IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KYMBERLIE JOY HURD,
Appellant,
vs.
MARIO OPIPARI,
Respondent.

No. 89932-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Kymberlie Joy Hurd appeals from a district court order denying her NRCP 60(b) motion to set aside a stipulated custody decree. Eighth Judicial District Court, Family Division, Clark County; Bill Henderson, Judge.

Kymberlie and respondent Mario Opipari were never married, but have one minor child in common, who was born in 2016 and was diagnosed with Trisomy 21 (Down syndrome). In 2021, Mario initiated custody proceedings, and the district court entered an order awarding Mario sole legal and physical custody of the child and ordered that Kymberlie pay Mario child support and arrears. On appeal from that order, this court reversed the district court's custody and parenting time determinations, vacated its child support determination, and remanded for the court to reconsider its decision in accordance with the guidance set forth in *Roe v. Roe*, 139 Nev. 163, 535 P.3d 274 (Ct. App. 2023), and to fully and properly analyze and apply the best interest factors. *Hurd v. Opipari*, No. 85537-COA, 2023 WL 5423478, *4 (Nev. Ct. App. Aug. 22, 2023) (Order Reversing in Part, Vacating in Part, and Remanding).

26-04619

On remand, in the midst of an evidentiary hearing in early April 2024, the parties reached a settlement agreement concerning custody and placed the terms on the record. The parties agreed to share joint legal custody and for Mario to have primary physical custody with Kymberlie having a designated parenting time schedule. They also agreed to a child support obligation based on the parties' financial disclosure forms on file and the income set forth therein and in accordance with the statutory guidelines, though they did not state the specific amount on the record. Kymberlie was canvassed and testified that she was competent, heard all the terms of the agreement placed on the record, and believed those terms were in the child's best interest. She agreed to be immediately bound by the terms pursuant to EDCR 5.601(d) and that she was asking the court to adopt the terms placed on the record as its order once the parties submit the final decree.

Mario's attorney prepared the stipulated decree, and the district court subsequently entered it, though Kymberlie had not signed it. The terms were substantially similar to what was placed on the record during the hearing but provided that Kymberlie would pay Mario $398 per month in child support based on a "profit and loss statement" attached to her financial disclosure form which listed her ride-share business revenue ($7,472.23) and business expenses ($3,997.00) over a three-month period. Mario took the revenue total, divided it by three, and used that number ($2,490.74) as Kymberlie's gross monthly income. From there, he determined she owed $398 per month in child support. *See* NAC 425.140(1)(a) (stating that the base child support obligation for one child, "[f]or the first $6,000 of an obligor's monthly gross income [is] 16 percent of such income."). Four days after the stipulated decree was filed, Kymberlie filed an NRCP 60(b) motion to set aside, arguing she did not sign the decree,

Mario submitted it to the court without her knowledge, and she had emailed Mario's attorney that she did not agree to any stipulation based primarily on an incident with Mario's wife that occurred on April 27, 2024.

Mario opposed the motion to set aside, arguing Kymberlie was not entitled to relief under NRCP 60(b), the terms of the parties' stipulated agreement were placed on the record in court, and both parties were under oath and specifically testified that they agreed to the terms and that the terms were in the child's best interest. Moreover, he claimed that he sent Kymberlie the proposed decree over a month before it was filed, but she failed to respond to his various follow-up emails requesting her response. Additionally, Mario argued that the proposed decree was submitted to the court prior to Kymberlie's email, though he conceded her email was inadvertently left off the submission to the court.

In reply, Kymberlie alleged the district court coerced her into settling and failed to analyze the best interest factors. She also argued that the child support amount was not placed on the record and was based on her total revenue as an Uber and Lyft driver, not on her gross monthly income. She additionally argued that her child support obligation should have been based on the low-income schedule.

At the motion hearing, the district court orally denied Kymberlie's motion to set aside. Notwithstanding that denial, the parties again negotiated off the record and informed the court that they reached a second agreement to modify parts of the stipulated decree. However, they did not modify the child support provision.

