



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAGDALENA OCASIO,
Appellant,
vs.
JONATHAN JORDAN WIRSZ,
Respondent.

No. 87589-COA

MAGDALENA OCASIO,
Appellant,
vs.
JONATHAN JORDAN WIRSZ,
Respondent.

No. 87695-COA

ORDER OF AFFIRMANCE

In these consolidated appeals, Magdalena Ocasio appeals from district court orders awarding respondent Jonathan Jordan Wirsz sole legal custody of a minor child and denying Ocasio's motion to modify custody and relocate the minor child to Nevada (Docket No. 87589-COA), and awarding Wirsz attorney fees and costs (Docket No. 87695-COA). Eighth Judicial District Court, Clark County; Hon. Dawn Throne, Judge.

Ocasio and Wirsz were never married and have one minor child together, M.W., who was born in 2014. Relevant to this appeal, the parties litigated custody at a hearing in 2020, during which Ocasio made false allegations that Wirsz was abusing M.W. Following that hearing, the district court issued a custody order awarding Wirsz primary physical custody and

both parents joint legal custody, with Wirsz having tie-breaking, decision-making authority.

Sometime later, Wirsz moved to relocate with M.W. from Nevada to Idaho. He explained that relocation would benefit himself and M.W. for several reasons, including because he had a business opportunity in Idaho. While Wirsz's motion was pending, the parties reached an agreement on relocation, which the court adopted through an amended stipulation and order (ASAO). Notably, Ocasio agreed Wirsz could relocate, Wirsz would maintain primary physical custody, and the parties would maintain joint legal custody with Wirsz having tie-breaking authority. The parties also waived all rights to reconsideration, rehearing, or appeal as it related to the court's 2020 custody order or the ASAO. Further, the ASAO provided that the prevailing party in any action relating to its validity or enforcement would be awarded reasonable attorney fees and costs. And it included a behavior order guiding the parties' coparenting relationship, including a requirement that they discuss any concerns about M.W.'s welfare with each other before addressing those concerns with a third party.

In 2021, the parties again litigated custody. In response to a custody motion that is not addressed in this appeal, Ocasio filed a declaration asserting that Wirsz procured relocation through fraud because he never engaged in the business opportunity he promised existed for him in Idaho. She also alleged that Wirsz was punishing their daughter by forcing her to eat hot sauce or hot peppers and once even held M.W.'s hands behind her back while doing so. Several months later, Ocasio moved to modify physical and legal custody and for M.W. to relocate back to Nevada. In that motion, Ocasio again asserted that Wirsz's relocation was procured by fraud because he never engaged in the promised business opportunity. Ocasio also raised several

instances of Wirsz allegedly violating the ASAO, including interfering with her Skype parenting time, preventing her from receiving information from M.W.'s school and medical providers, and alienating her from M.W.

The district court denied Ocasio's motion without holding a hearing and Ocasio appealed that decision. This court reversed and remanded the district court's denial of Ocasio's motion to modify custody with instructions for the district court to hold a hearing to consider Ocasio's allegations related to Wirsz limiting her parenting time and alienating her from M.W. *Ocasio v. Wirsz*, No. 84089-COA, 2022 WL 12469761, at *3 (Nev. Ct. App. Oct. 20, 2022) (Order of Reversal and Remand). Despite the reversal and remand, however, this court concluded that Ocasio failed to establish that she was entitled to a hearing on her fraud claims because she failed to provide authority demonstrating that the alleged fraud constituted a substantial change in circumstances. *Id.* at *2. Further, we noted that Ocasio failed to file a motion for NRCP 60(b) relief from the ASAO. *Id.*

Shortly thereafter, Wirsz moved for sole legal custody, to reduce Ocasio's parenting time, and for Ocasio to undergo a psychiatric evaluation. He also filed a motion for an order to show cause seeking to hold Ocasio in contempt for repeatedly violating the ASAO's behavior order, including by failing to share her concerns about his alleged punishments of M.W. before accusing him of abuse in her 2021 declaration. The district court subsequently granted Wirsz's request for an order to show cause and for Ocasio to undergo a psychiatric evaluation. It then set the parents' custody motions and the order to show cause for an evidentiary hearing in April 2023.

In January 2023, Ocasio served Wirsz with a notice of intent to serve *subpoenas duces tecum* on three entities related to Wirsz's business opportunity in Idaho. The proposed subpoenas requested all employment

contracts; any proof of compensation, including his W-2 tax document; all records showing Wirsz's hours; and all written communications regarding his offer of employment, compensation, or terms of employment.

