IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL JEFFERY,
Appellant,
vs.
MERLAINA BECKWITH,
Respondent.

No. 89155-COA

ORDER AFFIRMING IN PART, REVERSING IN PART, VACATING IN PART AND REMANDING

Michael Jeffery appeals from a custody decree. Eighth Judicial District Court, Family Division, Clark County; Michele Mercer, Judge.

Jeffery and respondent Merlaina Beckwith were never married but share three minor children, born in 2013, 2014, and 2016, respectively. In September 2023, Jeffery, who lived in Texas, filed a complaint for custody in Nevada seeking sole legal and primary physical custody. Beckwith, who lived in Nevada with the children, filed an answer requesting sole legal and sole physical custody and for Jeffery to have parenting time during spring and summer breaks. She also requested back child support from April 2023 to September 2023.

Beckwith subsequently filed a motion for temporary custody, visitation, and child support, which Jeffery opposed. Following a hearing, the district court granted Beckwith temporary primary physical custody and declared her the school-year parent. Based on one of Jeffery's allegations, the court ordered Beckwith to submit for a drug test and required Jeffery to pay for it. The court also granted a behavioral order requiring the parties to communicate over Our Family Wizard (OFW) and

prohibiting various types of conduct. Although Beckwith submitted for the drug test, Jeffery did not pay for it, and the test was ultimately destroyed.

Jeffery thereafter filed numerous motions to enforce and/or for orders to show cause, alleging Beckwith had violated the behavior order. Ultimately, the district court denied most of Jeffery's motions but granted an order to show cause why Beckwith should not be held in contempt for failing to communicate over OFW and for allegedly threatening Jeffery's spouse. The district court set the matter for an evidentiary hearing on child custody, child support, and the order to show cause.

Prior to the evidentiary hearing, Beckwith filed a motion for an order to enforce and/or for an order to show cause because Jeffery had taken the children to California during his 2024 spring break parenting time and had not returned them, causing them to miss school. Beckwith alleged that he refused to return the children unless she paid for their return trip, but she had not been aware he was taking them out of the state and had not agreed to that trip. Messages between the parties showed, among other things, that Jeffrey moved from Texas to Sacramento without informing Beckwith, did not inform her that he was taking the children to California because she had not asked what their plans were, and intended to keep the children until she booked flights for them. Following a hearing, the district court instructed Jeffery to return the children to Nevada at his own expense, but he failed to do so.

After more than a week had passed, Jeffery had still not returned the children to Beckwith and the district court held another hearing on the matter. Jeffery first told the court that he could not afford to pay for the children's tickets. He then stated he had purchased tickets for the upcoming weekend and revealed that he had purchased an

additional plane ticket for his wife to travel with him, despite earlier stating he could not afford tickets. Upon learning that information and that the children had missed 21 days of school due to Jeffery's failure to timely return them to Nevada, the district court ordered Jeffery to return the children that day at his sole expense. Jeffery complied.

The case proceeded to an evidentiary hearing. The district court heard testimony from both parties and from Beckwith's witness, Myrna Smith, the woman with whom Beckwith and the children resided. Jeffery's three bases for seeking primary physical custody were that Beckwith alienated him from the children by interfering with his communication with them, she lacked stability and was unable to support the children, and the children were not safe in her care. He presented numerous exhibits, many of which contained messages between the parties and between Jeffery and the children that were read aloud at the hearing. Jeffery testified that Beckwith and the children had moved multiple times and that the children were not safe with her because they were left alone and one of their friends had been shot because the person with whom they were living was playing with a gun. Jeffery acknowledged that he did not send Beckwith money to support the children, but testified he paid for "everything" until March 2023 when he moved to Texas, and for groceries, entertainment, clothing, and shoes when the children were with him.