Following the hearing, the district court entered a written order denying Kymberlie's motion to set aside the parties' custody decree. The court concluded Kymberlie failed to provide a sufficient legal or factual basis upon which to set aside the decree, and the only bases for which it could set

aside the parties' agreement were extreme duress, mental incapacity, lack of ability to contract, or other similar reasons, but it did not consider those because Kymberlie did not allege those bases. Further, the court found that the parties requested under oath that the court render the terms of the stipulated agreement effective immediately pursuant to EDCR 5.601(d), both parties were present in court and canvassed under oath, and the parties confirmed the stipulated terms were in the child's best interest. Because the allegations in Kymberlie's motions related to events subsequent to the entry of the stipulated decree, the district court determined Kymberlie was required to raise her issues in a motion to modify rather than a motion to set aside.

The district court subsequently filed the parties' written stipulation and order modifying the stipulated decree of custody, which was signed by Kymberlie, and encompassed the terms placed on the record at the November 2024 hearing. That order provided that "any and all previous orders not specifically addressed herein shall remain in full force and effect." Kymberlie thereafter appealed from the order denying her motion to set aside.

On appeal, Kymberlie primarily challenges the district court's denial of her motion to set aside the stipulated decree. In response, Mario argues that the motion to set aside was properly denied because the stipulated decree was enforceable and Kymberlie failed to demonstrate otherwise.

In Nevada, "[m]atters of custody and support of minor children of parties to a divorce action rest in the sound discretion of the trial court, the exercise of which will not be disturbed on appeal unless clearly abused." *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004) (quoting *Culbertson v. Culbertson*, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975)). We

review a district court's denial of an NRCP 60(b) motion for an abuse of discretion and will uphold the district court's decision to deny an NRCP 60(b) motion if sufficient evidence in the record supports that decision. *Kahn v. Orme*, 108 Nev. 510, 513, 835 P.2d 790, 792 (1992), *abrogated on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997); *Smith v. Smith*, 102 Nev. 110, 111-12, 716 P.2d 229, 230 (1986) (recognizing that this court will uphold the decision of the district court granting or denying an NRCP 60(b) motion if there is sufficient evidence in the record to support the decision). NRCP 60 allows the district court to set aside a final order for various reasons, including fraud, misrepresentation, or misconduct by an opposing party. NRCP 60(b)(3).

A settlement agreement is a contract, and "its construction and enforcement are governed by principles of contract law." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). While this court reviews contract interpretation de novo, "the question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." *Id.* at 672-73, 119 P.3d at 1257. "Parties in family law matters are free to contract regarding child custody and such agreements are generally enforceable if they are not unconscionable, illegal, or in violation of public policy." *Mizrachi v. Mizrachi*, 132 Nev. 666, 671, 385 P.3d 982, 985 (Ct. App. 2016) (internal quotation marks omitted). Contract principles apply when evaluating a stipulated custody order. *Johnson v. Bennett*, 141 Nev., Adv. Op. 35, 575 P.3d 1023, 1029 (Ct. App. 2025). The terms and definitions contained within a stipulated custody order "will control unless and until a party moves to modify those terms." *Id.* at 671 & n.7, 385 P.3d at 985 & n.7.

Having carefully reviewed the record, we conclude the district court did not abuse its discretion by denying Kymberlie's motion to set aside

the stipulated decree as it applied to the physical custody arrangement. The court found that Kymberlie failed to set forth a sufficient legal or factual basis to set aside the stipulated decree and the record supports this determination as it pertained to physical custody. The record shows Kymberlie initiated settlement negotiations with Mario, and the parties went off the record, reached an agreement, and placed the agreed-upon terms on the record, thereby entering into a binding agreement, which was later reduced to a written decree and, therefore, enforceable. *See* EDCR 5.601(b), (d) (allowing stipulations in family law proceedings to be placed on the record in court and providing that, "[a] stipulation adopted by the court shall be binding on the parties immediately, and shall become an enforceable order once written, signed by the court, and filed").

The record further shows Kymberlie was canvassed and testified she was competent, heard all the terms of the agreement placed on the record, and believed those terms were in the child's best interest. *See Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118-19, 197 P.3d 1032, 1042-43 (2008) (explaining that when parties mutually agree to a settlement and the settlement is entered into before the court without any objections from the parties, and reduced to writing in an order, the settlement is enforceable); *see also Harrison v. Harrison*, 132 Nev. 564, 570, 376 P.3d 173, 177 (2016) ("It is the contracting parties' duty to agree to what they intend."). Moreover, the record reveals that Mario's attorney sat next to Kymberlie as he read the terms aloud so that she could follow along and she did not object to the terms during the proceedings. She also agreed to be bound by the terms immediately and was given more than a month to review the proposed decree and failed to raise any objection until after Mario's attorney submitted it to the court, despite his attorney reaching out to her repeatedly for her signature or any proposed alterations.

