IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICK J. BRYANT,
Appellant,
vs.
MEGAN SORGET F/K/A MEGAN ALICIA EMDE,
Respondent.

No. 89717-COA



*ORDER OF AFFIRMANCE*

Nick J. Bryant appeals from a district court order modifying child custody and child support. Eighth Judicial District Court, Clark County; Gregory G. Gordon, Judge.

Bryant and respondent Megan Sorget were never married but share one minor child together, S.B., born in September 2013. The original custody order was established in 2015 by stipulation of the parties and provided for joint legal and physical custody of S.B. In December 2020, Sorget sought permission to relocate with S.B. to Michigan, to reside with her husband, John Sorget. However, the district court denied her request. Bryant was awarded primary physical custody of S.B., subject to Sorget having ten weeks of parenting time during summers along with other breaks. The order also allowed Sorget the ability to utilize ten additional days each month with S.B. in Las Vegas upon providing Bryant with notice two weeks in advance. Additionally, Sorget was ordered to pay child support in the amount of $350 per month. Sorget relocated to Michigan to be with John in 2021. However, Sorget and John divorced in February 2024. In March 2024, Sorget relocated back to Nevada. Upon her return, the

parties attempted to negotiate a new custody and parenting time arrangement but were unsuccessful. During that time, Sorget sought to resume a joint physical custody arrangement, which the parties exercised from 2015 through 2021 before she left Nevada.

Thereafter, in June 2024, Bryant moved to modify the custodial schedule due to Sorget returning to Nevada, seeking to adjust the parties' timeshare without changing his primary physical custodian designation. Sorget filed a countermotion, requesting that they resume a joint physical custody schedule similar to what they exercised before she left Nevada. She also asserted that her existing child support obligation would need to be modified due to her changed circumstances. On a temporary basis, the district court ordered the parties to follow an alternating week parenting time schedule and set the matter for an evidentiary hearing for October.

The district court subsequently held an evidentiary hearing concerning child custody and related issues. The evidence presented at the evidentiary hearing included the testimony of the parties, and testimony from Sorget's ex-partner from a different relationship, Tyler Austin, with Bryant and Austin testifying regarding difficulties coparenting with Sorget. Bryant testified to his and Sorget's disagreements over S.B.'s placement and low grade in an accelerated English class. Bryant also testified that Sorget is difficult to coparent with because she will not go along with his desire for S.B. to be evaluated for an Individualized Education Plan, while Sorget testified that she opposed the IEP plan because S.B. was currently in a 504 plan that afforded her assistance in the classroom, including additional time on tests. Bryant asserted that Sorget is unstable as she has moved frequently since 2015. Bryant believed that he should remain the

primary physical custodian, with Sorget being awarded parenting time with the same parenting time schedule that was implemented in Sorget's separate child custody case with Austin. With respect to child support, Bryant argued that Sorget should have income imputed to her, noting that the district court in Sorget's other custody case with Austin imputed income to her.

Conversely, Sorget testified as to her belief that the parties should share joint physical custody. Sorget testified that she believed the parties should be awarded equal parenting time, noting that the current week on/week off schedule was working for S.B. Sorget noted that she and S.B. had a good relationship and that S.B. had good communication with her. She also noted that S.B. had a good relationship with her siblings and stepsiblings. When questioned about S.B.'s grades, Sorget noted that she worked with S.B. during her parenting time to redo work and bring her English grade up. She also testified that after moving back to Nevada, she worked briefly at a bar to financially support herself and her children. However, Sorget testified that she was unable to continue working that job because of having to arrange multiple school pick-ups and drop-offs for her children, as one of her children is special needs. Sorget further testified that she and her ex-husband, John, reconciled and were engaged to be remarried shortly. She further testified that she is not planning to work as she plans to be a full-time parent for her three children on her custodial days, and also cares for John's five children. Sorget also testified that John financially supports her.

Subsequently, the district court entered a written order modifying physical custody to joint physical custody. The court concluded

that 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. Specifically, the court found that Sorget's relocation back to Nevada was a substantial change in circumstances, and S.B.'s well-being would continue to improve as a result of Sorget's return. The district court also found that several of the best interest factors set forth in NRS 125C.0035(4) favored awarding joint physical custody.

