



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUGLAS BROFMAN,
Appellant,
vs.
GINA FIORE,
Respondent.

No. 91260-COA

ORDER OF AFFIRMANCE

Douglas Brofman appeals from a final district court order modifying child custody. Eighth Judicial District Court, Family Division, Clark County; Dawn Throne, Judge.

Brofman and respondent Gina Fiore, who were never married, share one minor child, N.B., who was born in 2015. In 2021, the district court entered the original custody decree, which awarded the parties joint physical and joint legal custody. In the original decree, the court noted the parties had a high level of conflict and poor communication which impacted their ability to coparent.

Between 2021 and 2024, the district court was required to enter orders exercising its tie-breaking authority on numerous occasions due to the parties' inability or unwillingness to cooperate on a wide range of issues from medical care to schooling and extracurricular activities. Generally, these orders found Brofman either engaged in passive-aggressive behavior, lacked a reasonable basis for his objections to Fiore's suggestions, or otherwise acted in a manner intended to frustrate or control Fiore.

In 2024, Fiore filed a motion seeking sole legal custody over N.B.'s medical care, education, and extracurricular activities, arguing that Brofman continually refused to coparent on these issues, which delayed N.B.'s medical care or prevented him from participating in sports. Fiore additionally sought primary physical custody, arguing Brofman often took N.B. to school late and that she was primarily responsible for ensuring N.B. went to his medical appointments. Brofman did not file an opposition but did retain counsel and orally opposed the motion at a hearing on Fiore's motion.

Ultimately, the district court scheduled a three-day evidentiary hearing to resolve the motion. Relevant here, both parents testified to the dysfunctional coparenting relationship but accused the other parent of being primarily responsible for the conflict. Brofman maintained Fiore unilaterally made decisions regarding medical care, schooling, and extracurricular activities because she did not respect him as a parent. In contrast, Fiore admitted to occasionally making unilateral decisions but alleged it was because Brofman often refused to respond to her requests or if he did respond, he would oppose her suggestions simply to disagree with her. Additionally, N.B.'s current therapist testified that Brofman indicated he would not coparent with Fiore and instead preferred to parallel parent.¹ The therapist further testified that in his opinion, it would be impossible for the parties to coparent absent extraordinary intervention. Importantly, evidence was

¹Brofman additionally called as a witness N.B.'s former therapist to testify. However, during the former therapist's testimony she acknowledged she had not spoken to N.B. in nearly three years and thus lacked personal knowledge of the current family dynamics.

introduced that the parents' inability to cooperate caused delays in N.B. receiving medical care, including therapy, which negatively impacted him. Similarly, Fiore testified that N.B. was often left in limbo regarding whether he could participate in extracurricular activities with his friends because Brofman would fail to respond to her messages regarding the activities or otherwise refused to agree to them, which caused N.B. to miss out on the activities.

Following the contentious hearing, in July 2025, the district court entered an order finding changed circumstances existed that warranted modifying legal custody and the timeshare arrangement. As part of its findings, the court recounted prior orders entered over the preceding several years wherein the court generally found Brofman engaged in passive-aggressive behavior or opposed Fiore simply to frustrate her. After considering the best interest factors, the court determined it was in N.B.'s best interest to award one of his parents limited sole legal custody and that Fiore was the parent better suited to exercise sole legal custody. Accordingly, the court awarded Fiore sole legal custody over N.B.'s medical care and extracurricular activities but denied her request for sole legal custody over educational issues. Further, the court denied Fiore's request for primary physical custody, electing to maintain a joint physical custody designation, but found it was necessary to modify the parenting time schedule. The court increased Fiore's parenting time, stating week one would be a 5-2 split and week two would be a 4-3 split as the parents would alternate weekends. Brofman now appeals.

Before addressing Brofman's arguments, we must first address which portion of the appeal is properly before this court.

