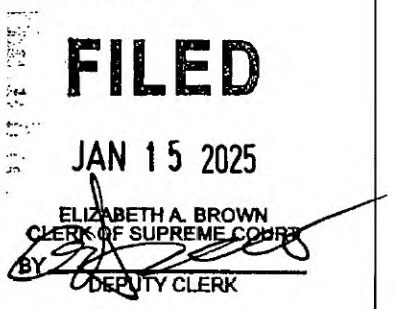
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEANNA MARY LYNN BURNS A/K/A DEANNA MARY LYNN HARNESS,
Appellant,
vs.
MATTHEW B. REED,
Respondent.

No. 88200-COA



ORDER DISMISSING APPEAL IN PART AND AFFIRMING IN PART

Deanna Mary Lynn Harness (née Burns) appeals from three district court orders denying her motion to modify child custody, holding her in contempt of court, and requiring that she submit to monthly drug tests. Second Judicial District Court, Family Division, Washoe County; Aimee Banales, Judge.

Harness and respondent Matthew B. Reed are the parents of 15-year-old A.R. In 2011, Reed, who then resided in Texas, filed a petition to establish paternity, custody, and parenting time for two-year-old A.R. upon learning Harness's mother had obtained temporary guardianship of A.R. due to Harness's ongoing drug abuse. The district court subsequently entered an order awarding Harness primary physical custody, ordering the parties share joint legal custody, and providing Reed with parenting time so he could establish a relationship with A.R. Between 2011 and 2021, Harness retained primary physical custody and Reed steadily obtained increased parenting time.

In July 2021, law enforcement raided Harness's home and arrested both Harness and her husband for possession of methamphetamine. Law enforcement contacted the Nevada Division of

Child and Family Services (DCFS), who responded to the Harness home and reported that the children, including A.R., were living in squalor and the home was unsafe. DCFS contacted Reed and requested he pick up A.R. from the home. DCFS additionally removed five other children, consisting of A.R.'s stepsiblings and half-siblings, and placed them with other relatives.

Reed subsequently filed an emergency motion to modify custody and requested that the district court award him primary physical custody of then 11-year-old A.R. The district court subsequently held an emergency status check at which Reed, Harness, and a DCFS employee participated. DCFS recommended Reed receive temporary physical custody as DCFS had ongoing concerns regarding A.R.'s safety should he return to Harness. For her part, Harness offered to stipulate to Reed receiving temporary primary physical custody so long as A.R. was returned to her custody following the closure of the DCFS case. Reed rejected the proposed stipulation and stated he wished to go forward with a hearing on his request for primary physical custody. The district court entered a temporary custody order awarding Reed temporary primary physical custody and set the hearing on Reed's motion for primary physical custody for January 2022.

On December 8, 2021, Harness, while driving A.R.'s two minor half-siblings, caused a vehicle collision when she crossed over the center line and struck a vehicle in oncoming traffic. Harness and her children were transported to the hospital where law enforcement obtained a blood sample that subsequently tested positive for methamphetamine. Harness suffered multiple broken bones, and her son suffered a broken femur and dislocated hip. As a result of the accident, the district court continued the evidentiary hearing on Reed's motion to change custody. The district court subsequently entered an order requiring that Harness undergo monthly

drug tests prior to the evidentiary hearing. In May 2022, Harness tested positive for methamphetamine and subsequently missed the June and July tests. Harness informed the district court that the positive test was the result of her Adderall prescription, and the district court—while accepting this explanation—cautioned Harness that any additional missed tests would be treated as presumptive positives.

While the custody dispute remained ongoing, Harness's husband Oliver filed a motion seeking to hold Reed in contempt for allegedly sharing his e-filing login information with Oliver's ex-wife. Oliver alleged his ex-wife used this information to download confidential medical documents discussing his substance abuse issues and use them in their ongoing custody dispute. The district court subsequently struck his motion as a rogue filing because he was not a party to the proceedings.