In response to the notice, Wirsz filed a motion in limine, objection, and a motion for a protective order. Wirsz explained that Ocasio had not filed an NRCP 60(b) motion to set aside the ASAO and therefore the details surrounding its creation, including his business opportunity, were irrelevant. Wirsz also asserted that Ocasio should not be given access to the requested documents because she had a history of publicizing his financial information. Ocasio opposed Wirsz's motion.

That same month, the parties served their expert disclosures. Ocasio disclosed Shawn Wygant, a doctoral student in clinical psychology whom Ocasio had consulted with since 2021. Wirsz disclosed Dr. Gregory Brown, a psychiatrist; Dr. Shera Bradley, a psychologist; Dr. Stephanie Holland, a psychologist; and Cindy Freer, M.W.'s therapist in Idaho. Thereafter, Ocasio served her rebuttal expert witness disclosure. It did not include Wygant.

In February, Wirsz moved to compel a psychological evaluation of Ocasio in addition to the psychiatric evaluation the court already ordered. He explained that he was requesting a *psychological* evaluation because the psychiatrist he chose to perform Ocasio's *psychiatric* evaluation, Dr. Brown, hoped to use that evaluation to augment his evaluation. Ocasio opposed the motion. The district court granted Wirsz's request and Ocasio underwent a psychological evaluation with Dr. Bradley that included computerized testing. While Ocasio was still undergoing the evaluation with Dr. Bradley, Dr. Brown completed his expert report. Shortly thereafter, Dr. Bradley withdrew as

Wirsz's expert because she did not have time to complete her report before the hearing.

In March, Ocasio provided her expert Wygant with Dr. Brown's report. In response to that report, Wygant performed his own psychological evaluation of Ocasio and drafted a rebuttal report. Sometime later, Wirsz received Wygant's rebuttal report.

On April 5, about three weeks before the hearing was set to commence, Ocasio moved to compel Dr. Bradley to produce the raw data from her computerized testing. Ocasio also sought a continuance because she did not have certain documents—including Dr. Bradley's report—which she believed were necessary to take all of her desired depositions. Wirsz opposed Ocasio's motion. He explained that Dr. Bradley was unable to complete a report, so he would not be calling her as a witness.

The next day, the district court granted Wirsz's motion in limine and motion for a protective order, and quashed Ocasio's business subpoenas. The court found that none of the three motions scheduled for the evidentiary hearing put the ASAO at issue. The court also found that Ocasio had not filed an NRCP 60(b) motion to set aside the ASAO and that such a motion would be untimely because she first raised the issue of Wirsz's alleged fraud in 2021, and it was now 2023. Consequently, the court found the subpoenas irrelevant. In granting Wirsz's motion, the court also considered Ocasio's previous attempts to interfere with Wirsz's finances and business, which it explained was not a mere allegation but was an act for which Ocasio had already been sanctioned.

On April 11, the district court ordered Dr. Bradley to provide the raw data from Ocasio's computerized testing, but it refused to continue the hearing. The following day, Ocasio filed a combined motion to continue the

hearing and to exclude Dr. Brown. Ocasio argued that Dr. Brown should be excluded because he completed his report without the psychological evaluation he previously asserted he needed. Ocasio added that Dr. Bradley told her that the raw data from her psychological testing was in the normal range, so Ocasio believed that Dr. Brown's opinion would be different if he had that data. Wirsz opposed the motion.

After receiving Wygant's purported rebuttal expert report, Wirsz likewise moved to exclude Wygant as a rebuttal expert witness. Wirsz argued, among other things, that Wygant was never disclosed as a rebuttal expert and therefore Wygant's rebuttal report was untimely. Ocasio never filed an opposition.

One week later, the district court issued an order on Ocasio's renewed motion for a continuance, Ocasio's motion to exclude Dr. Brown, and Wirsz's motion to exclude Wygant. The court denied Ocasio's motions but granted Wirsz's request to exclude Wygant. The court noted that Ocasio did not file an opposition to Wirsz's motion. Moreover, it found that Ocasio had engaged Wygant's services as early as 2021 and knew that Wirsz intended to call Dr. Brown as a witness. Accordingly, the court found that Ocasio's untimely disclosure was unjustified and that permitting his rebuttal testimony would prejudice Wirsz. That same day, Ocasio filed an ex parte motion for a continuance, which the district court again denied.

Less than a week later, on April 24, the evidentiary hearing began. Ocasio, Wirsz, Wygant, Dr. Brown, and Dr. Holland testified over the next several days. During that time, Wirsz denied punishing M.W. using hot sauce or hot peppers. He explained that he first heard about those allegations through Ocasio's court filings and tried to discuss the allegations with her through an electronic message, but she never responded. While Wirsz

acknowledged that his messages to Ocasio may have been too long, he explained that he sent such long messages because he was worried about what Ocasio was going to accuse him of next or how those allegations were going to be used against him. Meanwhile, Ocasio testified that she heard about the alleged hot-sauce and hot-pepper punishment from M.W., but that she may not have shared the allegations with Wirsz as she agreed to do in the ASAO before repeating them in her 2021 declaration.

