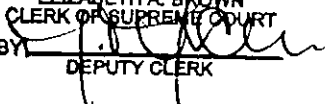


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KILIAN LEE N/K/A HAKEEM THE  
MAGNIFICENTLY FEARLESS  
KHALIFA,  
Appellant,  
vs.  
MADELINE BURDEN,  
Respondent.

No. 88009-COA

FILED  
FEB 19 2025  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Killian Lee n/k/a Hakeem the Magnificently Fearless Khalifa appeals from a district court post-custody decree order in a family law matter. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

Khalifa and respondent Madeline Burden were never married but have one minor child together. In the proceedings below, the district court initially entered a stipulated custody decree, which awarded them joint legal and physical custody of the child. The parties subsequently had many difficulties co-parenting the child and filed numerous motions concerning child custody and related matters. In 2015, the court granted Khalifa's motion to modify custody and awarded him primary physical custody of the child. In 2019, the district court entered an order modifying physical custody and awarded the parties joint physical custody of the child.

Additional issues arose with the child's custody and schooling and the parties filed motions concerning those issues. In December 2020, the district court conducted an evidentiary hearing as to those issues and entered an order on December 30, 2020, concerning physical custody and

addressing the school issues. In that order, the court noted that the parties had reached an arrangement concerning their parenting time, and it accordingly provided that the parties should continue with joint physical custody with a week on/week off parenting time schedule. The court also concluded the school selection factors set forth in *Arcella v. Arcella*, 133 Nev. 868, 872-73, 407 P.3d 341, 346 (2017), favored Burden's preferred choice of an elementary school over Khalifa's preferred choice of homeschooling.

Khalifa subsequently filed several motions concerning the school selection issue, expressing his concern that the elementary school was not the best choice for the child and that the child had experienced issues following entry of the 2020 order. Burden opposed Khalifa's motions and filed a countermotion seeking modification of the custody arrangement, alleging a substantial change in circumstances affecting the welfare of the child arose. In particular, Burden alleged that Khalifa had emotionally abused the child by directing her to lie at school and by telling her that it was her fault that she was sexually abused in the past. Khalifa opposed Burden's motion.

The district court held a hearing concerning the motions and concluded an evidentiary hearing concerning the custody issues was warranted. In light of the nature of the allegations raised in Burden's motion, the court also awarded Burden temporary primary physical custody of the child until the evidentiary hearing.

Khalifa later sought disqualification of the district court judge because he alleged she was biased against him and had out-of-court communications with Burden's counsel. The district court judge filed a declaration opposing Khalifa's assertions. The Chief Judge later issued an order denying Khalifa's request for disqualification of the district court

judge, finding that Khalifa failed to demonstrate that disqualification was warranted.

The district court subsequently conducted an evidentiary hearing concerning child custody and related issues. Both Burden and Khalifa testified at the hearing concerning the child, their care of the child, and the child's school and education. In particular, Burden testified concerning an incident on December 13, 2022, in which the child reported that Khalifa became upset with her and caused her significant emotional distress. Khalifa denied causing the child distress and testified at length concerning his desire for the child to either be homeschooled or to attend a school that included remote learning options.

The district court thereafter entered a written order concluding the evidence established that there had been a substantial change in circumstances affecting the welfare of the child since entry of the previous custody decision, including Khalifa's emotional abuse of the child. The court also found that several of the best interest factors under NRS 125C.0035(4) favored awarding Burden primary physical custody. Based on the evidence presented and its findings, the court concluded it was in the child's best interest to award Burden primary physical custody. In addition, the district court considered the appropriate *Arcella* factors and concluded those factors favored Burden's choice of school placement.

The district court also awarded the parties joint legal custody but concluded it was in the child's best interest to award Burden decision-making authority over the child's schooling and mental health treatment. In support of this decision, the court found that Khalifa was unable to get along with school officials and the child's teachers, and he had caused problems at the child's schools. The court further found that the child was

in need of therapy but Khalifa refused to support the child's therapy and interfered with the child's relationship with her therapist.

In addition, the district court concluded that the child should have a continuing relationship with Khalifa but found that it was in her best interest to limit his parenting time so that he would not be able to interfere with her education and so that he could learn to behave in an appropriate and healthy manner with the child. The court also provided that, should Khalifa exercise his parenting time and behave in an appropriate manner, his time with the child would increase. Accordingly, the court awarded Khalifa with parenting time every other Saturday from 10:00 a.m. to 2:00 p.m. during an initial two-month phase. Should Khalifa meet his obligations during that phase, his parenting time will increase to 10:00 a.m. to 4:00 p.m. every other Saturday for the next three-month phase. Should Khalifa meet his obligations during that phase, his parenting time will again increase, this time from 10:00 a.m. to 6:00 p.m. on every other Saturday. The court also provided for telephone calls between Khalifa and the child on Wednesdays, Fridays, and Sundays.<sup>1</sup> Finally, the district court awarded Burden child support in the amount of \$476.45 per month. This appeal followed.