Based on the evidence presented and its findings, the district court concluded it was in the child's best interest to award the parties joint physical custody. The court ordered that the parties exercise an alternating-week custody schedule. With respect to child support, Bryant was ordered to pay Sorget $500 per month. This amount was calculated based on Bryant's gross monthly income of $7,498.37, while Sorget is not working. The court did not impute income to Sorget, finding she had good cause to be unemployed. The court noted that while Bryant's obligation would be $1,080 per month under NAC 425.115(3), it was appropriate to adjust his child support obligation because Sorget's household income was approximately $10,000 per month based on how much John makes. Thus, Bryant's child support was set at $500 per month. This appeal followed.

On appeal, Bryant first challenges the district court's decision to modify physical custody, arguing Sorget failed to establish a substantial change in circumstances and that the minor child's best interests were not served by the modification. He further asserts the court's findings were not supported by substantial evidence. Conversely, Sorget asserts the district court properly exercised its discretion in modifying custody.

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. 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, 983 (2022) (internal quotation marks omitted), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404, 535 P.3d 1167, 1171 (2023).

The district court first determined that there had been a substantial change in circumstances affecting the welfare of the child since the entry of the previous custody decision. Specifically, the court found that Sorget's relocation back to Nevada was a substantial change in circumstances, that her return allowed for an increase in her parenting time with S.B., that S.B. now had more frequent and regular contact with Sorget, that Sorget was now more available and accessible to participate in S.B.'s

daily routine, and that S.B.'s well-being would continue to improve as a result of Sorget's return. While Bryant disputes that Sorget established that a substantial change in circumstances had occurred, the court's findings are supported by substantial evidence in the record, and thus, we are unpersuaded by his argument in this regard. *See Ellis*, 123 Nev. at 151, 161 P.3d at 243 (holding that a change in the circumstances of the child or the family unit as a whole is considered in making a change of circumstances determination); *Hayes v. Gallacher*, 115 Nev. 1, 7, 972 P.2d 1138, 1141 (1999) (recognizing that a party's relocation can constitute a substantial change in circumstances warranting a reexamination of custody based on the child's best interest).

Although Bryant argues that Sorget failed to present testimony to establish a change in circumstances, as the only evidence she testified to was with respect to S.B.'s English grade and that S.B. deserved time with both parents, as noted above, Sorget testified that she believed the parties should be awarded equal parenting time because the temporary, alternating-week parenting time schedule was working for S.B. noting that the parties had successfully exercised joint physical custody prior to Sorget moving out of Nevada. Specifically, Sorget testified as to her good relationship with S.B. and S.B.'s relationship with her siblings and stepsiblings. She noted that while S.B. would talk to her about things S.B. did not feel comfortable talking to Bryant about, Sorget would attempt to encourage her to find ways to express herself to Bryant. Sorget further testified that since her return to Nevada, the parties had jointly attended a school function for S.B. without issue. And the district court's findings ultimately determined, based on the testimony presented at the evidentiary

hearing, that S.B. would benefit from the parties exercising a joint physical custodian schedule. Thus, while Bryant attempts to assert that Sorget's proffered reasons to modify custody were insufficient, the district court's conclusion that Sorget's relocation back to Nevada was a substantial change in circumstances is supported by the testimony presented at trial.

Additionally, Bryant suggests that Sorget has failed to establish that having the alternating-week custodial schedule in Nevada will give her more parenting time than the ten additional days per month she could have exercised under the order in place when she relocated to Michigan, but we are not persuaded by this assertion.[1] The district court specifically found that modifying physical custody to joint physical custody increased Sorget's parenting time with S.B. over what was afforded in that order, and that S.B. had the benefit of more frequent, regular contact with Sorget. Thus, for the reasons noted above, we conclude the district court properly determined that there had been a substantial change in circumstances affecting the welfare of the child that supported modification of the prior custody arrangement.