During his testimony, Dr. Brown likewise testified about Ocasio's failure to discuss the allegations with Wirsz. He also opined that Ocasio had narcissistic personality disorder based on the criteria set forth in the Diagnostic and Statistical Manual Volume Five Text Revision (DSM-5), which he explained was the standard diagnostic tool used by mental health professionals. He explained the symptoms of that disorder, including examples specific to Ocasio, and how those symptoms could interfere with a person's ability to see the needs and perspectives of other people. In addition to that testimony, the parties stipulated to admit Dr. Brown's expert report, which further detailed his diagnosis. Therein, Dr. Brown explained that narcissistic personality disorder typically renders coparenting extremely challenging because people with that disorder tend to blame others for their problems as opposed to perceiving their own contributions.

While Ocasio subpoenaed Dr. Bradley, she did not appear and instead provided Ocasio with a custodian-of-records affidavit to authenticate her raw test data. Ocasio requested the district court accept that affidavit in lieu of Dr. Bradley's testimony. The court did so, expressly permitting Ocasio to use the data to cross-examine Wirsz's experts, Dr. Holland and Dr. Brown. And although Ocasio used Dr. Bradley's raw data to cross-examine Dr. Brown,

she never moved to continue the hearing to compel Dr. Bradley's attendance nor did she object that the court did not do so sua sponte.

Likewise, Freer did not appear. Because Freer lived out of state and was unable to appear remotely, however, Wirsz sought to have her testify via deposition as an unavailable witness under NRCP 32(a)(4). Ocasio disagreed that Freer was unavailable because Freer had appeared remotely for her deposition and could have likewise appeared remotely at the hearing. Despite Ocasio's argument, the district court found Freer unavailable. Thereafter, while Wirsz was entering parts of Freer's deposition testimony into the record, Ocasio objected that some of the deposition questions were leading and that the some of the testimony was impermissible hearsay. But Ocasio did not move the court to continue the hearing or seek any type of alternative relief.

Following the hearing, the district court issued its findings of fact, conclusions of law, final order, and judgment. Importantly, the court found the best-interest factor on the ability of the parents to cooperate to meet the needs of the child favored Wirsz. *See* NRS 125C.0035(4)(e). The court explained that there was little ability for the parents to effectively communicate and cooperate, which was due, in part, to Ocasio's diagnosed condition and Wirsz's hypervigilance resulting from Ocasio's prior false allegations of abuse. It added that the factor favored Wirsz, however, because Ocasio refused to address issues directly with him. The district court commented that the parents needed to learn to cooperate so that if M.W. was lying about being punished with hot sauce, they could work together to address that and teach her the difference between the truth and a lie and the consequences of lying about important matters.

The district court also found the factor on the mental health of the parents favored Wirsz in light of Ocasio's diagnosis by Dr. Brown which the court found credible. *See* NRS 125C.0035(4)(f). The court determined that Ocasio's diagnosis made it difficult for her to coparent with Wirsz. And the court acknowledged that, although Wirsz contributed to that difficulty with his hypervigilance, Ocasio's diagnosis favored Wirsz retaining physical custody and having sole legal custody.

The district court thereafter denied Ocasio's motion to modify custody and relocate M.W. to Nevada. Further, the court maintained Wirsz's primary physical custody and granted him sole legal custody. The court also found Ocasio violated the ASAO by making additional claims of abuse in her 2021 declaration without first discussing those allegations with Wirsz and held her in contempt. The court later denied Ocasio's subsequent motion to amend its judgment.

Around the same time, Wirsz filed a memorandum of costs seeking \$209,115.83 under NRS 18.110. He also filed a motion for attorney fees seeking \$726,456.57 in fees under various statutes, court rules, and the ASAO. His motion was supported by a chart itemizing the various filings, responses, and hearings associated with his fee request as well as a declaration, invoices, and ledgers demonstrating the attorney fees he incurred.

Ocasio filed an opposition to Wirsz's memorandum of costs rather than a motion to retax and settle the costs. She also opposed Wirsz's fee request, arguing that additional discovery was needed to demonstrate the disparity in the parties' income given Wirsz's ability to pay large sums of money to his attorneys while litigating this matter.

The district court found that Wirsz was entitled to reasonable attorney fees under several statutes, court rules, and the ASAO, but

determined “that NRS 125C.250 [did] not support an award of fees” because, in its view, the statute and Nevada’s appellate court decisions had not identified what findings were required to do so. The district court initially determined that it could award Wirsz, at most, \$90,037 in attorney fees. Then, after considering the four *Brunzell* factors,¹ any disparity in the parties’ incomes, the unreasonableness of awarding fees incurred before the 2022 remand, and the applicable invoices, the court found Wirsz was entitled to an award of \$69,214.51.