Despite this, Kymberlie argues the stipulated decree should have been set aside based on misconduct by Mario and his attorney because she did not approve or sign it, it was filed without her permission, and the subsequent April 27th incident justified her essentially reneging on her agreement. However, EDCR 5.601(b) provides that a stipulation may be placed on the record in court, and (d) provides that "a stipulation adopted by the court shall be binding on the parties immediately, and shall become an enforceable order once written, signed by the court, and filed." As such, Kymberlie's assent to the terms in court under oath was sufficient to demonstrate that she approved of the decree, even if she later refused to sign it. *See Grisham v. Grisham*, 128 Nev. 679, 686, 289 P.3d 230, 235 (2012) (upholding the enforcement of the parties' open-court stipulation to a final divorce decree although one party refused to sign the written agreement). Moreover, the April 27th incident occurred after the settlement hearing where the terms were placed on the record, and she has failed to demonstrate that a subsequent dispute provides a basis to set aside the stipulated decree under NRCP 60(b). Rather, Kymberlie should have moved to modify the terms. *See Mizrachi*, 132 Nev. at 671 & n.7, 385 P.3d at 985 & n.7 (providing that the terms of a stipulated custody order "will control unless and until a party moves to modify those terms").

Kymberlie further contends that the district court should have set aside the decree because the court coerced her into stipulating.[1]

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[1]Mario argues that Kymberlie forfeited her coercion argument because she failed to raise it in the district court. However, the record shows she made that argument in her amended reply brief in support of her motion to set aside and raised it at the hearing on that motion. Accordingly, she did not forfeit that issue. *Cf. Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (requiring parties to preserve arguments for appeal by raising them before the district court in the first instance).

Kymberlie argues that the court told her that it would not consider giving her sole legal or primary/joint physical custody in earlier proceedings and "scolded" her throughout the underlying proceedings, which forced her to later consent to terms she did not agree with. However, her various assertions are largely rebutted by the record. The record shows that Kymberlie initiated the settlement discussions with Mario's attorney and the parties negotiated off the record, without the court's involvement. Nothing in the record reflects that she was coerced by the court. *See Coerce*, *Black's Law Dictionary* (10th ed. 2014) ("To compel by force or threat."). Under these circumstances, we conclude that the record supports the district court's decision to deny Kymberlie's motion to set aside the custody arrangement and that the parties reached an enforceable stipulated agreement as to that issue, and we thus discern no abuse of discretion. *See Kahn*, 108 Nev. at 513, 835 P.2d at 792; *May*, 121 Nev. at 672, 119 P.3d at 1257.

Next, Kymberlie argues that the district court failed to analyze the NRS 125C.0035(4) best interest factors and therefore the stipulated decree is legally insufficient. EDCR 5.601(e) provides that "[a] court-adopted stipulation concerning child custody shall be construed as including findings that it is the best interest of the child and is not unconscionable, illegal, or in violation of public policy." It further provides that, "[u]nless otherwise ordered, it shall be construed as a waiver of any additional detailed findings and shall be enforceable without additional specific best interest findings." *Id.* As previously noted and in accordance with EDCR 5.601, the parties entered into a court-adopted stipulation as to the custody of the child, and therefore specific best interest findings were not required. *See* EDCR 5.601(e). Moreover, Kymberlie testified on the record that she understood and agreed that their stipulation was in the child's best interest

and that she waived her rights to the court entering findings of fact and conclusions of law. She has therefore failed to demonstrate relief is warranted on this basis.

Kymberlie next argues that the $398 child support obligation set forth in the decree is incorrect. She contends that, while the parties agreed that she would pay child support to Mario, the parties did not state a specific amount on the record at the settlement hearing such that they did not actually reach a stipulation as to the child support amount. Despite the failure to reach such a stipulation, Kymberlie asserts Mario's attorney included in the proposed custody decree a calculation of her support obligation based on her business revenue without deducting her business expenses, which was a different amount than her gross monthly income. She also argues that her support obligation should have been based on the low-income schedule.