First, Khalifa argues the district court abused its discretion by modifying the physical custody order. Khalifa contends that the district court failed to consider that the child suffers emotionally due to the reduced

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<sup>1</sup>Although not raised by the parties, to the extent the custodial arrangement constitutes sole physical custody, the district court properly made separate findings in support of its decision to limit Khalifa's parenting time, in particular his inappropriate behavior toward the child and his role in interfering with the child's schooling. *See Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 287-88 (Ct. App. 2023).

time spent with him. Khalifa also contends that the district court erred by failing to consider evidence concerning the sexual abuse the child suffered from Burden's ex-boyfriend.

This court reviews district court decisions concerning child custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence, "which is evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* at 149, 161 P.3d at 242. When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1). 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).

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 v. Romano*, 138 Nev. 1, 5, 501 P.3d 980, 982 (2022) (internal quotation marks omitted), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). A court may award one parent primary physical custody if it determines that joint physical custody is not in the best interest of the child. NRS 125C.003(1).

In addition, while district courts are barred from considering facts that preexisted the current custody order in considering whether a substantial change of circumstances has occurred, *see Ellis*, 123 Nev. at 151, 161 P.3d at 243, courts are not barred from looking at that evidence to determine whether modification is in the child's best interest, *see Nance v.*

*Ferraro*, 134 Nev. 152, 163, 418 P.3d 679, 688 (Ct. App. 2019) (“[Prior cases do] not, however, bar district courts from reviewing the facts and evidence underpinning their prior rulings in deciding whether the modification of a prior custody order is in the child’s best interest.”).

At the evidentiary hearing, Burden testified at length concerning her relationship with the child and the difficulties the parties have had in coparenting the child, including Khalifa’s interference with the child’s schooling and his failure to support the child’s mental health treatment. Burden also explained that there have been bullying incidents at the child’s schools but that the child was often the one exhibiting behavioral issues at school. However, Burden testified that the child had entered middle school, she was doing well at her middle school, and that she greatly enjoys participating in the middle school’s performing arts program.

Burden acknowledged that the child had been sexually abused by her ex-boyfriend but explained that he had previously been incarcerated and no longer resided in Nevada. In addition, Burden stated that the child was sexually abused by one of Khalifa’s relatives. Burden testified that the child has struggles due to those issues and that she requires therapy to help her but had been unable to attend due to Khalifa’s interference with the therapist.

Burden also testified at length regarding an incident that occurred on December 13, 2022, where Khalifa grew angry with the child and caused her to become upset. Burden explained that she picked up the child from Khalifa’s residence in the evening. As the child got into Burden’s vehicle, Burden explained that the child began crying and was extremely upset. The district court concluded the child’s statements made at that time were admissible as excited utterances, *see* NRS 51.095, and permitted

Burden to testify concerning the child's statements. Burden accordingly testified that the child informed her that Khalifa had wished for her to lie to the officials at her school and to state that she did not feel safe at school. The child did not feel comfortable lying to the school officials and that decision caused Khalifa to become angry. The child stated that Khalifa forced her to stay outside in the cold for a lengthy period of time, and told her that he did not want her anymore, she had demons inside her and that was the reason she allowed herself to be sexually abused, and that he would cause her to sit in a room alone so that she could feel what it was like to be not loved. Burden also stated that Khalifa had not exercised his parenting time since that incident and the child was saddened by Khalifa's failure to contact the child on her birthday.

Khalifa testified and denied making the aforementioned statements to the child. Khalifa acknowledged that he had not exercised his parenting time since the December 13, 2022, incident. Nevertheless, Khalifa testified to his belief that the child would benefit from increased time with him. Khalifa also explained that he did not want the child to attend therapy, as he believes it is not beneficial and stated therapy is against his religious beliefs. In addition, Khalifa testified that he wanted the child to attend homeschool or a hybrid program that contained some remote schooling.

At the hearing, the district court informed Khalifa that it would not consider information concerning the child's sexual abuse in the context of whether there were changed circumstances warranting modification of the custody arrangement because those incidents occurred prior to the entry of the previous custody order. However, the court allowed presentation of

that information at the evidentiary hearing and utilized it in its evaluation of the best interest factors.