In reaching that number, the district court declined to consider the parties’ assets and wealth as part of its income analysis. Instead, looking at the parties’ most recent financial disclosure forms, which showed that Ocasio’s gross monthly income was \$9,488.61 while Wirsz’s was \$1,331.10, the court found that, for purposes of determining how much of Wirsz’s fees Ocasio could “be compelled to reimburse him for . . . there is no disparity in income at this time to consider.” The court also declined to award fees incurred before this court’s 2022 reversal and remand order.²

The district court also awarded Wirsz \$85.844.22 in costs that it found were reasonable and necessarily incurred under NRS 18.050. The court noted that, by filing an opposition to Wirsz’s memorandum of costs rather than a motion to retax costs and doing so beyond the time in which a motion to retax

¹*Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (providing four factors for courts to consider when determining the reasonable value of attorney fees: “the qualities of the advocate[,] . . . the character of the work[,] . . . the work actually performed[,] . . . [and] the result”).

²Of the \$726,456.57 in fees Wirsz sought, only \$408,709.65 were incurred following the 2022 remand.

must be filed, Ocasio did “not comply with NRS 18.110(4) in terms of both timeliness and the required procedure.”

Ocasio subsequently appealed the district court’s custody order and judgment in Docket No. 87589-COA and the award of attorney fees and costs in Docket No. 87695-COA, and the supreme court consolidated her appeals.

Docket No. 87589-COA

In challenging the district court’s custody order and judgment, Ocasio presents a variety of arguments regarding both the court’s denial of her motion to modify custody and relocate M.W. to Nevada and its grant of Wirsz’s motion to modify custody. Her challenges to both of these determinations are addressed below.

“[W]e will not disturb the district court’s custody determinations absent a clear 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). 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. “The ‘best interests of the child’ standard is a polestar of judicial decision making in family law matters.” *Monahan v. Hogan*, 138 Nev. 58, 62, 507 P.3d 588, 592 (Ct. App. 2022) (quoting *Schwartz v. Schwartz*, 107 Nev. 378, 382, 812 P.2d 1268, 1270-71 (1991)).

The district court did not abuse its discretion by declining to revisit relocation under the ASAO or allow discovery related to the ASAO

As a primary focus of her appellate arguments, Ocasio contends that the ASAO was procured by fraud and, therefore, the district court should have awarded her primary physical custody and ordered M.W. to relocate to

Nevada. She argues that she should have been permitted to conduct discovery into the alleged fraud, including by serving subpoenas on the entities involved in Wirsz's business opportunity in Idaho, and that the court abused its discretion by entering a protective order prohibiting discovery regarding that opportunity. She contends that this discovery would have informed the court's best-interest analysis regarding her relocation and physical-custody requests.

In addressing these issues below, the district court granted Wirsz's combined motion in limine, motion for a protective order, and motion to quash the subpoenas. The court found that the information Ocasio sought was irrelevant when none of the motions pending before the court put the ASAO at issue, Ocasio had not filed an NRCP 60(b) motion to set aside the ASAO, and such a motion would have been untimely considering she first raised the fraud issue in 2021.

Beginning with Ocasio's argument that the district court abused its discretion by refusing to adjudicate her fraud claim, while the court and the parties focus on the expiration of the time for filing an NRCP 60(b) motion, *see* NRCP 60(b)(c)(1) (setting a six-month time period for filing a motion to set aside an order or judgment based on fraud), we need not address the timing issue because Ocasio never filed a motion for NRCP 60(b) relief from the ASAO and did not otherwise seek to set that order aside. And absent a request for NRCP 60 relief from the ASAO, there was no proper basis for the district court to set aside the ASAO based on Wirsz's purported fraud.

Additionally, this court already concluded that Ocasio was not entitled to an evidentiary hearing on her fraud claim because she failed to provide any authority demonstrating that her fraud allegations warranted a custodial modification and failed to file a motion for NRCP 60(b) relief from the prior custody order. *Ocasio*, 2022 WL 12469761, at *2 (reversing on other

grounds). This determination represents the law of the case on whether the district court was required to hold an evidentiary hearing on the fraud allegations related to the ASAO. *See Geissel v. Galbraith*, 105 Nev. 101, 103, 769 P.2d 1294, 1296 (1989) (discussing the law-of-the-case doctrine), *modified on other grounds by Willerton v. Bassham*, 111 Nev. 10, 17 n.6, 889 P.2d 823, 827 n.6 (1995). Under these circumstances, we conclude that Ocasio cannot demonstrate that the district court abused its discretion by declining to adjudicate her fraud allegations.