In December 2022, the district court held an evidentiary hearing on Reed's motion to modify custody. Relevant to the pending appeal, Harness testified she should retain primary physical custody of A.R. because she was sober, Reed worked out of state for half of each month and his wife would receive de facto custody, A.R. did not have his own bedroom at Reed's home, she would better address A.R.'s academic struggles, and Reed refused to cooperate regarding parenting time. In contrast, Reed testified A.R. was struggling in school due to Harness's prior neglect, which resulted in him being behind his peers, that A.R. suffered from post-traumatic stress disorder (PTSD) due to witnessing domestic violence in Harness's home, that a separate district court prohibited Harness from interacting with her stepchildren due to allegations of abuse, and that Harness engaged in inappropriate conversations with A.R., which negatively impacted him.

On January 20, 2023, the district court entered an order granting Reed primary physical custody, ordering the parties to continue sharing joint legal custody, awarding Harness parenting time, and requiring that Harness undergo monthly drug tests until December 2024. Harness did not appeal this order. Following the custody modification, Harness tested positive for methamphetamine in May 2023, and missed the March, June, July, August and September drug tests.

Reed then filed a motion for an order to show cause for contempt regarding Harness's failure to submit to monthly drug tests. Harness opposed this motion, arguing the positive test was the result of her Adderall prescription and that she missed the monthly tests because checking her emails was not a priority and so she did not see the emails instructing her to test within 48 hours.

In addition to her opposition, Harness filed a motion to modify custody, arguing she should receive primary physical custody of A.R. because he was continuing to struggle in school, he still did not have his own bedroom, A.R. was unhappy living with Reed, and Reed was continuing to interfere with her parenting time. Alternatively, Harness suggested the district court award Harness's mother guardianship of A.R. instead of leaving him with Reed. Harness provided a declaration attesting to the above allegations. Reed opposed the motion and argued the issues raised by Harness did not constitute a change of circumstances because they were raised and addressed during the December 2022 hearing on his motion to change custody that resulted in the January 2023 custody modification order. Harness subsequently filed a reply in support of her request to change custody which alleged A.R. was behaving "unusually" and speculated that his behavior could be the result of abuse. Notably, Harness

did not support the allegations in her reply with a declaration and did not identify any specific allegations of abuse or neglect.

Finally, Reed filed a motion seeking reimbursement for various medical costs, including a chiropractic bill, dental bill, and the cost of A.R.'s new glasses. Harness did not file an opposition or any other response to this motion.

The district court subsequently held a hearing on Reed's motion for an order to show cause and took testimony from Harness. The district court expressly found Harness's testimony regarding the missed tests was not credible and held her in contempt pursuant to NRS 22.030(2). As part of its contempt ruling, the district court issued a companion order extending Harness's drug testing requirement through December 2024 and establishing a new procedure for the testing.

Approximately two weeks later, the district court entered an order denying Harness's motion to modify custody without a hearing, finding she failed to demonstrate a substantial change in circumstances affecting the welfare of A.R. and failed to provide sufficient allegations that a change in custody was in A.R.'s best interest. The district court further granted Reed's motion for repayment of medical costs as unopposed and required Harness to reimburse Reed half the costs of the medical care. Harness now appeals the order finding her in contempt, the order establishing the drug testing procedure, and the order denying her motion to change custody and awarding Reed reimbursement.

Harness's challenge to the prior custody award

As part of her appeal from the above noted orders, Harness raises several arguments regarding the district court's January 20, 2023, order granting Reed primary physical custody of A.R. and awarding

Harness parenting time with the child. The certificate of service stated the notice of entry of order was served on May 23, 2023; but Harness did not file her notice of appeal until February 26, 2024, well beyond the time limit for appealing the January 20, 2023, order. *See* NRAP 4(a)(1) (requiring an appeal to be filed no later than 30 days after service of notice of entry of the challenged order). Thus, Harness's notice of appeal is untimely as to the January 2023 modification order, and we lack jurisdiction to consider her arguments regarding that decision. *Id.* Accordingly, we dismiss the portion of Harness's appeal challenging the January 20, 2023, order awarding Reed primary physical custody.[1]

