

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KRISTINA PROBST F/K/A KRISTINA
CARNEY,
Appellant,
vs.
CASEY CARNEY,
Respondent.

No. 89437-COA

FILED

JUN 26 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Kristina Probst f/k/a Kristina Carney appeals from a district court order denying a motion concerning child custody. Second Judicial District Court, Family Division, Washoe County; Sandra A. Unsworth, Judge.

Probst and respondent Casey Carney were previously married but divorced in 2011. The parties initially agreed to share legal custody and for Probst to have primary physical custody of the children. In 2018, the parties agreed to modify the custody arrangement, with the parties sharing joint legal and physical custody of the children. However, in 2020, Carney again moved to modify the custody arrangement, and the parties later agreed to continue to share joint legal custody but for Carney to have primary physical custody of the children. The parties also agreed to a parenting time schedule and a holiday timeshare.

In 2022, Carney filed a motion alleging that the younger child had sexual contact with Probst's stepson and seeking suspension of Probst's parenting time pending further investigation into that issue. The district court thereafter issued an order temporarily suspending Probst's parenting time and setting an expedited hearing concerning the allegations raised in

Carney's motion. The court soon after held a hearing concerning the motion and ultimately issued an order modifying Probst's parenting time and directing her to have supervised parenting time at the Family Peace Center. The district court also determined that Probst's husband and stepchildren were not permitted to attend the parenting time.

The parties later agreed to a safety plan for the children to engage in reunification therapy. To that end, the district court appointed Dr. Herbert Coard to evaluate the children and conduct reunification therapy. The court also appointed Dr. Lorraine Apodaca as parenting coordinator to aid the parties with the child safety and reunification issues, and to help the parties resolve disputes. The court also directed Dr. Coard and Dr. Apodaca to make recommendations concerning the child safety issues and reunification, including recommendations concerning modification of the parenting time schedule or other custody issues. Of note, the district court did not grant either Dr. Coard or Dr. Apodaca the authority to make substantive changes to the child custody arrangement.

In January 2023, the district court modified the parenting time schedule, awarding Probst unsupervised parenting time with the children. The district court also noted that the parties agreed that Probst's parenting time would occur in the Reno/Sparks area only. As the parties implemented the safety plan and they progressed in reunification therapy, the parties were permitted to agree to enlarge Probst's parenting time with the children.

Concerns with respect to the safety plan later arose, in particular with respect to the younger's child's contact with his stepbrother. The younger child reported that he had unwanted physical contact with the stepbrother, and that Probst was aware of it but did not stop that contact.

Following several emails among the parties, Dr. Coard, and Dr. Apodaca, Carney expressed his belief that Probst had not adequately addressed the safety issues and stated he did not agree to allow Probst to have additional parenting time. Dr. Coard also communicated to Probst his belief that she had not addressed the safety issues stemming from her stepson.

Probst subsequently filed a motion seeking the removal of Dr. Coard and Dr. Apodaca from their roles as she alleged they were biased against her, alleging her parenting time had been improperly withheld, and requesting an award of additional parenting time to make up for her lost time. Carney opposed the motion and Probst filed a reply.

The district court subsequently scheduled a one-day evidentiary hearing concerning Probst's motion. At the hearing, Probst questioned Dr. Coard at length concerning his opinions about the children and his interactions with the parties. Dr. Coard explained that he had significant concerns about the safety of the parties' youngest child with respect to the sexual contact between that child and Probst's stepson. Coard also explained his opinion that Probst minimized that issue and failed to ensure the child's safety. Coard also denied being biased against Probst but explained that Probst had serious communication problems and expressed his belief that she may have mental health issues. In addition, the parties produced documentary evidence concerning their communications and matters involving the children.

The district court thereafter entered a written order in which it denied Probst's motion. The court made findings concerning the best interest factors under NRS 125C.0035(4), and, in particular, noted the youngest child had been sexually abused by Probst's stepson and found Probst had not adequately provided for the child's safety while he was in

her home. The court further found that Dr. Coard and Dr. Apodaca were not biased against Probst but acknowledged that they could no longer work with her and accordingly removed them from this case. The court therefore elected to temporarily act as the parenting coordinator. The court also determined that the parties should continue to have joint legal custody of the children but that it was in the children's best interest for Carney to retain primary physical custody. In addition, the court found that Probst's parenting time should continue to be dictated by the safety plan and the reunification process but explained that she was responsible for obtaining a new reunification therapist and for paying any additional fees above what the parties had previously been paying to Dr. Coard.

