IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN YANG,
Appellant,
vs.
WENNA YANGHU,
Respondent.

No. 90514-COA

ORDER OF AFFIRMANCE

Sean Yang appeals from a district court decree of divorce. Eighth Judicial District Court, Family Division, Clark County; Charles J. Hoskin, Judge.

Sean Yang and Wenna Yanghu were married on May 6, 2015, and have one child, V.Y., who was born on December 5, 2016. Sean, Wenna, and V.Y. lived in a home with both Sean and Wenna's parents in Clark County, Nevada. Sean and Wenna separated on October 7, 2023, after a confrontation during which Sean's mother threatened Wenna with a knife. Wenna left the marital home with V.Y. and her parents. Wenna also transferred V.Y. from Alamo Elementary School to Lowman Elementary School.

Wenna filed for divorce on October 17, 2023, and subsequently moved for temporary primary physical custody. The court awarded both Wenna and Sean temporary joint legal custody. It recognized that Wenna had de facto primary physical custody after moving out of the marital home in response to a threat from Sean's mother. The district court awarded Wenna temporary primary physical custody and awarded Sean parenting

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time on Thursdays and Fridays from 4:00 p.m. to 8:00 p.m. The district court indicated it was willing to expand Sean's parenting time if he exercised it and wanted more moving forward. The district court rejected Sean's request to return V.Y. to Alamo as it was not in her best interest to transfer mid-semester.

Sean filed a motion to return V.Y. to Alamo on February 22, 2024. He asserted that Wenna misled the district court into believing that V.Y. attended Lowman since the separation, but instead Wenna enrolled V.Y. in Dearing Elementary School for a month before enrolling her in Lowman. Sean also asserted that V.Y. was accustomed to Alamo, had friends at Alamo, and Alamo was a ten-minute walk from Sean's home. He contended Lowman was not chosen with careful consideration and was rated lower than Alamo. Wenna opposed the motion acknowledging that she had to change schools twice due to available housing. Wenna insisted that V.Y. had many friends at Lowman and loved her teacher there.

At the hearing on this motion, the district court recognized that it had already ruled that it was not in V.Y.'s best interest to move schools midsemester. It was not inclined to reconsider that ruling unless additional evidence was introduced. However, school choice would ultimately be decided later at a trial.

Later, the district court conducted a trial concerning the property settlement, support, custody, and school choice. Both Sean and Wenna testified at the trial concerning their relationship and communication with each other and V.Y. They also testified about the state of Sean's home, the events that preceded Wenna and V.Y. leaving the residence, and V.Y.'s progress since moving schools.

In March 2025, the district court entered its findings of fact, conclusions of law and divorce decree. The order recognized that Wenna had de facto primary custody of V.Y. since the separation in October 2023, when she and V.Y. left the marital residence after Sean's mother threatened Wenna. The court noted Wenna's concerns about the cleanliness of Sean's residence and found that Wenna introduced credible evidence that Sean's parents served spoiled food when they lived together. It also found that the majority of parenting was done by Wenna when she lived with Sean and Sean did not request any contact with V.Y. after they left.[1] Additionally, Sean did not ask for additional parenting time after the temporary order issued, did not consistently exercise the parenting time he was afforded, and did not seek overnight parenting time. And, according to Wenna, some of that parenting time was exercised by Sean's parents. The district court also noted Wenna testified she sought primary physical custody so she could be a source of stability for V.Y.

The district court presumed that both parents demonstrated efforts to establish a meaningful relationship with V.Y., but Wenna testified Sean never spent much time with V.Y. The court found the testimony showed that Sean and Wenna worked different shifts and grandparents supplemented Sean's childcare efforts. The court noted that Sean could help V.Y. with homework and it believed he was able to care for her. Although Sean sought joint physical custody, the court concluded he failed to address how joint physical custody served V.Y.'s best interest. The court

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[1]Sean pointed to online messages asking for visits after the separation that were included in the motion practice preceding the temporary custody order but he did not introduce these at the evidentiary hearing.

found that Sean failed to establish he was capable of adequately caring for V.Y. for at least 146 days of the year.