Beckwith testified that the children regularly communicated with Jeffery. She acknowledged that she previously interfered with their communication but testified that she was wrong for doing so, and she had been better about encouraging their communication and keeping the children's devices charged. Beckwith further acknowledged that she "might not be great with stability," but that was due to her having to support three

children as a single parent without any financial support from Jeffery. She had filed a child support case prior to the instant custody proceedings, but Jeffery had never paid child support. Beckwith also explained that, in addition to Jeffery withholding the children following his spring break parenting time, he had also withheld the parties' eldest child for several months in 2022.

Beckwith disputed Jeffery's shooting allegation, testifying that there had been a shooting in the apartment complex they had previously lived in, but she did not know the child victim. Following the shooting, she asked Jeffery to pick up the children, but he sent his brother to pick them up instead. Beckwith had sometimes left the children alone after school for less than an hour. When she asked Jeffery for financial support for after-school childcare, he refused. However, she had moved in with Smith, a 70-year-old family friend, and the children were not left alone in that living situation. Smith corroborated Beckwith's testimony about her living arrangements but acknowledged the children had sometimes been left alone when she went to a nearby grocery store.

Jeffery wanted his wife to testify about Beckwith's interference with his communication with the children and his brother to testify about clothing he had purchased for the children and the shooting incident, although he acknowledged his brother did not witness the shooting. The district court did not allow either witness to testify, reasoning it had heard evidence about Beckwith's interferences from Jeffery and through his exhibits, and did not need to hear from his brother about the shooting.

Following the hearing, the district court entered findings of fact, conclusions of law, and a decree of custody, which, in pertinent part, awarded the parties joint legal custody and Beckwith primary physical

custody. The court awarded Jeffery parenting time in accordance with the court's long-distance holiday and vacation plan and ordered that the receiving parent be responsible for paying for transportation. The court ordered Jeffery to pay Beckwith $1,040 in child support in conformance with the base child support guidelines set forth in NAC 425.140(3) based on his income listed on his financial disclosure form. It also required him to pay $10,400 in constructive child support arrears (in $104 per month increments) for October 2023 through July 2024.

The district court extensively recounted the procedural history of the case and the testimony at the evidentiary hearing. Although the court found both parties "mostly credible," both had inconsistencies in their testimony. The court analyzed the best interest factors, finding most did not favor either party, either because there was no evidence presented, they were inapplicable, or because both parties were at fault for the high level of conflict, poor communication, and inability to cooperate. Because Jeffery had a child with his spouse, the court found the factor relating to the ability of the children to maintain a relationship with any sibling was "neutral, and perhaps slightly favoring Dad." Further, both parents had interfered with the other parent's relationship with the children.

However, with respect to the abduction factor, the district court found it favored Beckwith, "[n]otwithstanding that neither parent has been charged with abduction" because Jeffery withheld the parties' eldest son for several months in 2022 and had failed to return the children after his parenting time for spring break in 2024. The court found Jeffery's "stand-off" with Beckwith during the spring break incident "disturbing to the court" and resulted in the children missing 21 days of school. Further, his actions were not in the children's best interest, demonstrated poor parental

judgment, and showed that the cost of returning them was more important than their education.

The district court concluded that both parties exhibited poor parental judgment but were fit to parent. If both parties lived in Clark County, they would be awarded joint custody; however, because Jeffery lived in California, the district court awarded Beckwith primary physical custody of the children and found it was in their best interest to do so based on the totality of the evidence, the credibility of the parties, and application of the law. This appeal follows.

Jeffery first challenges the district court's award of primary physical custody[1] to Beckwith, arguing the court failed to adequately address the statutory best interest factors and review his evidence against Beckwith. He further contends the court disregarded his concerns and based its determination solely on Beckwith's Nevada residency.

This court reviews a custody determination for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). "An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). A district court's factual findings will be upheld so long as "they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis*, 123 Nev. at 149, 161 P.3d at 242. The district court's sole consideration when determining custody is the best interest of the child. NRS 125C.0035(1); *Ellis*, 123 Nev. at 149, 161 P.3d at 242. When evaluating a child's best interest, the district court must

[1]Jeffery does not challenge the joint legal custody determination.

consider all twelve factors set forth in NRS 125C.0035(4), and a written custody decree must contain findings regarding those factors and tie the findings to the ultimate custody determination. *Davis v. Ewalefo*, 131 Nev. 445, 450-51, 352 P.3d 1139, 1143 (2015).