Moreover, we are not persuaded by Bryant's assertion that the district court failed to account for the child's best interest, as the court considered the enumerated best interest of the child factors under NRS 125C.0035(4) and found the following factors favored Sorget and her request

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[1]Nor are we persuaded that Sorget was required to establish that she used all the custodial time available to her while in Michigan before she could demonstrate that the relocation to Nevada was a substantial change in circumstances, given that her presence in Nevada with the child would make the exercise of custodial time far easier.

to modify custody to joint physical custody: "[t]he level of conflict between the parents," "[t]he ability of the parents to cooperate to meet the needs of the child;" and "[t]he physical, developmental and emotional needs of the child." *See* NRS 125C.0035(4)(d), (e), (g). The district court found that there is a high level of conflict between the parties, but that this conflict was primarily due to Bryant's actions. Although Bryant points to portions of his testimony to suggest that Sorget is unable to coparent with him, disrespects his relationship with S.B., and creates conflict, the court was not persuaded by these assertions and found that Bryant would blame Sorget for their respective disagreements. As a result, the court concluded that the conflict factor favored Sorget. *See* NRS 125C.0035(4)(d).

The district court further found that a joint physical custody arrangement would allow both parents to more frequently and regularly participate in meeting S.B.'s needs. Considering the aforementioned findings, the court concluded that it was important for both parents to cooperate to meet the child's needs, and the cooperation factor thus favored Sorget and her request to adopt a joint physical custodial arrangement. *See* NRS 125C.0035(4)(e).

With respect to the parents' ability to meet the physical, developmental and emotional needs of the children factor—NRS 125C.0035(4)(g)—the district court determined that this factor weighed heavily in its analysis and favored Sorget's request for joint physical custody. Specifically, the court found that it was critical to S.B.'s emotional and psychological well-being that she have frequent, regular contact with both parties. The court further noted that S.B. had just begun middle school

and her continued development during this stage would be enhanced by consistent involvement by both parties.

Aside from these best interest factors that the district court found weighed in favor of Sorget's request to modify physical custody, the court concluded that the remaining factors were either not applicable or neutral. Furthermore, the court found that because Sorget has returned to Nevada and based upon the close relationship she maintains with S.B., it was the court's determination that S.B. "will benefit from having the ability to maintain substantial and regular contact with both of her parents."

We conclude that the district court's findings as to the above factors are supported by substantial evidence in the record, particularly the testimony presented at the evidentiary hearing. *Ellis*, 123 Nev. at 149, 161 P.3d at 242. To the extent Bryant challenges the district court's factual findings and contends it should not have found that modification of physical custody was in the child's best interest, his arguments in this regard do not provide a basis for relief.

He also asserts that the district court mistakenly was not persuaded by his arguments with respect to Sorget's alleged instability. However, the district court considered Bryant's argument with respect to Sorget's alleged stability and specifically found that "the moves she was forced to make since returning to Nevada do not disqualify her from maintaining custody nor do they diminish the importance of her relationship with [S.B.] and her presence in [S.B.'s life.]" While Bryant is dissatisfied with how the district court weighed the evidence and testimony in determining the child's best interest, this court does not reweigh the evidence or witness credibility determinations on appeal. *See Grosjean v.*

*Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009); *Roggen v. Roggen*, 96 Nev. 687, 689, 615 P.2d 250, 251 (1980) (noting that it "is not the duty of a reviewing court to instruct the trier of facts as to which witnesses, and what portions of their testimony, are to be believed"). Nor will we question a district court's resolution of a factual issue where conflicting evidence is presented. *Morrison v. Rayen Inv., Inc.*, 97 Nev. 58, 61, 624 P.2d 11, 13 (1981) (noting that it is the purview of the trier of fact to resolve conflicts in testimony).

To the extent Bryant argues that the district court failed to take judicial notice of Sorget's proceedings with Tyler Austin in her other custody action, which would have allegedly evidenced how difficult Sorget is to coparent with, we are likewise not persuaded by this argument. Tyler Austin testified at the evidentiary hearing regarding the other custody action, and the district court did consider this evidence. Specifically, the court found that Bryant and Austin would conflate their respective disagreements and issues with Sorget. Furthermore, the court ultimately determined that Bryant was more responsible for the parties' conflict than Sorget, and that finding is supported by substantial evidence. Accordingly, we discern no abuse of discretion in the district court's examination of the child's best interest. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. Therefore, we affirm the district court's modification of physical custody.

Next, Bryant argues that the district court abused its discretion in finding that he was required to pay $500 per month in child support. On appeal, he challenges the child support award based on the court's failure to impute income to Sorget, to properly calculate the award, to correctly calculate her monthly income, and to state the basis for its decision.

Conversely, Sorget suggests that the court's findings with respect to her good cause reasons for being unemployed were correct because of the time she spends caring for S.B. and the children from her relationship with Austin.

