


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONECIA MOORE,  
Appellant,  
vs.  
CHRISTOPHER MOTEN,  
Respondent.

No. 88172-COA

**FILED**

OCT 21 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Antonecia Moore appeals from a district court order modifying child custody. Eighth Judicial District Court, Family Division, Clark County; Michele Mercer, Judge.

Moore and respondent Christopher Moten have three children together. Pursuant to a partial parenting agreement and the resulting custody order signed in June 2022, the parties shared joint legal and physical custody of the children. Following an incident at the children's school wherein Moore was arrested for domestic violence against Moten, Moten filed a motion for an order to show cause, requesting that the court find Moore in contempt of the parenting agreement and Moore filed a countermotion seeking to hold Moten in contempt. In his reply and opposition, Moten moved the court for primary physical custody of the children, alleging that the domestic violence and Moore's violation of the parenting agreement constituted a substantial change in circumstances. After considering the parties' filings, the district court denied the contempt motions and scheduled an evidentiary hearing under *Myers v. Haskins*, 138 Nev., Adv. Op. 51, 513 P.3d 527 (Ct. App. 2022), on the custody modification issue.

At the hearing, the district court swore in the parties and received testimony regarding their respective positions on the child custody issue. Both parties represented themselves pro se, and neither party had prepared or properly disclosed exhibits in advance of the hearing. Because of this, the district court utilized exhibits submitted by both parties with their prior motions for an order to show cause. Importantly, neither party objected to the district court's review or consideration of their prior documentary exhibits during the hearing. However, Moore did object to one piece of evidence: a video clip of the alleged domestic violence incident at the children's school, objecting on the basis that the video related to her open criminal case. But she did not present any other objections, and the district court reviewed the video after confirming that Moore had received a copy of the video via email earlier in the litigation.

Ultimately, the district court entered a thirty-page order awarding Moten primary physical custody of the children. In its order, the district court first found that Moten had demonstrated a *prima facie* case to modify custody under *Romano v. Romano* and found that Moore's conduct of withholding the children from him, as well as the act of domestic violence she committed against Moten in front of the children, constituted a substantial change in circumstances affecting the welfare of the children. 138 Nev. 1, 7, 501 P.3d 980, 985 (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). In its analysis of the best interest of the child factors, the court noted that Moten demonstrated clear and convincing evidence that Moore committed domestic violence against him, that the parties were unable to coparent, and that Moore was less likely to allow a relationship with the

children's siblings due to her past behavior of preventing the children from attending their half-sibling's baby shower. Moore now appeals.

On appeal, Moore argues that the district court abused its discretion by considering improperly disclosed evidence and hearsay statements at trial. She further argues that, because the district court led the questioning during the hearing, the court "violated [her] right to directly confront witnesses in her defense, thus violating a fundamental and protected constitutional right." In response, Moten argues that Moore failed to object to any of these points below, and that the testimony of the parties supports the district court's decision. Moore elected not to file a reply.

Having considered the arguments and briefs of the parties, along with the record on appeal, we affirm the district court's decision. With the exception of the video of the domestic violence incident, Moore made no objections to the presentation or form of the evidence, or any of the purported hearsay statements addressed by her counsel in her fast-track statement. As a result, she has waived these arguments. *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."). Further, although Moore objected to the video below, her argument regarding the video is not properly before us on appeal as the content of her objection—that it was related to her criminal trial—is different from the one raised on appeal, which is that this evidence was improperly disclosed under EDCR 5.506. *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)).

Moore also argues that that the district court violated the Confrontation Clause by leading the questioning of witnesses—thus preventing her from cross-examining Moten during the hearing, and violating her due process rights to a fair trial. This argument is without merit as the Confrontation Clause does not apply in civil proceedings. See U.S. Const. amend. VI (“In all *criminal prosecutions*, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . .” (emphasis added)); see also *Austin v. United States*, 509 U.S. 602, 608 n.4 (1993) (observing that the Confrontation Clause does not apply in civil cases).<sup>1</sup> Moreover, Moore did not contend—on appeal or below—that she received inadequate notice of the hearing and further, did not attempt or request to cross-examine Moten during the hearing and presented no objections to the form of the hearing at trial. Accordingly, any arguments as to these issues are waived. *Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983; see also *Ringle v. Bruton*, 120 Nev. 82, 95, 86 P.3d 1032, 1040 (2004) (noting that “[t]imely objections [ ] conserve judicial resources. Objections

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<sup>1</sup>To the extent that Moore also argues that the district court’s involvement in the hearing violated her due process rights, this argument is tied to her challenge related to the Confrontation Clause. To that end, we note that the Supreme Court of the United States has recognized that “[w]here a particular Amendment ‘provides an explicit textual source of constitutional protection’ against a particular sort of government behavior, ‘that Amendment, not the more generalized notion of “substantive due process,” must be the guide for analyzing these claims.’” *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (quoting *Graham v. Connor*, 490 U.S. 386, 395(1989)).

provide the trial court an opportunity to correct any potential prejudice and to avoid a retrial.”).

Accordingly, based on the reasoning set forth above, we,  
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Michele Mercer, District Judge, Family Division  
G Law  
Christopher Moten  
Eighth District Court Clerk

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<sup>2</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.