Here, the findings in the custody order and transcripts from the evidentiary hearings demonstrate that the district court gave due consideration to the issues and evidence before it and awarded Beckwith primary physical custody for appropriate reasons—in particular, its determination that doing so was in the children's best interest. *See* NRS 125C.0035(1); *see also Davis*, 131 Nev. at 451, 352 P.3d at 1143. That determination was based on an evaluation of the best interest factors, which was supported by substantial evidence, and provided an adequate explanation for its decision that, although both parents were fit, it was in the children's best interest for Beckwith to have primary physical custody, thereby undermining Jeffery's contention that the award was based solely on Beckwith's Nevada residency.

Following an evidentiary hearing at which both parties presented conflicting evidence, the district court issued a written order setting forth its findings and conclusions. Specifically, the court found that certain best interest factors were inapplicable, neither party presented evidence regarding certain factors, and many factors were neutral and favored neither party because both exhibited poor parental judgment and contributed to the ongoing conflict and communication issues between them. Nevertheless, the court found the abduction factor favored Beckwith based on Jeffery's conduct with the children. He had withheld the eldest child from Beckwith for several months in 2022 and refused to return the children following his spring break parenting time. Further, certain aspects

of his testimony undermined his credibility, such as his failure to follow through with paying for the drug test that he demanded and his insistence that he could not afford plane tickets, despite purchasing an additional ticket for his wife. The court concluded both parties were fit to parent notwithstanding their poor judgment. However, although there is a preference that joint physical custody is in a child's best interest if certain conditions are met, NRS 125C.0025(1), the court ultimately found that because the parties lived in separate states, they could not share joint physical custody and determined it was in the children's best interest to remain with Beckwith. *See Roe v. Roe*, 139 Nev. 163, 173, 535 P.3d 274, 286 (Ct. App. 2023) (explaining that joint physical custody is the preferred arrangement and that a district court should make findings when imposing an alternative arrangement).

Moreover, contrary to Jeffery's assertion that the district court failed to review his evidence, the written order extensively recited the testimony, and the transcript reveals the court read many of his exhibits aloud and asked questions based on their contents, thus demonstrating it considered his evidence. Although Jeffery believes his evidence was sufficient to show he should have been the primary custodial parent, he fails to acknowledge that there was unfavorable evidence presented against both parties. Jeffery essentially argues that his evidence was more persuasive than Beckwith's and the court improperly ruled against him. However, this court does not reweigh the evidence or reevaluate witness credibility on appeal. *See Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh the evidence on appeal); *see also Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal). Thus, because both parties presented evidence which "a reasonable

person may accept as adequate to sustain a judgment," *Ellis*, 123 Nev. at 149, 161 P.3d at 242, and the district court weighed the evidence and analyzed the best interest factors, we see no basis to conclude the district court abused its discretion in awarding Beckwith primary physical custody.

Next, Jeffery argues the district court abused its discretion by excluding his brother and wife from testifying and allowing Beckwith's undisclosed witness, Smith, to testify. The district court has broad discretion in deciding whether to admit or exclude evidence. *Abid v. Abid*, 133 Nev. 770, 776, 406 P.3d 476, 481 (2017). NRS 48.035(2) allows the district court to exclude relevant evidence if its probative value is substantially outweighed by the needless presentation of cumulative evidence.

With respect to excluding Jeffery's wife and brother as witnesses, the district court essentially concluded that their testimony was cumulative. *See id.* Jeffery explained to the court that his wife would testify regarding Beckwith's interference with his communication with the children and withholding their devices. The court determined it did not need to hear her testimony on those subjects because it heard that information from Jeffery's testimony and extensive exhibits. The court similarly stated it did not need to hear Jeffery's brother's testimony after Jeffery explained that, while his brother was not a witness to the shooting, he would testify that he picked up the parties' children following that incident and that Jeffery purchased the children clothing and "entertainment." Beckwith agreed that Jeffery had purchased the children clothing and testified that his brother picked up the children at her request following the shooting in her apartment complex. Given that the evidence Jeffery wished to present through his witnesses had been presented by the

parties themselves, we discern no abuse of discretion from the district court's decision to exclude such testimony. *See Abid*, 133 Nev. at 772, 406 P.3d at 478; *see also* NRS 47.040(1) (providing error may not be predicated on a ruling excluding evidence unless a substantial right is affected).