Brofman’s notice of appeal states he is challenging the order modifying custody as well as “all underlying interlocutory and motion orders merged therein.” Additionally, Brofman’s opening brief seeks to challenge the merits of the prior district court orders cited in the July 2025 modification order. However, a review of Brofman’s prior appeals confirms that all but three of the identified orders were previously resolved through prior appeals. *See Brofman v. Fiore* Nos. 83807 & 83865, 2024 WL 655241 (Nev. Feb. 15, 2024) (Order Affirming in Part, Vacating in Part, and Remanding); *see also Brofman v. Fiore*, Docket No. 86673 (Nev. Jul. 11, 2023) (Order Partially Dismissing Appeal, Directing Transmission of Record, and Granting Motion); *see also Brofman v. Fiore*, No. 86673-COA, 2024 WL 5220168 (Nev. Ct. App. Dec. 24, 2024) (Order Vacating District Court Order, Dismissing Appeal in Part, and Affirming in Part). Accordingly, those appellate orders constitute the law of the case, and we cannot consider Brofman’s renewed challenges to the underlying district court orders. *See Tien Fu Hsu v. Cnty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) (“When an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal.” (alteration and internal quotation marks omitted)).

Furthermore, although the May 2022 and April 2023 orders were not addressed in prior appeals, we nevertheless lack jurisdiction to consider them as they were issued more than 30 days before the notice of appeal in this matter and were independently appealable orders. *Healy v. Volkswagenwerk Aktiengesellschaft*, 103 Nev. 329, 331, 741 P.2d

432, 433 (1987) (holding an untimely notice of appeal fails to vest jurisdiction with the appellate courts).²

Accordingly, we address only the merits of Brofman’s challenge to the July 2025 modification order. To obtain a custody modification, the movant must demonstrate “there has been a substantial change in circumstances affecting the welfare of the child” and “the modification would serve the child’s best interest.” *Romano v. Romano*, 138 Nev. 1, 9, 501 P.3d 980, 986 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023). We review a district court’s custody determinations for an abuse of discretion. *See 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). Substantial evidence is “evidence that a reasonable person may accept as adequate to sustain a judgment.” *Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Here, we conclude the district court did not abuse its discretion by concluding Brofman’s ongoing refusal to improve his coparenting or communication constituted a substantial change in circumstances. Namely, evidence introduced at the evidentiary hearing

²Brofman additionally challenges a November 2024 order permitting N.B. to attend a school field trip. Although reviewable in the context of Brofman’s appeal from the July 2025 modification order, we nevertheless conclude Brofman has forfeited the ability to challenge the order as he did not raise his objections before the district court. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating “[a] point not urged in the trial court, unless it goes to the jurisdiction of that court,” is forfeited).

supports the finding that since the entry of the original order establishing joint legal custody, Brofman indicated he would not coparent, instead preferring parallel parenting; and that the refusal to coparent or cooperate on medical decisions delayed N.B.'s medical care and escalated the conflict requiring substantial judicial intervention. Under these facts we cannot say the district court abused its discretion in finding a substantial change in circumstances.

Brofman next contends the district court abused its discretion by awarding Fiore sole legal custody over medical decisions and extracurriculars and that it was instead required to continue employing its tie-breaking authority. District courts have "broad discretionary powers" to determine child custody. *Ellis*, 123 Nev. at 149, 161 P.3d at 241. And "the sole consideration of the court is the best interest of the child." NRS 125C.0035(1). Here, we conclude the district court did not abuse its discretion by finding it would be in N.B.'s best interest to award one parent limited sole legal custody as opposed to continuing to employ its tie-breaking authority. Evidence at the evidentiary hearing demonstrated that because the parents continually required the court to intervene in their disputes, N.B.'s medical care or treatment was delayed, which was not in his best interest. Similarly, evidence submitted demonstrated that the constant litigation was financially taxing on Fiore, who unlike Brofman, paid for her own legal representation, and that this was money she could not use for N.B.'s needs. Accordingly, we conclude substantial evidence supports the district court's conclusion that it would be in N.B.'s best interest to award one parent limited sole legal custody.