Turning to Ocasio's arguments regarding the district court's refusal to allow discovery related to her fraud claim, she maintains that the information she sought to subpoena regarding Wirsz's business opportunity was relevant to assess Wirsz's credibility and thus to any best-interest determination.³ But given Ocasio's failure to move to set aside the ASAO and our prior determination that Ocasio was not entitled to an evidentiary hearing on the fraud issue connected with her motion to modify custody, the discovery she sought through the subpoenas cannot be relevant to her motion to modify on that ground. *See* NRCP 26(b)(1) (authorizing "discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case").

And to the extent Ocasio contends that the discovery related to her fraud claim was relevant to the best-interest analysis for Wirsz's motion to modify physical or legal custody, she fails to develop any cogent argument on

³While Ocasio also asserts that the information she sought through the subpoenas would have been relevant to sanction Wirsz through a modification of custody, this contention is without merit because "a court may not use changes of custody as a sword to punish parental misconduct." *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993).

that point. Notably, while Ocasio asserts that the information she sought went directly to the credibility of Wirsz's asserted reasons for relocating, and thus to the district court's best-interest determination, she does not explain how Wirsz's alleged fraud would have altered the court's findings on *any* of the NRS 125C.0035(4) best-interest factors. In fact, she does not directly challenge any of the court's NRS 125C.0035(4) best-interest findings on those factors with regard to its physical custody analysis.⁴ Nor does she connect the requested discovery to the question of legal custody. And given Ocasio's failure to present any cogent argument on this issue, we need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that the appellate courts need not consider assertions that are not supported by cogent argument).

Similarly, to the extent Ocasio argues that the discovery was relevant to impeach Wirsz's credibility, she does not explain how attacking Wirsz's credibility would have changed the outcome of the case, especially when the district court had other evidence in addition to Wirsz's testimony to consider when deciding custody. Ocasio likewise does not demonstrate how the discovery was proportional to the needs of the case considering the burden production would have had on Wirsz in light of Ocasio's history of misusing his information in the past, where the subpoenas requested his employment records, including his W-2 form. Under these circumstances, we conclude that Ocasio fails to demonstrate that the court's decision to preclude discovery into the business opportunity affected her substantial rights, and thus she is not

⁴Because Ocasio does not directly challenge the district court's physical-custody best-interest findings, any arguments as to these findings have been forfeited. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015).

entitled to relief on this issue. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (“To establish that an error is prejudicial, 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.”).

Based on the reasoning set forth above, we conclude Ocasio has not demonstrated that the discovery she sought through the business subpoenas was relevant to either her motion to modify custody and relocate M.W. to Nevada or Wirsz’s motion to modify custody. As a result, she was not entitled to that discovery under NRCP 26(b) and the district court did not abuse its discretion in declining to allow her discovery to move forward.⁵ *See Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct.*, 136 Nev. 221, 224, 467 P.3d 1, 4 (Ct. App. 2020) (noting that discovery matters are generally “within the district court’s sound discretion, and [this court] will not disturb a district court’s ruling regarding discovery unless the court has clearly abused its discretion”) (quoting *Club Vista Fin. Servs., LLC v. Eighth Jud. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012)).

Ocasio forfeited her arguments regarding Dr. Bradley, Freer, and Wygant

Ocasio argues that the district court abused its discretion by not compelling Dr. Bradley to testify; not compelling live testimony from Freer, rather than allowing her to testify by deposition; and by not continuing the evidentiary hearing for the purpose of compelling these witnesses to testify. Even assuming Ocasio could have obtained such relief, she never moved the district court to compel their trial testimony below, and thus she has forfeited

⁵Because we conclude Ocasio was not entitled to the discovery she sought through the subpoenas, we need not otherwise address her challenges to the district court’s protective order, its quashing of the subpoenas, and its refusal to grant a continuance until she obtained the requested discovery.

any argument on these points. *See Allum v. Valley Bank of Nev.*, 114 Nev. 1313, 1324, 970 P.2d 1062, 1069 (1998) (“[F]ailure to object to asserted errors at trial will bar review of an issue on appeal.” (alteration in original) (quoting *McCullough v. State*, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983))); *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 [forfeited] and will not be considered on appeal.”). While Ocasio also suggests the district court was required to sua sponte compel Dr. Bradley to testify, compel Freer to testify live at the hearing, and continue the hearing for those purposes, she cites no authority supporting this proposition and thus we need not consider these arguments. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (stating that the appellate courts need not consider assertions that are not supported by relevant authority).