The contempt orders

Harness further purports to appeal the order finding her in contempt of court and extending the requirement that she submit to monthly drug tests and the companion order establishing the procedure for the monthly drug tests moving forward (the drug testing orders). Having reviewed the drug testing orders, we conclude we lack jurisdiction to consider Harness's appeal of these orders because contempt orders are not directly appealable, and the drug testing orders are not contained within otherwise appealable orders. *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000); *see also* NRAP 3A(b); NRS Chapter 22; *Yu v. Yu*, 133 Nev. 737, 738-39, 405 P.3d 639, 640 (2017); *see*

[1]To the extent Harness purports to appeal the September 27, 2022, order striking her husband Oliver's filing regarding Reed's use of the eFlex system, no statute or court rule provides for an appeal from such a decision. *See* NRAP 3A(b) (listing appealable determinations). Even if that order could be considered in the context of an appeal from the January 20, 2023, modification order, because Harness failed to timely appeal that decision any challenge to the September 27 order is likewise not properly before us.

also Lewis v. Lewis, 132 Nev. 453, 373 P.3d 878 (2016) (reviewing a contempt order contained within an order modifying child custody). Accordingly, we dismiss the portion of the appeal challenging the contempt orders.

Denial of motion to modify custody

We turn now to Harness's challenge to the order denying her motion to modify custody. We review a district court's decision to deny a motion to modify physical custody without holding an evidentiary hearing for an abuse of discretion. *Myers v. Haskins*, 138 Nev. 553, 556, 513 P.3d 527, 531 (Ct. App. 2022). A district court abuses its discretion only when "no reasonable judge could reach a similar conclusion under the same circumstances." *In re Guardianship of Rubin*, 137 Nev. 288, 294, 491 P.3d 1, 6 (2021). When a movant seeks to modify physical custody, a district court must hold an evidentiary hearing if the movant demonstrates "adequate cause" for one. *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124-25 (1993). "Adequate cause" arises if the movant demonstrates a prima facie case for modification. *Id.* at 543, 853 P.2d at 125. A prima facie case requires that the movant demonstrate 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 modification." *Romano v. Romano*, 138 Nev. 1, 3, 501 P.3d 980, 983 (2022) (quoting *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007)), *abrogated on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167 (2023). To avoid "repetitive, serial motions[,]" "any change in circumstances must generally have occurred since the last custody determination[.]" *Ellis*, 123 Nev. at 151, 161 P.3d at 243 (internal citation and quotations omitted).

"In determining whether a movant has demonstrated a prima facie case for modification of physical custody, the court must accept the movant's specific allegations as true." *Myers*, 138 Nev. at 556-57, 513 P.3d at 532. "[D]emonstrating a prima facie case for modification is a *heavy burden* on a petitioner which must be satisfied before a hearing is convened." *Id.* at 560, 513 P.3d at 534 (emphasis in original) (internal citation and quotations omitted).

Here, the district court denied Harness's motion to modify custody without holding a hearing after finding Harness failed to make a prima facie case that there had been changed circumstances or that modification was in A.R.'s best interest. On appeal, Harness acknowledges that at least some of her allegations do not constitute changed circumstances because they were previously addressed during the evidentiary hearing resulting in the January 20, 2023, order granting Reed primary custody.

Nonetheless, Harness contends she was entitled to an evidentiary hearing because *Ellis* stands for the proposition that an evidentiary hearing is required when a child experiences an extended academic decline because such a decline constitutes a changed circumstances supporting modification. But the situation presented here is distinguishable from what was at issue in *Ellis*, and thus, this argument does not provide a basis for relief. In *Ellis*, the district court found the child had previously excelled in school but following a change in custody, the child's academic performance significantly declined over a four-month period. 123 Nev. at 148, 161 P.3d at 241. Because the child's academic decline began after the prior custody modification, the district court