This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington,* 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). This court will not disturb the factual findings underlying a child support order if they are supported by substantial evidence. *Miller v. Miller,* 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018). This court "leave[s] witness credibility determinations to the district court and will not reweigh credibility on appeal." *Ellis*, 123 Nev. at 152, 161 P.3d at 244. District courts are authorized to impute income to an obligor if the court determines the obligor is underemployed or unemployed without good cause. NAC 425.125; *Rosenbaum v. Rosenbaum,* 86 Nev. 550, 554, 471 P.2d 254, 256-57 (1970) (holding that a district court may impute income to a party that "purposefully earns less than his reasonable capabilities permit"). The key issue is the good faith of the parent. *Rosenbaum,* 86 Nev. at 554, 471 P.2d at 257.

In this case, the district court found that the modification of physical custody necessitated modification of the child support order. At the evidentiary hearing, Bryant requested that the district court impute to Sorget the same income that the district court in her custody case with Austin did. Sorget testified that she cares for S.B. and her two children with Austin, including a child with cerebral palsy among other special needs, and John's five children, and that while she does not have full custody of her children, the needs of the children when in her care render

her unable to work outside the home. The district court found Sorget's testimony credible that she is unable to work due to caring for all the children. Sorget's testimony provided substantial evidence for the district court to conclude that she had good cause for not working. Accordingly, the district court did not abuse its discretion by finding that Sorget had good cause for her unemployment and declining to impute income to her under NAC 425.125.

To the extent Bryant asserts that the district court failed to adequately explain how it derived the $500 per month child support amount, we are not persuaded by this argument. A child support order "must be based on the obligor's earnings, income and other evidence of ability to pay" and there is a rebuttable presumption that the basic needs of the child are met by the support guidelines established by NAC Chapter 425. NAC 425.100(1), (2). If the court deviates from the child support guidelines, it must set forth findings of fact as to the basis for the deviation and set forth the amount that would have been established under the guidelines. NRS 125B.080(6); NAC 425.115; *Jackson v. Jackson,* 111 Nev. 1551, 1554, 907 P.2d 990, 992 (1995). Failure to set forth those findings constitutes reversible error. *Anastassatos v. Anastassatos*, 112 Nev. 317, 321, 913 P.2d 652, 654 (1996); NAC 425.150(1).

Here, the district court's order made sufficient findings to support the $500 per month child support amount. The court determined that Bryant earns $7,498.37 per month. The court further found that Sorget does not work, and as noted above, declined to impute income to Sorget. Thus, the court determined that Bryant's child support obligation under the guidelines was $1,080 per month. *See* NAC 425.115(3). The court

subsequently found it appropriate to adjust Bryant's child support obligation based upon the "relative income of both households" as well as Sorget's "legal responsibility to support her other two children." As a result, the district court adjusted Bryant's child support obligation to $500 per month.

And while Bryant challenges the district court's findings with respect to Sorget's household income, the court's findings reflect that it properly considered the documents presented and the testimony from the parties when adjusting Bryant's child support obligation. Under the facts of this case, a reasonable mind could accept that there was sufficient evidence presented to support the district court's child support findings, which ultimately reduced Bryant's child support obligation to $500 per month. Therefore, we conclude that the child support award was supported by substantial evidence. *See Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (providing that district court determinations that are supported by substantial evidence will not be disturbed on appeal).

Insofar as Sorget contends on appeal that she is no longer with John, which appears to have occurred after the evidentiary hearing, and submits that the district court must recalculate the child support amount, these claims were not raised before the district court in the first instance, and we decline to consider them on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (recognizing that arguments not raised in district court generally will not be considered for the first time on appeal); *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the

first instance."). Nevertheless, Sorget's contentions may be raised before the district court as a possible basis to modify the child support amount prospectively. *See Romano,* 138 Nev. at 7, 501 P.3d at 985 ("A district court may modify a child-support order if there has been a change in circumstances and the modification is in the child's best interest."), *abrogated on other grounds by Killebrew*, 139 Nev at 404, 535 P.3d at 1171.

Therefore, we affirm the district court's modification of physical custody and child support determinations.

It is so ORDERED.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Gregory G. Gordon, District Judge
Leavitt Family Law Group
Megan Sorget
Eighth District Court Clerk

[2]Insofar as Bryant has raised 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.