Finally, the district court awarded Probst unsupervised parenting time but explained that the parenting time must occur in the Reno/Sparks area and not in California where Probst resides. The court provided Probst with parenting time on every other weekend, from 2:00 p.m. on Saturdays until 4:00 p.m. on Sundays. The court specifically found that Probst was not permitted to bring her stepchildren to her parenting time. This appeal followed.¹

First, Probst contends the district court improperly permitted Dr. Coard and Dr. Apodaca to overstep their authority and that they improperly caused her to lose parenting time. This court reviews district

¹Carney urges this court to dismiss this appeal for lack of jurisdiction as he contends the district court did not enter a final order. He asserts there remain outstanding issues regarding the appointment of a new reunification therapist. However, we conclude Carney's argument lacks merit, as the district court's order resolved the pending issues concerning child custody and parenting time, and thus, it was a final appealable order. See NRAP 3A(b)(7).

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.* When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). 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).

District courts have "the ultimate decision-making power regarding custody determinations" and may not delegate such power. *Roe v. Roe*, 139 Nev. 163, 178, 535 P.3d 274, 290 (Ct. App. 2023) (internal quotation marks omitted). However, district courts may appoint a parenting coordinator to resolve non-substantive disputes, so long as the parenting coordinator's authority does "not extend to modifying the underlying custody arrangement." *Harrison v. Harrison*, 132 Nev. 564, 572, 376 P.3d 173, 179 (2016).

As explained previously, the district court appointed Dr. Coard as a reunification therapist and Dr. Apodaca as the parenting coordinator. The court provided Dr. Apodaca with the authority to resolve minor disputes between the parties. The court also explained that Dr. Apodaca could make recommendations to the court concerning the parenting plan but the court retained the ultimate decision-making authority with respect to the children's custody. Moreover, the court explained that Probst's parenting time could be expanded, amongst other things, through agreement of the parties.

The record demonstrates that the district court entered orders concerning the child custody issues, and in so doing, made its own findings in support of those decisions and did not improperly delegate decision-making authority to Dr. Coard or Dr. Apodaca. In addition, Carney rescinded his agreement for Probst to have expanded parenting time following the previously discussed safety issues at her home. In light of the foregoing, we conclude that Probst fails to demonstrate that the court improperly delegated its decision-making authority, and therefore, Probst is not entitled to relief based on this argument.

Second, Probst argues the district court abused its discretion by rejecting her claim that Dr. Coard and Dr. Apodaca were biased against her. Again, this court reviews district court decisions concerning child custody for an abuse of discretion. *Ellis*, 123 Nev. at 149, 161 P.3d at 241. In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Here, the district court reviewed the information concerning Dr. Coard and Dr. Apodaca and the parties, and it found that the doctors did not exhibit any bias or prejudice against Probst. Instead, the court found that Probst had behaved in such a manner that they were no longer able to work with her.

The district court's findings are supported by substantial evidence and we accordingly conclude that the district court did not abuse its discretion by finding that Dr. Coard and Dr. Apodaca were not biased against Probst. *See id.* at 149, 161 P.3d at 241-42.

Third, Probst challenges the district court's decisions concerning parenting time. Probst argues she was improperly deprived of her parenting time and asserts the court should have awarded her

additional time to compensate her for that lost time. She also contends the court's findings were not supported by substantial evidence and it failed to consider problems that arose in Carney's home. In addition, she argues the district court should have permitted her to have parenting time at her home because traveling to Nevada is a financial burden as she resides in California.

Matters of child custody, including parenting time, rest in the district court's sound discretion. *Ellis*, 123 Nev. at 145, 161 P.3d at 241; *see also Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (reviewing a decision concerning parenting time for an abuse of discretion). An order awarding parenting time must define the rights of the non-custodial parent with sufficient particularity. NRS 125C.010. Moreover, a district court may order "the custodial parent to permit additional [parenting time] to compensate for the [parenting time] of which the noncustodial parent was deprived" if the court "finds that the noncustodial parent is being wrongfully deprived of" parenting time with the children. NRS 125C.020(1).

At the evidentiary hearing, Dr. Coard testified at length concerning his interactions with the parties and the children. In particular, Dr. Coard testified concerning sexual abuse committed by Probst's stepson against the parties' youngest child and the parties' safety plan that was meant to protect that child from further abuse. Dr. Coard explained, after a recent visit to Probst's home, the child reported that Probst's stepson had sat next to him and placed his head on the child's shoulder. The child further reported that this made him uncomfortable and that Probst had not stepped in to cause her stepson to cease that behavior. Probst acknowledged

that she had not intervened between the younger child and her stepson, explaining she wanted the child to learn to stand up for himself.

Dr. Coard further explained that he believed such actions by Probst's stepson constituted low-level grooming behavior and Probst's failure to separate the two boys put her son at risk of further sexual abuse. Dr. Coard also explained that Probst had not provided private spaces for the younger child, away from her stepson, in violation of the safety plan. Dr. Coard also noted that there were several additional safety issues reported by the children, including a lack of hot water at Probst's home.

Dr. Coard testified that he explained those potential safety issues to Probst but she reacted defensively and did not address those safety concerns in a satisfactory manner. Dr. Coard testified that he had serious concerns regarding the younger child's safety but noted that Probst minimized the sexual abuse issues and instead focused on relatively less important matters, such as her contention that her home had hot water. Dr. Coard also explained that he had not properly evaluated Probst but he believed she may have mental health issues.