As stated previously, this court reviews child support orders for an abuse of discretion. *Flynn*, 120 Nev. at 440, 92 P.3d at 1227. However, when issuing a child support award, a district court must make "specific findings of fact supported by substantial evidence." *Rivero v. Rivero*, 125 Nev. 410, 431, 216 P.3d 213, 228 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 501 P.3d 980 (2022). Moreover, "deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted). Further, NRCP 60(b)(1) allows the district court to set aside a judgment based on mistake.

Here, the parties agreed at the settlement hearing that Kymberlie would pay child support based on the NAC method of calculation and the income set forth in her financial disclosure form on file, but they did not calculate the exact amount of her monthly obligation, nor was a

specific amount identified at the time the settlement terms were placed on the record. Mario's attorney drafted the proposed decree and calculated Kymberlie's child support obligation at $398 based on the profit and loss statement attached to her financial disclosure form which listed Kymberlie's total revenue and total expenses over a three-month period, using only Kymberlie's revenue and none of her expenses to determine her gross monthly income. This amount was then adopted by the court.

Kymberlie maintained below that the district court should set aside the decree because it mistakenly used her total business revenue as her gross monthly income without accounting for the deduction of her business expenses. Kymberlie argued that her gross monthly income should have been calculated by subtracting her listed expenses ($3,997) from her revenue ($7,472.23) over a three-month period which, which averaged $1,158.41 per month. Moreover, Kymberlie asserted that her obligation should be based on the low-income schedule. *See Fernandez v. Fernandez*, 126 Nev. 28, 37, 222 P.3d 1031, 1037 (2010) (stating that child support should be "set at levels that can be met without impoverishing the obligor parent"); *see also* NAC 425.145(1) (requiring the district court to establish a base child support obligation using the low-income schedule if it determines the obligor's total economic circumstances limit her ability to pay a base obligation in the amount determined pursuant to NAC 425.140). On appeal, Kymberlie essentially argues that the stipulated decree contained a mistake as to the amount of the child support award she was required to pay based on an erroneous calculation of her gross monthly income and therefore should be set aside under NRCP 60(b).

NRCP 60(b)(1) authorizes district courts to set aside judgments based on mistakes. Further, NAC 425.025(1)(n) provides that gross monthly income includes self-employment income "that is calculated after

deducting all legitimate business expenses but without deducting personal income taxes, contributions for retirement benefits, contributions to a pension or other personal expenses." In this case, the district court's order merely concluded there was no basis to set aside the stipulated decree as a whole without specifically addressing whether a portion of the decree should be set aside because a mistake was made in calculating Kymberlie's gross monthly income, which resulted in an incorrect determination of the child support amount. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142.

Based on a review of the record, we conclude that the district court abused its discretion in failing to determine if a mistake warranted setting aside the $398 monthly child support obligation. Because determining the proper amount of child support necessarily involves questions of fact, we reverse the denial of Kymberlie's motion to set aside the amount of child support in the decree and remand to the district court for further proceedings. *See 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."). On remand, the district court must determine what business expenses, if any, should be deducted from Kymberlie's revenue, the amount of her gross monthly income, and whether the low-income schedule should be utilized, all of which are necessary to properly calculate her child support obligation. *See Rivero*, 125 Nev. at 431, 216 P.3d at 228 (explaining that, with regard to child support, the district court is required to make specific findings of fact supported by substantial evidence); *see also* NAC 425.025(1)(n).

Finally, although she explicitly states she is not seeking reassignment to a different judge, Kymberlie argues the district court exhibited bias against her during the underlying proceedings. Having

reviewed the record, we conclude relief is unwarranted based on this argument because Kymberlie 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*, 125 Nev. at 439, 216 P.3d at 233 (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, *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023).

In sum, we affirm the district court's denial of Kymberlie's motion to set aside the decree as it pertains to the child custody arrangement, but reverse and remand for further proceedings to determine Kymberlie's child support obligation. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Bill Henderson, District Judge, Family Division
Kymberlie Joy Hurd
Mario Opipari
Eighth District Court Clerk

[2]Insofar as Kymberlie 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 or need not be reached given our disposition.