The district court reviewed NRS 125C.0035(4)'s best interest factors and found that those factors favored granting Wenna primary physical custody. The court found that, based on Wenna's testimony about complying with Sean's court-ordered parenting time and Sean's failure to demonstrate any examples of parental cooperation, Wenna was more likely to allow V.Y. to have frequent associations and a continuing relationship with Sean and Wenna was more likely to cooperate on parenting issues. Regarding V.Y.'s physical, developmental, and emotional needs, the district court found this favored Wenna because she had been V.Y.'s primary custodian since the separation. While Sean indicated that he has helped V.Y. with homework and other issues, he did not acknowledge any additional needs that he addressed. The court also found that the nature of the relationship with each parent favored Wenna based on her testimony that she has a close relationship with V.Y. and the fact that V.Y. had not requested to see Sean. Additionally, Wenna had been the de facto primary custodian since the separation. While Sean testified that he did what he thought was best for V.Y.'s care, the court noted he presented minimal evidence about his relationship with V.Y. Moreover, although the court found Sean did not engage in domestic violence, it determined the testimony established his mother, who currently resided with Sean, threatened Wenna with a knife, and that information favored Wenna. Lastly, the district court considered evidence that Wenna was responsible for caretaking of V.Y during the parties' marriage.

In light of the aforementioned findings, the district court awarded Wenna primary physical custody and Wenna and Sean joint legal custody. It also denied Sean's request to transfer V.Y. to Alamo after considering the appropriate factors set forth in *Arcella v. Arcella*, 133 Nev. 868, 872-73, 407 P.3d 341, 346 (2017). This appeal followed.

Sean raises several arguments contending the district court abused its discretion in granting Wenna primary physical custody. 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. 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).

When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1). The NRS 125C.0035(4) best interest factors are non-exhaustive and should be considered along with any other relevant information the district court deems significant. *See Ellis*, 123 Nev. at 152, 161 P.3d at 243. While "[j]oint physical custody is the first [arrangement] a court should consider when deciding custody," it "may . . . order primary physical custody" if it determines that joint physical custody is not in the children's best interest. *Roe v. Roe*, 139 Nev. 163, 173, 535 P.3d 274, 286 (Ct. App. 2023).

First, Sean argues that the district court erred in finding that Wenna had become the de facto primary custodian while the divorce was pending. With respect to the period before the temporary custody order, Sean asserts that the record showed that Wenna had refused to allow him to have contact with V.Y. He further asserts that the district court erred in considering the post-temporary custody order period as de facto custody because it was imposed by the court. Additionally, Sean asserts that the district court improperly considered his failure to move to modify the temporary custody order against him and the court improperly placed a burden on him to demonstrate facts related to changed circumstances. He insists that Wenna's testimony that she spent more time with V.Y. during the marriage was not sufficient to find she had spent more time with V.Y.[2]

Here, the district court recognized that, since the parties' separated, Wenna had been the de facto custodian in the divorce decree. To the extent this recognition was based on the period of time between the separation and initial temporary custody determination, it was accurate. Sean did not substantiate his claims at the evidentiary hearing that he requested and was denied parenting time by Wenna prior to the entry of the temporary custody order. Thereafter, Wenna was the primary custodian as determined by the temporary custody order. Thus, to the extent that the district court considered Wenna as the de facto primary custodian for the

[2]To the extent Sean contends that the district court's observation that Sean and V.Y.'s lack of contact for three months constituted an "extended period," we conclude this contention lacks merit. This characterization was made at the temporary custody hearing and Sean did not demonstrate that it factored into the final custody determination he challenges on appeal.

period it granted her temporary primary custody, the court's recognition may have been inaccurate.

However, Sean fails to demonstrate that any error in the district court's consideration of this factor affected his substantial rights as it did not affect the custody determination. *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"). The district court only noted Wenna was the de facto custodian in relation to its consideration of the child's relationship to each parent. According to the court, this factor favored Wenna because Sean produced minimal evidence concerning his relationship with V.Y., Wenna testified she had a close relationship with the child, and V.Y. did not request to see Sean. The district court determined these findings, "along with the de facto primary custody schedule" favored Wenna.