In addition to Dr. Coard's testimony, the parties produced documentary evidence. Those documents included the parties' communications with Dr. Coard and Dr. Apodaca. The documents also included information concerning the sexual abuse issues faced by the younger child and behavioral issues concerning the older child, including her alcohol use and sexual contact with other minors that occurred years prior.

The district court reviewed the evidence presented by the parties and evaluated the best interest factors from NRS 125C.0035(4). Specifically, the court found that the level of conflict between the parties

remained high due to Probst's aggressive communications and it found that Probst was not willing to work with Carney to meet the needs of the children. *See* NRS 125C.0035(4)(d), (e).

In addition, the district court noted Dr. Coard had concerns regarding Probst's mental health and found that Probst thinks about herself rather than the needs of the children. *See* NRS 125C.0035(4)(f). Further, the court found that there were several concerning issues regarding the children's physical, developmental, and emotional needs, including the youngest child being forced to provide his own safety while in Probst's home. *See* NRS 125C.0035(4)(g). Moreover, the court sought to ensure that the children were able to maintain a relationship with each other and found that the younger child had been sexually abused by Probst's stepson, and that Probst was close to being neglectful of the children's needs. *See* NRS 125C.0035(4)(i), (j).

The district court also stated it evaluated the custody matters with a focus on the children's safety. In light of the foregoing findings, the court concluded it was in the children's best interest for the parties to continue to share joint legal custody but for Carney to continue to have primary physical custody. The court also found Probst should exercise unsupervised parenting time, without her stepchildren, in the Reno/Sparks area only, which was in accord with the January 2023 order regarding the parenting time arrangement following the discovery of the sexual contact involving Probst's stepson and the younger child. The court further found that Probst's parenting time should occur on every other weekend, from 2:00 p.m. on Saturdays until 4:00 p.m. on Sundays. In addition, the district court concluded that Probst was not entitled to additional parenting time to compensate for a loss of her time with the children, as it concluded any loss

of parenting time occurred because she failed to comply with the parties' safety plan.

The district court's factual findings made in support of its parenting time 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. While Probst challenges the district court's findings and contends it should not have given weight to Dr. Coard's testimony, 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 its parenting time decisions. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Fourth, Probst argues the district court abused its discretion by requiring her to pay additional costs for a new reunification therapist. This court reviews district court decisions concerning child custody for an abuse of discretion and will affirm the court's factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 241-42. Here, when appointing Dr. Coard and Dr. Apodaca to their roles, the court provided that each party would be responsible to pay their respective portions of the costs, and that those costs may be allocated unequally depending on the nature of the costs and the parties' behavior with the doctors. Probst later sought removal of Dr. Coard as the reunification therapist and, based on the information provided at the evidentiary hearing, the court found Probst was unable to meaningfully work with Dr. Coard and so removed him as the reunification therapist. The court further found, in light of the safety concerns and Probst's behavior, that reunification therapy continued to be in the children's best interest. In addition, the court directed Probst to find

a new reunification therapist to work on this matter and found Probst should pay any costs greater than what the parties had been paying to Dr. Coard.

The record supports the district court's factual findings concerning this issue. In light of the district court's findings, we conclude that Probst fails demonstrate the court abused its discretion. *See id.*; *see also* NRS 125C.0045(1)(a) (stating a district court may "make such an order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest").

Fifth, Probst argues the district court abused its discretion by scheduling the evidentiary hearing in this matter for one day only, as she asserts that was not long enough for her to address all of the issues in this matter. Setting trial dates and arranging a district court's calendar are matters within the discretion of the district court and will not be interfered with absent arbitrary conduct. *Monroe, Ltd. v. Cent. Tel. Co. S. Nevada Div.*, 91 Nev. 450, 456, 538 P.2d 152, 156 (1975). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006) (internal quotation marks omitted).

The district court issued an order in which it noted the issues raised by Probst's motion and scheduled the evidentiary hearing for one day. In light of the record before this court, Probst fails to demonstrate the district court's decision concerning the length of the evidentiary hearing was arbitrary or capricious or exceeded the bounds of law or reason. Moreover, Probst fails to demonstrate prejudice stemming from the district court's scheduling decision in light of the aforementioned findings the

district court made concerning the safety of the children. See *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, “the movant must show that the error affects the party’s substantial rights so that, but for the alleged error, a different result might reasonably have been reached”).

Finally, Probst argues the district court was biased against her and did not objectively consider the evidence. We conclude that relief is unwarranted on this point because Probst 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).

Moreover, the record demonstrates that the district court considered the testimony and evidence 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 Probst is not entitled to relief based on this argument.

In light of the foregoing analysis, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Sandra A. Unsworth, District Judge, Family Division
Kristina Probst
Surratt Law Practice, PC/Reno
Washoe District Court Clerk

²Insofar as Probst 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.