And to the extent Ocasio contends that the district court abused its discretion by excluding Wygant as a rebuttal expert witness, that argument is likewise forfeited as Ocasio did not file an opposition to Wirsz’s motion to exclude Wygant as a rebuttal expert or otherwise raise this issue below. *See Old Aztec*, 97 Nev. at 52, 623 P.2d at 983.

The district court did not abuse its discretion by relying on Dr. Brown

Ocasio argues that the district court abused its discretion by relying on Dr. Brown’s testimony and report. She contends that Dr. Brown’s diagnosis that she had narcissistic personality disorder was unreliable because he reached that conclusion without having access to Dr. Bradley’s psychological testing. She further argues that “[b]ecause the district court . . . prevented [Ocasio] from meaningfully testing [this testimony], its

custody determination rests on an unreliable evidentiary foundation and constitutes reversible error.”⁶

“This court reviews a district court’s decision to allow expert testimony for abuse of discretion,” and a district court does not abuse its discretion if its decision is supported by substantial evidence. *Hallmark v. Eldridge*, 124 Nev. 492, 498-99, 189 P.3d 646, 650-51 (2008).

At the evidentiary hearing, Dr. Brown testified that he performed a psychiatric evaluation of Ocasio, which included a two-hour interview and mental status examination, and “reviewed an extensive . . . set of records,” including court filings, audio and video recordings, CPS worker testimony and records, court and deposition testimony, and a previous psychological evaluation and its corresponding test results. And based on his evaluation and his review of those records, Dr. Brown concluded that Ocasio exhibited the requisite number of symptoms to be diagnosed with narcissistic personality disorder under the DSM-5. Dr. Brown not only detailed the symptoms Ocasio exhibited, but he gave specific examples of Ocasio exhibiting those symptoms.

To the extent Ocasio maintains that Dr. Brown’s report and testimony were unreliable because he did not have the benefit of Dr. Bradley’s psychological testing report, that argument is belied by Dr. Brown’s own testimony. In particular, under cross-examination by Ocasio’s attorney—who

⁶While Ocasio appeared to challenge the admissibility of Dr. Brown’s testimony and report under *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008), in her opening brief, she expressly abandoned any such challenge in her reply brief, and thus we do not consider this issue. Nonetheless, we note that the district court found Dr. Brown to be “a very qualified forensic psychiatrist who is relied upon by many courts in this State to provide forensic diagnosis of individuals, including in criminal matters and for mental health courts.” Ocasio also stipulated to the admission of Dr. Brown’s report during the hearing.

inquired whether Dr. Brown wanted updated psychological testing because he did not want to rely on three-year-old test data from an earlier custody proceeding—Dr. Brown explained that updated psychological testing would simply have been “an additional data point” that could have been “useful in comparison” with the older psychological testing. Critically, Dr. Brown did not testify that the additional testing was required to diagnose Ocasio.

The district court expressly found Dr. Brown’s report and diagnosis that Ocasio had narcissistic personality disorder credible, and insofar as Ocasio asks this court to reweigh the district court’s determination in this regard, we will not do so. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Moreover, our review of the record on appeal demonstrates that Dr. Brown’s diagnosis was supported by substantial evidence. In particular, Dr. Brown explained that he reviewed records demonstrating Ocasio’s qualities and personally evaluated Ocasio. He then compared her qualities to the symptoms listed in the DSM-5. He also demonstrated how her qualities compared to those symptoms by giving specific examples of her exhibiting those symptoms.

Based on the reasoning set forth above, we conclude the district court did not abuse its discretion in relying on Dr. Brown’s report and expert testimony. As a result, Ocasio’s challenges to this testimony do not provide a basis for relief.

The district court did not abuse its discretion by awarding Wirsz sole legal custody

Ocasio argues that the court abused its discretion by awarding Wirsz sole legal custody based on Dr. Brown diagnosing her with narcissistic personality disorder. She contends that there were no findings or evidence connecting her diagnosis with an inability to coparent or share joint custody as required by *Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (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).⁷ Additionally, she maintains that the district court failed to weigh Wirsz’s bad behavior against him.

“Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child’s health, education, and religious upbringing.” *Id.* at 420, 216 P.3d at 221. “When a court is making a determination regarding the legal custody of a child, there is a presumption . . . that joint legal custody would be in the best interest of a minor child if” certain conditions are met. NRS 125C.002(1). But this presumption is overcome when the district court finds that the parents are unable to communicate, cooperate, and compromise in the best interest of the child. *Rivero*, 125 Nev. at 420, 216 P.3d at 221 (“Joint legal custody requires that the parents be able to cooperate, communicate, and compromise to act in the best interest of the child.”); *Lee v. Perry*, No. 90830-COA, 2026 WL 1424741, at *4 (Nev. Ct. App. May 20, 2026) (Order Affirming in Part, Reversing in Part and Remanding) (applying *Rivero* to conclude the presumption was rebutted).