Further, although Jeffery is correct that Beckwith failed to disclose Smith as a witness, he failed to object to her testimony during the evidentiary hearing, so he has forfeited any such challenge on appeal. *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."). We note, however, that while generally a party may not use a witness at a hearing or trial if she fails to identify the witness, that failure may be excused if it is harmless. NRCP 37(c)(1) (providing that evidence not timely disclosed may still be admitted if the party provides substantial justification for the late disclosure or the late disclosure is harmless). Jeffery has not explained how the outcome of the hearing would have been different had Smith not testified about Beckwith's living arrangements, so even if we were to consider this contention, he has failed to establish that relief is warranted on this basis. *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"); *see also* NRS 47.040(1) (providing error may not be predicated on a ruling admitting evidence unless a substantial right is affected).

Next, Jeffery challenges the district court's award of child support, child support arrears, and health insurance.[2] "We review decisions regarding child support for an abuse of discretion." *Romano v. Romano*, 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). A district court abuses its discretion when its findings are not supported by substantial evidence, *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018), which is "evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Jeffery argues the district court failed to consider his financial responsibilities and travel expenses in imposing his child support obligation.

"The parents of a child . . . have a duty to provide the child necessary maintenance, health care, education and support." NRS 125B.020(1). "Where the parents of a child do not reside together, the physical custodian of the child may recover from the parent without physical custody a reasonable portion of the cost of care, support, education and maintenance provided by the physical custodian." NRS 125B.030. The Nevada Administrative Code provides a formula for determining a parent's base child support obligation. *See* NAC 425.140. NAC 425.150 allows for the adjustment of the baseline child support obligation in accordance with

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[2]While this appeal was pending, Jeffery filed a motion to modify child support in the supreme court. The supreme court denied the motion to the extent it requested to modify child support on appeal but stated that, to the extent his arguments went to the merits of the child support award, those would be considered with the merits of his appeal. Accordingly, those arguments are addressed herein.

specific needs of the children and the economic circumstances of the parties based on eight enumerated factors, including the cost of transportation of the child to and from parenting time. NAC 425.150(1)(e). Our supreme court recently explained that "[b]ecause transportation costs are specifically enumerated [in NAC 425.150] . . . the district court may not impose transportation costs separately without determining the impact on the overall child support obligation." *Martinez v. Martinez*, 140 Nev., Adv. Op. 73, 559 P.3d 863, 867 (2024).

Here, the district court imposed a child support obligation in accordance with the NAC 425.140(3) (schedule for determining base child support obligation) guidelines and NAC 425.115 (determination of child support obligation in accordance with guidelines) based on Jeffery's financial disclosure form, which indicated his gross monthly income was $4,000. However, the court ordered that the receiving parent pay for travel expenses in a different section of the decree without referencing or including those costs in its child support analysis or considering the specific needs of the children and economic circumstances of the parties. We acknowledge *Martinez* was published following the entry of the decree in this case, so the district court did not have the benefit of that opinion in determining Jeffery's support obligation. Nevertheless, in light of the rule announced in *Martinez*, we necessarily reverse the district court's order with respect to child support and remand for the court to consider the transportation costs in its overall child support analysis. *See Martinez*, 140 Nev., Adv. Op. 73, 559 P.3d at 867. We note, however, that we express no opinion as to whether an adjustment from the base child support obligation is warranted under the facts of this case.