Based on the evidence presented at the evidentiary hearing, the district court found that there had been a substantial change in circumstances affecting the welfare of the child. The court found that Khalifa emotionally abused the child on December 13, 2022, and had abandoned his parental role since that date. The court also found that Khalifa had neglected the child's schooling since 2022.

The district court also evaluated the relevant best interest factors from NRS 125C.0035(4) and found that several favored Burden. The court found that Khalifa does not support the child's relationship with Burden and often denigrates Burden. Thus, the court concluded that Burden was the parent more likely to allow the child to have frequent associations and a continuing relationship with Khalifa. *See* NRS 125C.0035(4)(c).

Next, the district court found that there is a high level of hostility between the parties. However, based on Khalifa's actions, the court concluded that he bore the primary responsibility for the conflict between the parties. Thus, the court concluded that the conflict factor favored Burden. *See* NRS 125C.0035(4)(d).

The district court also found that Khalifa's communication demonstrated a lack of respect for Burden as a parent and an unwillingness to communicate in a respectful manner. The court also found that Khalifa was unwilling to help work on the child's behavioral issues and that he even supported the child's poor behavior. Considering the aforementioned findings, the court concluded that Khalifa was unwilling to cooperate with



Burden to meet the child's needs, and the cooperation factor thus favored Burden. *See* NRS 125C.0035(4)(e).

Next, the district court found that the child has several developmental and emotional needs including her education, safety, stability, and the knowledge that she is loved. However, the court concluded that Khalifa is not best suited to help the child with these needs. The court found Khalifa demonstrated that he does not make decisions with the child's interest in mind and is not interested in teaching the child appropriate behaviors. The court also found that Khalifa made emotionally abusive statements to the child on December 13, 2022, including those implying she was at fault for suffering sexual abuse.

The district court further found that Khalifa failed to meet the child's emotional needs by refusing to help her participate in therapy. The court noted that the child had been the victim of sexual abuse and needed therapy to address that issue. The court additionally found the child needed therapy to address Khalifa's emotional abuse and her estrangement from Khalifa. The court also noted that Khalifa testified that therapy was against his religious beliefs but found he did not demonstrate his testimony was credible. In light of the foregoing, the court concluded Burden was best able to help with the physical, developmental, and emotional needs of the child, and that this factor strongly favored Burden. *See* NRS 125C.0035(g).

In addition, the district court found that the relationship between Khalifa and the child was strained. The court also found the child's relationship with Burden was stronger than her relationship with Khalifa and that this factor thus favored Burden. *See* NRS 125C.0035(h).

Finally, the district court found that Khalifa neglected the child's education and had emotionally abused the child. Thus, the court

concluded that the abuse and neglect factor favored Burden. *See* NRS 125C.0035(j).

Based on the aforementioned evidence and the findings made concerning that evidence, the district court concluded it was in the child's best interest to award Burden primary physical custody. The district court's factual findings made in support of its physical custody determinations are supported by the evidence presented at the evidentiary hearing, and thus, were supported by substantial evidence in the record. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Turning to Khalifa's contentions that the child suffers emotionally without him and that the district court failed to consider the sexual abuse of the child, his arguments fail. The district court reviewed the evidence submitted at the evidentiary hearing and made findings concerning the child's emotional wellbeing, and it found that Khalifa harmed the child's emotional state. The district court appropriately considered information related to the sexual abuse of the child when it evaluated whether modification of the custody order was in the child's best interest. *See Nance*, 134 Nev. at 163, 418 P.3d at 688. While Khalifa challenges the district court's findings and contends it should not have found that modification of the custody order was in the child's best interest, this court is not at liberty to reweigh the evidence or the district court's credibility determinations on appeal. *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 modifying the custody order and awarding Burden primary physical custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Second, Khalifa contends Burden took the child to a therapist without his consent. To the extent that Khalifa argues the district court abused its discretion by awarding Burden final decision-making authority concerning the child's mental health treatment, he is not entitled to relief. 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; *Kelley v. Kelley*, 139 Nev., Adv. Op. 39, 535 P.3d 1147, 1153 (2023) (recognizing that district courts have discretion when making decisions concerning legal custody). “[T]he parents need not have equal decision-making power in a joint legal custody situation” and “one parent may have decisionmaking authority regarding certain areas or activities of the child’s life, such as education or healthcare.” *See Rivero v. Rivero*, 125 Nev. 410, 421, 216 P.3d 213, 221 (2009), *overruled on other grounds by Romano*, 138 Nev. at 6, 501 P.3d at 984.