Here, while the district court referenced Ocasio’s diagnosis in awarding Wirsz sole legal custody, it did not rely exclusively on that diagnosis in reaching this decision, nor did it fail to connect that diagnosis with Ocasio’s ability to exercise joint legal custody as Ocasio argues. Notably, the court found that the factor on the parents’ physical and mental health, NRS 125C.0035(4)(f), favored Wirsz having sole legal custody because narcissistic personality disorder “makes it very difficult for parents to coparent . . . and

⁷While Ocasio also contends that *Rivero* required the district court to find that lesser remedies would have been inadequate before eliminating joint legal custody, *Rivero* contains no such requirement. And because Ocasio cites no legal authority actually supporting that proposition, we do not consider this argument. See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

makes interpersonal relationship for [the person with the disorder] very difficult.” The court recognized that Wirsz’s hypervigilance contributed to the difficulties between the parties, but it ultimately concluded that Ocasio’s diagnosis favored Wirsz having sole legal custody.

Additionally, in its examination of the parents’ ability to cooperate to meet M.W.’s needs under NRS 125C.0035(4)(e), the district court explained that there was “very little ability for the parents to effectively communicate and cooperate with each other to meet [M.W.’s] needs.” The court found that both parents needed to learn to cooperate so that, for example, if M.W. was lying about being punished, they could work together to address that and teach her the difference between the truth and a lie and the consequences that can happen when she is not telling the truth about important matters. Although the court found that some of the difficulty in communicating and cooperating was explained by Ocasio’s diagnosis and Wirsz’s hypervigilance, the court stated that what ultimately pushed this factor to favor Wirsz was Ocasio’s “refusal . . . to address issues directly with [Wirsz].” While the district court did not *explicitly* find, in discussing this factor, that sole legal custody was warranted because Ocasio and Wirsz were unable “to cooperate, communicate, and compromise to act in the best interest of the child,” *see Rivero*, 125 Nev. at 420, 216 P.3d at 221, the best-interest findings outlined above reflect that conclusion.

These findings, which were supported by substantial evidence in the record, demonstrate that—contrary to Ocasio’s arguments on appeal—the district court did not award Wirsz sole legal custody based solely on her diagnosis or fail to make findings connecting her diagnosis to an inability to

coparent.⁸ Further, the district court properly accounted for Wirsz’s actions and behavior in making its decision and nonetheless concluded that awarding Wirsz sole legal custody of M.W. was in her best interest. We therefore conclude that Ocasio is not entitled to relief based on these arguments.

While Ocasio argues that Dr. Brown’s testimony and expert report failed to connect her diagnosis with an inability to cooperate, communicate, and compromise in M.W.’s best interest, his testimony and report did in fact make that connection. Dr. Brown testified that Ocasio had “remarkable challenges in co-parenting,” and his report explained that personality disorders typically make coparenting extremely challenging because people with those disorders tend to blame others for their problems rather than “perceiving their contributions to tumultuous relationships.” He testified that people with disorders such as narcissistic personality disorder have an inability to be introspective, cannot acknowledge their fault in conflicts, and thus are unable to change their behaviors to meet the perspectives and needs of others. He further explained that Ocasio lacked empathy—another symptom of narcissistic personality disorder—which makes it difficult to appreciate and understand the emotional perspectives of others or consider their needs and perspectives when making decisions.

Additionally, Dr. Brown testified that, while Ocasio claimed to have extreme concerns about Wirsz, she did not share them with Wirsz or confront Wirsz with them and instead saved them as points for litigation. He explained that Ocasio’s unwillingness or inability to communicate with Wirsz and her ingrained belief that Wirsz was harming M.W. “demonstrate

⁸The district court also explained that awarding Wirsz sole legal custody was not that different than the prior arrangement where—although the parties had joint legal custody—Wirsz had tie-breaking authority.

impairment of judgment behavior based upon a narcissistic . . . personality disorder.”

As an example, Dr. Brown noted Ocasio’s allegation that Wirsz had put hot peppers in M.W.’s mouth, even though there was no evidence that Wirsz did that, and that she did not respond to Wirsz’s communications about those allegations. And he recalled Ocasio stating that she considered Wirsz to be a liar, so she would make unilateral decisions impacting M.W. Dr. Brown’s testimony on these points was further supported by Wirsz’s testimony that he could not remember a single allegation Ocasio made against him that she addressed with him personally. Wirsz testified that he sent Ocasio several messages to see if they could work together to correct any misunderstandings, but she did not respond and would take days or weeks to even read messages he sent her.

