IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MELINDA SUE MILLER N/K/A MELINDA LESINSKY,
Appellants,
vs.
PAUL MENDEZ MILLER,
Respondent.

No. 87625-COA

FILED
OCT 07 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Melinda Sue Miller, n/k/a Melinda Lesinsky, appeals from a district court order modifying the parties' parenting time schedule in a child custody matter. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

Melinda and respondent Paul Mendez Miller were divorced in 2016 and share joint physical and joint legal custody of a minor child. Historically, the parties' parenting time schedule fluctuated based on Paul's work schedule as a pilot. The constantly changing schedule resulted in extensive litigation between the parties. As a result, in August 2022, Melinda filed a motion to set a permanent custodial schedule, which Paul opposed. The district court temporarily changed the custody schedule to a week-on/week-off arrangement, pending an evidentiary hearing.

In February 2023, Paul filed a motion for an order to show cause, alleging that Melinda was violating the holiday schedule set forth in the divorce decree, which provided that he had parenting time for President's Day weekend on odd-years, and requesting that she be held in contempt. He argued that, per the decree, he had parenting time during the 2023 President's Day holiday weekend, but Melinda picked the child up

from school that Friday and took him to Utah for a soccer tournament without Paul's knowledge or consent. Melinda opposed the motion, arguing that Paul was aware of the out-of-state tournament and that his failure to both regularly exercise his parenting time and communicate regarding which days he would exercise his time precluded a contempt finding. In his reply, Paul disputed Melinda's allegations and asserted that he was not required to give her notice of his intent to exercise his holiday timeshare. Both parties requested attorney fees. The district court issued an order to show cause, and the matter was scheduled to be heard at the evidentiary hearing regarding the custodial schedule.

Just prior to the evidentiary hearing, Melinda filed her pretrial memorandum and in it requested, for the first time, that the district court award her primary physical custody in addition to setting a custodial schedule. Paul's pretrial memorandum was filed the same day and did not address the request for a change in the custodial designation.

Thereafter, the district court held an evidentiary hearing on the order to show cause, the week-on/week-off custody schedule, and attorney fees. At the outset of the hearing, the court informed Melinda that it would not consider her request to award her primary physical custody because she included the request for the first time in her pretrial memorandum and deprived Paul of due process since he was without adequate notice or opportunity to defend himself as to that request. Melinda's attorney asked that the court permit her to amend the pleadings because the evidence would show that Paul was unable to exercise the week-on/week-off schedule in a meaningful way, but the court declined to change its ruling.

Following the hearing, in July 2023, the district court entered a written order, concluding that it was in the child's best interest to have a

more regular and predictable schedule. Consequently, the court set a custody schedule whereby Paul would have parenting time from Thursdays to Sundays each week except the second weekend of the month, which would be Melinda's parenting time, and could pick four "floating days" per month. With regard to contempt, the court found that the lack of communication between the parties led to the incident on President's Day weekend, but that Paul met the technical requirements of contempt and had established that Melinda intentionally took the child during his clearly defined parenting time without his express written consent and ordered Melinda to pay him a sanction of $500.

The district court further declined to award either party attorney fees with respect to the custody schedule dispute. However, the court awarded Paul $1,800 in attorney fees and costs for the contempt issue pursuant to NRS 22.100(3) and EDCR 5.219(f).

Melinda filed a timely motion to reconsider the district court's finding of contempt, the $500 contempt sanction, the award of attorney fees, and the floating days provision of the new custody schedule. With respect to the contempt finding, Melinda argued that the evidence at the hearing showed that she asked Paul multiple times when he would be exercising his timeshare during February 2023 and he refused to answer, Paul had previously been unable to exercise his full timeshare resulting in the child being left at school one day the week prior to President's Day, and Paul had engaged in multiple contemptuous acts more significant than Melinda's behavior. Melinda asserted that the contempt finding was "technical" and unnecessary, and that the court failed to consider EDCR 5.509(a) and Paul's own contemptuous acts. She also challenged the award of attorney fees. Finally, Melinda requested a set custody schedule without floating days,

reasoning that uncertainty with the schedule caused issues in the first place.

Shortly thereafter, Paul filed a motion for an order to enforce and/or for an order to show cause regarding contempt, claiming that Melinda failed to pay him the $500 contempt sanction and pick the child up on one of her designated exchange dates in August 2023. Melinda opposed the motion.

Following a hearing on Melinda's motion to reconsider and Paul's contempt motion, the court entered a written order finding Paul's motion for contempt frivolous and awarding Melinda $500 in attorney fees for having to oppose it, thereby reducing the amount of attorney fees she owed Paul to $1,300 in addition to the $500 contempt sanction. The court denied Melinda's motion to reconsider as to the contempt finding and attorney fees award, but it removed the floating days from the custodial schedule and set Paul's parenting time to Thursday to Sunday each week. This appeal followed.

Melinda first argues that the district court erred by finding her in contempt and failing to consider that Paul's own conduct—intentionally failing to respond to which days he would exercise custody in February 2023 and exercising a small portion of his timeshare the week prior—caused her "purported contempt."

This court reviews contempt orders for an abuse of discretion. *Lewis v. Lewis*, 132 Nev. 453, 456, 373 P.3d 878, 880 (2016); *see also Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) (explaining that, while orders of contempt are not appealable, this court has jurisdiction to review contempt findings when included in an order that is otherwise independently appealable). Disobedience to a lawful court order constitutes

contempt. NRS 22.010(3). "An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on [her]." *Cunningham v. Eighth Jud. Dist. Ct.*, 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986).