Here, the district court considered and evaluated the testimony of the parties concerning the care of the child, which included testimony concerning the parties’ actions and decisions related to the child’s mental health treatment. In consideration of that information, the court awarded the parties joint legal custody but Burden final decision-making authority as to the child’s mental health treatment as it found the child needed therapy and that Khalifa refused to help the child receive appropriate mental health treatment. Considering the aforementioned circumstances, we discern no abuse of discretion by the court in doing so. *See id.* Therefore, we conclude that Khalifa is not entitled to relief based on this argument.

Third, Khalifa argues the district court abused its discretion by rejecting his request for the child to be homeschooled. Khalifa contends that

the child is bullied at her current school and the district court improperly did not consider that issue when reaching its decision. This court reviews a district court's school selection decision for an abuse of discretion. *Arcella*, 133 Nev. at 870, 407 P.3d at 344. In *Arcella*, the Nevada Supreme Court provided a non-exhaustive list of factors a court should consider when determining school selection. *Id.* at 872-73, 407 P.3d at 346. Moreover, “[d]etermining which school placement is in the best interest of a child is a broad-ranging and highly fact-specific inquiry, so a court should consider any other factors presented by the particular dispute, and it should use its discretion to decide how much weight to afford each factor.” *Id.* at 873, 407 P.3d at 347.

The district court made several findings based on the *Arcella* factors. The court found that Burden testified that the child preferred her current school over other options based on the school's performing arts program. In addition, the court found the child's current school provided traditional, in-person schooling and this was better suited to the child's needs than a homeschooling or online program. The district court also noted that Burden testified the child was performing well academically at her current school and found the child was not likely to do as well with a non-traditional program. Moreover, the court found the child was less likely to be able to participate in programs and activities with a non-traditional school and that transferring to another school could harm the child academically and emotionally. Further, the court concluded neither parent resided far from the child's current school. Finally, contrary to Khalifa's argument on appeal, the district court noted Khalifa's contentions concerning bullying but found that other issues outweighed those concerns.

Based on the totality of the circumstances in this matter, the district court concluded it was in the child's best interest for her to continue to attend her current middle school. The district court's factual findings made in support of its school choice determinations were supported by substantial evidence in the record. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242; *Arcella*, 133 Nev. at 872-73, 407 P.3d at 346. While Khalifa challenges 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 by the district court in reaching its school selection decision. *See Arcella*, 133 Nev. at 870, 407 P.3d at 344.

Finally, Khalifa argues the Chief Judge abused his discretion by denying Khalifa's request to disqualify the district court judge. Khalifa sought disqualification based on his contention that the judge was biased against him and his assertion that the judge improperly communicated with Burden's attorney outside of the courtroom. In addition, Khalifa argues the district court judge's adverse decisions demonstrated the judge was biased against him.

We review a decision concerning a motion to disqualify a district court judge for an abuse of discretion. *See Ivey v. Eighth Jud. Dist. Ct.*, 129 Nev. 154, 162, 299 P.3d 354, 359 (2013). "A judge is presumed to be unbiased, and the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification." *Rivero*, 125 Nev. at 439, 216 P.3d at 233 (internal quotation marks omitted), *overruled on other grounds by Romano*, 138 Nev. at 6, 501 P.3d at 984.


Here, the Chief Judge reviewed Khalifa's request to disqualify the district court judge and the district court judge's affidavit filed in

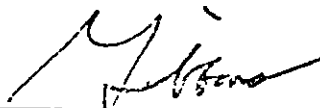
response, in which the district court judge denied improper bias or improper communications with Burden's counsel. The Chief Judge thereafter denied Khalifa's request. In so doing, the Chief Judge concluded that disqualification was unwarranted because Khalifa had failed to show the district court judge exhibited improper bias. The Chief Judge also concluded Khalifa failed to meet his burden to demonstrate that the district court judge communicated with Burden's attorney outside of the courtroom.

We conclude Khalifa fails to demonstrate the Chief Judge abused his discretion by denying the motion to disqualify the district court judge. The record supports the Chief Judge's finding that Khalifa failed to establish factual grounds warranting disqualification. *See id.* Moreover, Khalifa does not demonstrate the district court judge's decisions in the underlying case were based on knowledge acquired outside of the proceedings and the judge's decisions do 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"). Khalifa is therefore not entitled to relief based on this argument.

In light of the foregoing analysis, we conclude that Khalifa is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Dawn Throne, District Judge, Family Division  
Kilian Lee n/k/a Hakeem the Magnificently Fearless Khalifa  
Hutchison & Steffen, LLC/Las Vegas  
Eighth District Court Clerk

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<sup>2</sup>Insofar as Khalifa 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.