Sean's remaining contentions related to recognition of Wenna as the de facto custodian lack merit. In observing that Wenna had been the de facto custodian during the pendency of the proceedings, the district court did not place any burden on Sean to make a showing regarding changed circumstances. Instead, the court considered Sean's efforts to exercise parenting time under the temporary custody order and seek more parenting time by moving to modify the order as indicative of his relationship with V.Y. Sean cites no authority suggesting that the district court improperly relied on his failure to move for additional parenting time in making the final custody determination. *See Edwards v. Emperor's Garden Rest.*, 122

Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by relevant authority). Moreover, temporary custody orders may be reviewed and modified by the district court. *See* NRS 125C.0045(1) (vesting the district court with authority to, "[a]t any time," issue, modify, and vacate orders that concern a minor child's "custody, care, education, maintenance and support" as appears in the minor's best interest). The district court even admonished Sean that it could revisit the temporary custody arrangement if Sean exercised his parenting time and sought more but Sean did not do so.[3] Lastly, the district court's finding that Wenna had been primarily responsible for V.Y.'s care during the marriage was based on Wenna's testimony at the hearing and the court's finding was thus supported by substantial evidence. To the extent Sean offered contradictory testimony, the district court was in the best position to evaluate the credibility of competing testimony. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). Accordingly, Sean failed to demonstrate that the district court abused its discretion.

Second, Sean argues that there was insufficient evidence in the record to support the district court's custody findings regarding: (1) whether he sought contact with V.Y. after Wenna and V.Y. left the home; (2) whether he worked nights and slept instead of cared for V.Y.; (3) whether Wenna was more likely to allow association with Sean than vice-versa; (4) whether Wenna had a stronger relationship with V.Y. than V.Y. had with Sean; and

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[3]Sean had requested overnight parenting time at a pretrial hearing, however, the district court concluded this request was not properly before it because it had not been previously briefed.

(5) whether domestic violence was supported by the record given that no physical contact was shown.[4]

Sean's contentions largely amount to disagreements with the district court's findings regarding the NRS 125C.0035(4) factors and he essentially asks this court to reweigh the evidence considered by the district court to support its findings. This court does not do so. *See id.*; *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"). We further conclude that Sean fails to demonstrate that the district court abused its discretion for the following reasons.

Sean points to messages that were attached to a supplemental motion filed before the preliminary custody determination as supporting his contention that he did seek parenting time before the temporary custody determination. However, Sean did not mention or introduce these messages at the evidentiary hearing. Thus, Sean did not demonstrate that any evidence admitted at the hearing contradicted the district court's findings.

As to Sean's work schedule and care for V.Y. during the marriage, the district court's findings are supported by Wenna's testimony. She testified that when she lived in the marital home, Sean worked nights and slept during the day or scrolled on his phone instead of caring for or playing with V.Y. She also testified that his parents cared for V.Y. instead

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[4]To the extent Sean contends that the court improperly relied on the effect of its own order in finding that the Wenna was the de facto primary custody since the separation, this contention lacks merit for the reasons discussed above.

of Sean. The district court found this credible and Sean points to no evidence in the record suggesting that this finding was clearly erroneous. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080; *Roggen*, 96 Nev. at 689, 615 P.2d at 251.

Regarding the district court's finding as to the likelihood of each parent allowing contact with the non-custodial parent, the court noted that minimal evidence was presented on this issue. But, because Wenna complied with the temporary custody order and, given her efforts to make sure the arrangement set forth in that order continued, the factor favored Wenna. *See* NRS 125C.0035(4)(c). Contrary to Sean's contention, the court did not rely on the custody situation it created with the temporary custody order. Instead, the court's finding was based on Wenna's efforts to continue Sean's parenting time as evidenced by her evidentiary hearing testimony acknowledging he was a good father and her desire to ensure he receive more parenting time.

