfied with custody decrees [from filing] immediate, repetitive, serial motions until the right circumstances or the right judge allows them to achieve a different result, based on essentially the same facts." *Ellis*, 123 Nev. at 151, 161 P.3d at 243 (alteration in original) (internal quotation marks omitted). Thus, in seeking to modify custody, the moving party must generally establish a change in

circumstances that occurred since the district court's last custody determination. *Id.*

Here, Rowland did exactly what the changed-circumstances prong is designed to prevent.[1] Just a few months after entry of the custody decree, Rowland requested modification of the parenting time schedule and expressed her dismay at the fact that she had less involvement with the child as a result of the court's prior custody decision and her belief that the child was unhappy. In particular, she moved to modify the parenting time decision to allow her and the child's half-siblings to have more time with the child, but Rowland did not establish a substantial change in circumstances affecting the welfare of the child since the district court entered its October 2023 order. Similarly, at the evidentiary hearing, Rowland did not identify a substantial change in circumstances since entry of the court's October 2023 order, but instead challenged the court's findings and decisions made in that order. Rowland thus failed to establish a substantial change in circumstances affecting the welfare of the child. *See Romano*, 138 Nev. at 5, 501 P.3d at 983; *see also Ellis*, 123 Nev. at 151, 161 P.3d at 243.

On appeal, Rowland does not provide cogent argument as to whether there was a substantial change in circumstances affecting the welfare of the child since entry of the district court's order awarding Yzaguirre primary physical custody of the child. Accordingly, this court need not consider this issue. *See Edwards v. Emperor's Garden Rest.*, 122

---

[1]Indeed, the district court admonished Rowland that future requests to modify custody must have evidence supporting the relief requested therein and cautioned her against continuing to file motions that "lack a legal basis."

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).

Next, Rowland argues that the district court violated her right to due process. This court reviews constitutional challenges de novo. *Sw. Gas Corp. v. Pub. Utils. Comm'n of Nev.*, 138 Nev. 37, 45, 504 P.3d 503, 511 (2022). "[D]ue process of law [is] guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 8(5) . . . of the Nevada Constitution." *Rico v. Rodriguez*, 121 Nev. 695, 702-03, 120 P.3d 812, 817 (2005). Due process protects certain substantial and fundamental rights, including the interest parents have in the custody of their children. *Id.* at 704, 120 P.3d at 818; *Blanco v. Blanco*, 129 Nev. 723, 731, 311 P.3d 1170, 1175 (2013) ("[C]hild custody decisions implicate due process rights because parents have a fundamental liberty interest in the care, custody, and control of their children."). Further, due process demands notice before such a right is affected. *Wiese v. Granata*, 110 Nev. 1410, 1412, 887 P.2d 744, 745 (1994). To be proper, notice "must be provided at the appropriate stage" of the proceedings so that the parties "can provide meaningful input in the adjudication of their rights." *Sw. Gas Corp.*, 138 Nev. at 46, 504 P.3d at 511. Moreover, "[l]itigants in a custody battle have the right to a full and fair hearing concerning the ultimate disposition of a child." *Moser v. Moser*, 108 Nev. 572, 576, 836 P.2d 63, 66 (1992).

The record demonstrates that the district court provided the parties with prior, specific notice of the evidentiary hearing and the fact that it would consider modification of the custody order at that hearing. *See Dagher v. Dagher*, 103 Nev. 26, 28, 731 P.2d 1329, 1330 (1987) (stating the district court must give the parents "prior specific notice" that it may make

the custody determination that it ultimately does make (internal quotation marks omitted)). Here, the district court issued an order on January 26, 2024, in which it noted that Rowland filed several motions seeking to modify legal custody and the parenting time schedule. The court also stated it had reviewed Rowland's motions and concluded an evidentiary hearing concerning the motions was warranted. In addition, the court informed the parties that the evidentiary hearing would be held on February 27, 2024. And, as stated previously, Rowland and Yzaguirre attended the evidentiary hearing, where they presented evidence and argument concerning Rowland's requests to modify the custody order. In light of the foregoing, we conclude that Rowland fails to demonstrate that her right to due process was violated.

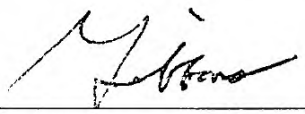
Finally, Rowland argues that the district court was biased against her and did not objectively consider the evidence. We conclude that relief is unwarranted on this point because Rowland has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions did 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*, 125 Nev. at 439, 216 P.3d at 233 (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification).

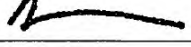
Moreover, the record demonstrates that the district court listened to the testimony of the parties and considered the evidence that they presented at the evidentiary hearing in the course of making its decision. Accordingly, the record does not show that the court had closed its "mind to the presentation of all the evidence." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). Therefore, we conclude that Rowland is not entitled to relief based on this argument.

Based on the foregoing analysis, we conclude that Rowland is not entitled to relief. Accordingly, we dismiss this appeal to the extent Rowland seeks to challenge the initial custody decree, and we affirm the district court's decision to deny Rowland's motions to modify custody.

It is so ORDERED.



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Sandra A. Unsworth, District Judge, Family Division
Wendy Rowland
Jennifer S. Anderson
Washoe District Court Clerk