Here, the district court determined that there was a clear order—specifically the parties' divorce decree—that established that President's Day weekend 2023 was Paul's parenting time, that Melinda had notice of the order and the ability to comply, and that she intentionally picked the child up from school and took him during that weekend. *See* NRS 22.010(3). Indeed, Melinda acknowledged as much in her testimony. Under these circumstances, we conclude that the court properly exercised its discretion in finding Melinda in contempt. *See Lewis*, 132 Nev. at 456, 373 P.3d at 880.

Although Melinda essentially argues that Paul's conduct should have precluded the court from finding her in contempt, we are unpersuaded by this argument. While the court found that communication between the parties could have avoided the incident, it further found that Paul's conduct and the prior issues between the parties did not negate the fact that Melinda knowingly violated the court's custody order without attempting to communicate with Paul first about picking the child up from school during this time. And considering these circumstances in light of the deferential standard of review for contempt determinations, we discern no abuse of discretion in the court's decision finding Melinda in contempt. *See id.*

Melinda next argues that the district court abused its discretion in sanctioning Melinda and awarding Paul attorney fees after finding her

in contempt because the court failed to consider EDCR 5.509(a) and whether there was a need for a contempt ruling and instead focused on the fact that Melinda "technically" violated a prior order. She claims that, with the parties' history, there was no reason to penalize her for "technical" contempt, and that the court's findings and penalties have increased the conflict in the custody case.

Melinda's argument regarding EDCR 5.509(a) does not demonstrate any abuse of discretion on the part of the district court. *See Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005) (reviewing an award of attorney fees for an abuse of discretion). EDCR 5.509(a) sets forth what is required of the party filing a motion seeking an order to show cause for contempt, not what the court must include in a decision holding a party in contempt. *See* EDCR 5.509(a) (providing that a motion seeking an order to show cause for contempt must be accompanied by an affidavit complying with NRS 22.030(2) that identifies, among other things, the need for a contempt ruling). And Melinda cites no authority suggesting that the court is required to include findings regarding that rule in its contempt order and she provides no explanation as to why she believes the rule's requirements somehow carry over from the contempt motion to the contempt order. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider issues that are not cogently argued or supported by relevant authority). Thus, this argument does not provide Melinda with a basis for relief.

Further, while Melinda acknowledges that the decision to impose contempt sanctions is within the district court's discretion under NRS 22.100 (providing that when a person is found guilty of contempt, the court may impose a fine and award attorney fees incurred as a result of the

contempt), her summary argument that she should not be sanctioned for technical contempt, which is not supported by any salient authority, does not provide a basis for relief, particularly where she admits that she violated the child custody order. *See Edwards,* 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Finally, Melinda argues that the district court erred by denying her request to conform her pleadings to the evidence and to present evidence supporting a change in custody. She contends that, by denying this request, the court failed to make a custody determination in the child's best interest. She claims that the parties were already proceeding with an evidentiary hearing, so Paul had the opportunity to present evidence on his behalf or to counter Melinda's evidence.[1]

A district court has broad 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). The court may "[a]t any time modify" custody "as appears in [the child's] best interest." NRS 125C.0045(1)(a)-(b). However, the Nevada Supreme Court has held that a district court errs when it modifies custody "without prior specific notice" to the parties that custody may be modified. *Dagher v. Dagher*, 103 Nev. 26, 28, 731 P.2d 1329, 1330 (1987); *see also Micone v. Micone*, 132 Nev. 156, 159, 368 P.3d 1195,

---

[1]Melinda also asserts that the district court had the authority to delay the proceedings if necessary. But Melinda did not request that the district court delay the proceedings in order to provide Paul with the opportunity to prepare, so any challenge to the court's failure to do so is waived. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

1197 (2016) (holding the court's "surprise" unilateral award of primary physical custody to the grandparents violated due process where the parents were unaware the court was considering that option); *Matthews v. Second Jud. Dist. Ct.*, 91 Nev. 96, 97-98, 531 P.2d 852, 853 (1975) (holding the lower court "manifestly acted without notice where notice was required" by sua sponte awarding custody to the father when the mother failed to timely submit a psychiatric report, thereby depriving the mother of her opportunity to be heard); *see also* NRS 125A.345(1) (requiring notice and an opportunity to be heard for child custody determinations).

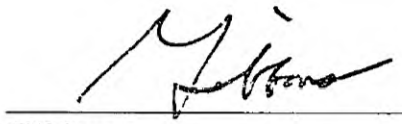
Here, Melinda did not file a motion requesting to modify the physical custody designation. She instead requested the change in her pretrial memorandum, which was filed on the same day that Paul filed his pretrial memorandum. Paul therefore had no opportunity to respond to this request or adequately prepare for a hearing on this issue because, to his knowledge at the time he filed his memorandum, the hearing would only address modification to the custody schedule, the contempt motions, and attorney fees. The district court's refusal to consider a change to the custodial designation properly recognized this potential due process violation and the court was therefore within its discretion to decline to consider Melinda's request to modify the custody designation in this regard. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Moreover, the district court did not outright deny Melinda's request to modify the physical custody designation, nor did it preclude her from seeking such a modification. Rather, the court refused to consider the request at the evidentiary hearing since it was raised for the first time just prior to that hearing. And the fact that the parties had a hearing scheduled does not address the district court's due process concerns because holding a

hearing without allowing Paul adequate notice and time to prepare to address this issue would not comport with due process. *See* NRS 125A.345(1); *see also Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (providing that a fundamental requirement of due process "is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." (internal quotation marks omitted)). We therefore conclude that Melinda has not demonstrated that the district court erred in denying her request to modify her pleadings and declining to consider a modification to the parties' physical custody designation.

Accordingly, for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.[2]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[2]Insofar as Melinda raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for further relief.

cc: Hon. Dawn Throne, District Judge, Family Division
Burton & Reardon
Paul Mendez Miller
Eighth District Court Clerk