As to his contention that the finding concerning the strength of the relationship between Wenna and V.Y. was based solely on Wenna's testimony, Sean has not demonstrated an abuse of discretion. The district court was in the best position to weigh the evidence introduced and assess the credibility of the witnesses at the evidentiary hearing. It could properly base its conclusion on Wenna's testimony if it found her credible. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. To the extent he asserts that the district court should have interviewed V.Y., Sean does not assert that he requested that V.Y. be interviewed in the district court. *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).

In addressing the district court's application of NRS 125C.0035(4)(k), the court did not find that either Sean or Wenna engaged in domestic violence against V.Y. or each other. However, it considered Sean's mother's act of domestic violence against Wenna as relevant because Sean lives with his parents. *See Ellis*, 123 Nev. at 152, 161 P.3d at 243. The court found Wenna's testimony about being threatened with a knife by Sean's mother was credible. Even though Sean's mother was not alleged to have struck Wenna with a knife, the district court did not abuse its discretion in finding this conduct constituted domestic violence. *See* NRS 33.018(1) (recognizing assault and coercion as potentially constituting domestic violence). Accordingly, we conclude Sean fails to demonstrate the district court abused its discretion in reaching its factual findings.

Third, Sean argues that the district court abused its discretion in failing to maximize Sean's time with V.Y. Sean argues the court improperly limited his parenting time from Thursdays at 4:00 p.m. until Fridays at 8:00 p.m. He asserts that the testimony at the evidentiary hearing established he did not work from noon on Wednesdays until 4:00 a.m. on Saturdays. Wenna even agreed that Sean's time should be maximized and that he could be a good father. He contends that he complied with the temporary order and the court improperly relied on his failure to exercise overnight visits. He argues that the district court's findings that Wenna indicated his parents exercise his parenting time is not supported by the record.

This court reviews parenting time schedules for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 3, 501 P.3d 980, 982 (2022). Sean's argument cites no authority requiring the district court to "maximize" the time he spends with V.Y. The district court's order acknowledged that Wenna agreed that Sean's time with V.Y. should be maximized but not be equal. The district court's order shows that the district court conscientiously considered the best interest factors and made findings concerning Sean's living arrangement and potential concerns it had with his living situation. The court noted that Sean lived with his parents. The court found that his parents had fed spoiled food to V.Y., Sean's mother had threatened Wenna with a knife, and that Sean's parents were known to care for V.Y. during Sean's parenting time. Notably, the court acknowledged that, considering the instance of domestic violence demonstrated at the evidentiary hearing, the parenting schedule must adequately protect V.Y. The district court further noted Wenna's belief that Sean's parents usually exercised his parenting time but the court did not indicate that it found this testimony accurate and the court did not specifically rely upon that information in allotting parenting time. Given the findings made by the district court, Sean did not demonstrate the district court abused its discretion when making its parenting time decision or that any failure to maximize his parenting time constituted an abuse of discretion. Accordingly, we conclude Sean is not entitled to relief.

Next, Sean argues the district court abused its discretion by rejecting his request for V.Y. to be reenrolled in Alamo. Sean contends that Alamo ranked in the top third of Nevada elementary schools compared to

Lowman's near bottom ranking. He pointed out that even Wenna agreed that she wanted V.Y. to attend a school that met academic standards.

This court reviews a district court's school selection decision for an abuse of discretion. *Arcella v. Arcella*, 133 Nev 868, 870, 407 P.3d 341, 344 (2017). 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 V.Y.'s grades before the separation were less than acceptable and she continued to struggle after the separation. However, her performance has improved since. Although Alamo appeared to be a better school, no information was presented that either school could not meet V.Y.'s educational needs. Wenna credited V.Y.'s improvement to her relationship with her teacher at Lowman; Sean did not provide any evidence about V.Y.'s potential teacher at Alamo. The district court also found Sean appeared to be motivated by a shorter commute to Alamo, but V.Y. will be in Wenna's care most of the school week.

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 Lowman. The 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 Sean 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.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Charles J. Hoskin, District Judge, Family Division
Page Law Firm
Pecos Law Group
Eighth District Court Clerk

[5]Insofar as Sean 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.