concluded it constituted changed circumstances warranting modification. *Id.*

Here, however, A.R.'s academic struggles predate the prior custody order. Indeed, a review of the December 2022 evidentiary hearing and accompanying order demonstrates that the issue of which parent was better suited to address his struggles was substantially litigated in the proceedings resulting in the January 2023 custody order, and the district court expressly found Reed demonstrated an ability to better meet A.R.'s physical, developmental, and emotional needs. Further, Harness did not allege that A.R.'s struggles had worsened and instead argued only that his grades had not improved following the change in custody. Instead, Harness attempted to rely upon the same evidence she previously provided to the district court when opposing Reed's motion to change custody. Thus, we cannot conclude the district court abused its discretion by determining his ongoing struggles did not constitute changed circumstances.

We similarly conclude Harness's arguments regarding A.R.'s mental health struggles did not constitute a substantial change in circumstances because this issue was addressed during the December 2022 evidentiary hearing, which resulted in the January 2023 order awarding Reed primary physical custody. Specifically, A.R.'s therapist testified during the evidentiary hearing and the district court expressly found Reed was the parent better situated to address A.R.'s physical, emotional, and developmental needs. Accordingly, the district court did not abuse its discretion in determining Harness's allegations did not warrant an evidentiary hearing.

Harness next argues she was entitled to an evidentiary hearing because she believes A.R. may have experienced, or witnessed, domestic

violence or emotional or physical abuse in Reed's home. We similarly conclude the district court did not abuse its discretion by finding Harness's allegations failed to state a prima facie case of a substantial change in circumstances. Notably, Harness raised her concerns regarding potential domestic violence or abuse in her reply to Reed's opposition to her motion to modify custody and did not provide an affidavit attesting that A.R. was being abused or witnessing abuse. *See Myers*, 138 Nev. at 559, 513 P.3d at 534 (holding a district court "need not consider facts alleged or exhibits filed that are not supported by verified pleadings, declarations, or affidavits"). Further, Harness did not provide any specific allegations supporting her concerns and instead only vaguely alleged that A.R. was behaving "unusually" by bullying his younger siblings and listening to music she found concerning, which she reasoned could be signs of abuse. *See id.* (holding district courts are not required to consider "general, vague, broad, or conclusory allegations" when considering a motion to modify custody). Thus, because Harness provided only "general, vague, broad, or conclusory allegations" and did not point to anything to support her assertions regarding potential domestic violence or abuse, we cannot conclude that the district court abused its discretion in denying her motion to modify custody without a hearing based on this allegation.[2]

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[2]As noted above, in addition to denying Harness's motion to modify custody, the district court's order granted Reed's unopposed request for reimbursement of A.R.'s medical expenses. While Harness challenges the district court's decision in this regard on appeal, we do not consider her arguments on this point because—given her failure to oppose the motion—they are improperly raised for the first time on appeal. *See Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding an argument not presented before the district court is waived on appeal).

Harness further argues the district court erred by failing to consider awarding her mother temporary guardianship of A.R., if the district court remained concerned about Harness having primary physical custody. We conclude Harness failed to provide cogent arguments supporting her position and thus do not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims that are unsupported by cogent arguments). Harness's initial argument, that DCFS should not have placed A.R. with Reed following his removal from her home; and instead, should have placed him with Harness's mother, does not support her position. Further, Harness failed to provide cogent argument demonstrating the district court was required to consider awarding her mother temporary guardianship of A.R., when his father Reed was actively caring for him.

Finally, Harness argues the district court was biased against her. We conclude relief is unwarranted on this point because Harness 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 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).

Accordingly, we dismiss Harness's appeal to the extent she purports to challenge the January 2023 custody order, the 2022 order striking her husband's filing, and the drug testing orders. And we affirm the district court's order denying Harness's motion to change custody and granting Reed's motion for reimbursement of medical costs.[3]

It is so ORDERED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Aimee Banales, District Judge, Family Division
Deanna Mary Lynn Harness
Kreitlein Leeder Moss, Ltd.
Washoe District Court Clerk

[3]Insofar as Harness 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 relief.