Next, Brofman contends substantial evidence does not support the district court's decision to award Fiore limited sole legal custody, or to modify the physical custody arrangement, arguing the court failed to properly credit his evidence, and should not have relied upon its prior findings in other orders. Although Brofman disagrees with the weight the district court accorded to the witnesses' testimony, and believes his evidence outweighed Fiore's, this court does not reweigh the evidence or determine witness credibility. *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). We further note the court was permitted to rely on its prior findings and conclusions when determining whether modification was warranted. *See Nance v. Ferraro*, 134 Nev. 152, 159, 418 P.3d 679, 685 (Ct. App. 2018) (holding "it logically follows that the court's evaluation of whether modification is in the child's best interest will necessarily be informed by [the court's prior] findings and conclusions"). And substantial evidence supports the district court's conclusion that because of the dysfunctional coparenting relationship, which negatively impacted N.B., it was in N.B.'s best interest to award Fiore limited sole legal custody as she was the parent primarily responsible with ensuring N.B. attended medical appointments and arrived at school on time. Nevertheless, the court allowed Brofman to participate in N.B.'s healthcare and extracurricular

activities and to challenge by motion any medical decisions Fiore made.³ The district court also permitted Brofman to continue to share all other aspects of joint legal custody including N.B.'s schooling.

Brofman next contends the district court abused its discretion by designating the custodial arrangement as joint physical custody when the modified parenting time schedule provided him approximately 33 percent of the parenting time.⁴ Although joint physical custody often results in a 50/50 timeshare, the supreme court has long recognized "there must be some flexibility in the timeshare requirement." *Rivero v. Rivero*, 125 Nev. 410, 425, 216 P.3d 213, 224 (2009), *overruled on other grounds by Romano*, 138 Nev. at 6, 501 P.3d at 984. Although *Rivero* established guidelines suggesting that if each parent had the child for at least 40 percent of the time, it would constitute joint physical custody, the supreme court later clarified this was simply a guideline, not a requirement. *Bluestein v. Bluestein*, 131 Nev. 106, 112, 345 P.3d 1044, 1048 (2015). In *Bluestein*, the supreme

³We reject Brofman's contention that the court impermissibly delegated its decision-making authority to N.B.'s current therapist simply by referencing his testimony in its order.

We likewise reject Brofman's contention that the district court modified custody to "penalize [Brofman] for complying with the Court's own orders," as substantial evidence supports the finding that Brofman refused to coparent or otherwise cooperate with Fiore in a reasonable manner.

⁴The district court awarded Brofman parenting time which amounts to 5 days of every 14, which equals approximately 36% of the parenting time. Specifically, week one of the parenting time arrangement consisted of a 5-2 split and week two consisted of a 4-3 split as the parents would alternate weekends.

court reiterated that “the child’s best interest is paramount” and that the 40-percent guideline should not be “so rigidly applied that it would preclude joint physical custody when the court has determined in the exercise of its broad discretion that such a custodial designation is in the child’s best interest.” *Id.* at 112-113, 345 P.3d at 1048-49.

Here, we conclude the district court did not abuse its discretion by designating the custodial award as joint physical custody. First, the timeshare percentage is not so low as to mandate a finding of primary physical custody. Second, substantial evidence supports the district court’s determination that a designation of joint physical custody is in N.B.’s best interest. Here, despite the dysfunctional coparenting relationship and conflict, both parents conceded N.B. has a close relationship with each parent and enjoys being with both parents. Accordingly, the district court did not abuse its discretion in designating the parties’ custodial arrangement as joint physical custody.⁵

⁵We reject Brofman’s contention that the district court’s reliance on its prior orders demonstrates it is biased against him and that this case must be reassigned. As we previously noted, courts are permitted to consider prior findings or conclusions when evaluating a motion to modify custody. *Nance*, 134 Nev. at 159, 418 P.3d at 685. Accordingly, we conclude Brofman has failed to demonstrate reassignment is warranted as he has not demonstrated the court held “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings, which reflects deep-seated favoritism or antagonism that would render fair judgment impossible).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Dawn Throne, District Judge, Family Division
Douglas Brofman
Chesnoff & Schonfeld
Eighth District Court Clerk

Insofar as Brofman 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.