Additionally, to the extent Jeffery contends that he was denied due process because the court did not allow him to explain his financial situation during the evidentiary hearing and "unlawfully" entered an order that deprived him of his income, we conclude that argument lacks merit. Procedural due process requires notice and an opportunity to be heard. *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (internal quotation marks omitted). "Due process is satisfied where interested parties are given an opportunity to be heard at a meaningful time and in a meaningful manner." *Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) (internal quotation marks omitted).

Here, Jeffery does not demonstrate a lack of notice or lack of opportunity to be heard on the child support issue. Beckwith requested child support in her answer and subsequent motions, so he was on notice that child support was an issue the court needed to resolve. Moreover, the record does not support Jeffery's contention that the court did not allow him the opportunity to be heard. The court asked for Jeffery's response to Beckwith's testimony that she provided for the children financially without his assistance. In doing so, Jeffery did not mention any financial constraints and instead insisted he paid for "everything," focused on how much he had spent on the children, and referenced his exhibits regarding his bank accounts, how he took the children "to all these places," and purchased groceries and clothing when they were with him. Given that he had notice and the opportunity to be heard at the evidentiary hearing, Jeffery has failed to demonstrate the district court violated his due process rights.

With respect to child support arrears, Jeffery contends that obligation was based on inaccurate income, which he argues was reduced

from October 2023 to March 2024. Under NRS 125B.030, district courts have discretion to award child support arrears for the "reasonable portion of the cost of care, support, education and maintenance provided by the physical custodian." *See* NRS 125B.030.

In this case, the district court ordered Jeffery to pay Beckwith constructive child support arrears for October 2023 through July 2024. While the district court had discretion in imposing child support arrears, the parties referenced a previously-opened child support case and the court made a factual finding in the decree that in August 2023, the Nevada Department of Health and Human Services, Division of Welfare and Supportive Services filed a notice and finding of financial responsibility to enforce or adjust an existing order to establish an obligation. This notice is not contained in the record, but the court's finding indicates there was a preexisting child support obligation in place for the time period it imposed constructive arrears. If there was an existing obligation in place, the court could not modify the amount of child support that had accrued. *See* NRS 125B.140(1)(a) (providing that child support stemming from a court order is "a judgment by operation of law on or after the date a payment is due" and "[s]uch a judgment may not be retroactively modified or adjusted"). Because the record is silent as to the amount of the preexisting support obligation, we vacate the district court's imposition of constructive child support arrears and remand for the court to make findings in connection with the preexisting order. If, after the court makes findings, the amount of arrears does not change, then the original order can be reinstated.

With respect to health insurance, Jeffery contends that the district court abused its discretion by requiring him to obtain health insurance for the children because he works part time and is not eligible for

health insurance and, in any event, his employer's health insurance is not available in Nevada.

Although this issue was not addressed below, NAC 425.135(1) requires orders relating to the support of children to include provisions that medical support is required to be provided for the children and any details relating to that requirement. The custody decree provides that Jeffery shall cover the children through private health insurance but acknowledges the court did not receive evidence on this issue. A review of the parties' various filings in this case reveals that both expected the children to obtain health insurance through Medicaid. Under these circumstances, and because there was no evidence presented or discussion relating to health insurance at the hearing, we necessarily conclude the court's order in this respect is not supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. We therefore reverse the district court's health insurance determination and remand for further proceedings on this issue.

Finally, Jeffery argues the district court exhibited bias against him based on various statements and actions taken during the course of the underlying proceedings. Having reviewed the record, we conclude relief is unwarranted based on this argument because Jeffery has not demonstrated that any alleged bias was based on knowledge acquired outside of the proceedings, and the challenged decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *See 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, which

reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 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) (noting that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano*, 138 Nev. at 6, 501 P.3d at 984.

In sum, we affirm the district court's physical custody determination, but we reverse the court's custody decree as it pertains to child support and health insurance, vacate the decree with respect to arrears, and remand this matter for proceedings consistent with this order.

It is so ORDERED.[3]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[3]Insofar as Jeffery 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.

cc: Hon. Michele Mercer, District Judge, Family Division
Michael Jeffery
Merlaina Beckwith
Eighth District Court Clerk