For the reasons outlined above, we conclude that Ocasio’s argument that Dr. Brown’s testimony failed to connect her narcissistic personality disorder diagnosis with an inability to cooperate, communicate, and compromise in M.W.’s best interest is without merit. And ultimately, there is substantial evidence in the record—including Dr. Brown’s testimony—supporting the district court’s finding that Ocasio and Wirsz were unable to effectively communicate and cooperate with one another in M.W.’s best interest, and that this was, in part, due to Ocasio’s diagnosed personality disorder. Accordingly, the presumption for joint legal custody was overcome and the district court did not abuse its discretion by awarding Wirsz sole legal custody.

In summary, based on our review of the record and the parties’ arguments, we conclude that Ocasio has failed to demonstrate any abuse of discretion in the district court’s denial of her motion to modify custody and

relocate M.W. to Nevada and the court's grant of Wirsz's motion for sole legal custody. We therefore affirm the district court's child custody order at issue in Docket No. 87589-COA.

Docket No. 87695-COA

In this appeal, Ocasio challenges the district court's award of attorney fees and costs to Wirsz. "We review an award of attorney fees and costs for an abuse of discretion." *LVMPD v. Yeghiazarian*, 129 Nev. 760, 769, 312 P.3d 503, 510 (2013). "But when the attorney fees matter implicates questions of law, the proper review is de novo." *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006).

The district court did not abuse its discretion by awarding Wirsz \$69,214.51 in attorney fees

Ocasio argues that the district court abused its discretion by awarding Wirsz \$69,214.51 in attorney fees under EDCR 5.219 and 5.501, NRS 22.100(3), NRCP 26(c)(3) and 37(a)(5), and the ASAO because the court's findings under those provisions failed to support the fee award. However, we need not reach Ocasio's arguments challenging the fee award under the aforementioned provisions because the district court's award of reasonable fees was supported under NRS 125C.250. *See Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (recognizing that appellate courts will affirm a district court's order if it reached the correct result, even if it did so for a different reason).

NRS 125C.250 provides that, "in an action to determine legal custody, physical custody or visitation with respect to a child, the district court may order reasonable fees of counsel and experts and other costs of the proceeding to be paid in proportions and at times determined by the court." As our supreme court has recognized, "NRS 125C.250 gives the district court broad discretion in a child custody action to order reasonable attorney fees and

costs as determined by the court.” *Matkulak v. Davis*, 138 Nev. 647, 651, 516 P.3d 667, 671-72 (2022).

In this case, both parties requested attorney fees under NRS 125C.250 and argued that a reasonable attorney fee award under that statute was appropriate. Yet, the district court declined to award *any* fees under that statute, concluding it was a “generic authorization for an award of attorney’s fees without any guidance regarding what kind of findings need to be made” and observing that decisions from Nevada’s appellate courts “do not give any guidance regarding the findings that would be necessary to award fees under NRS 125C.250.” As a result, the court concluded that “NRS 125C.250 does not support an award of fees in this case.” But in doing so, the court abused its discretion by failing “to exercise discretion that it unquestionably ha[d],” *Lund v. Eighth Jud. Dist. Ct.*, 127 Nev. 358, 363, 255 P.3d 280, 284 (2011), to award reasonable attorney fees under NRS 125C.250.

The plain language of NRS 125C.250 provides that, to award fees under that statute, a district court must make findings supporting the conclusion that its fee award is reasonable. *See Roe v. Roe*, 139 Nev. 163, 184, 535 P.3d 274, 294 (Ct. App. 2023) (observing that “[a]dequate findings of reasonableness are necessary” to support an award of attorney fees under NRS 125C.250); *cf. O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 560, 429 P.3d 664, 672 (Ct. App. 2019) (holding that the amount of attorney fees awarded can be based upon any sensible or logical method as long as the court weighs the *Brunzell* factors when determining reasonableness). It is well established that, in assessing the reasonableness of requested attorney fees in family law matters, the district court must consider the factors set forth in *Brunzell* and the disparity in the parties’ income pursuant to *Wright v. Osburn*, 114 Nev.

1367, 1370, 970 P.2d 1071, 1073 (1998). *See Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005).

Here, in considering Wirsz's request for attorney fees, the district court repeatedly recognized that it could only award reasonable attorney fees. The court explained that "the approximate allowable attorney's fees" it could consider awarding was \$90,037 out of the \$725,456.57 in total fees Wirsz requested. Thereafter, the court considered Wirsz's attorney's invoices, the *Brunzell* factors, and the parties' income, and determined that Wirsz was only entitled to \$69,214.51⁹ in attorney fees.

In making this determination, the district court made detailed findings with regard to each of the four *Brunzell* factors, explaining that Wirsz's counsel was very well qualified, the case involved extensive litigation involving sophisticated counsel, Wirsz's counsel completed "significant motion practice and discovery" and participated in a five-day hearing, and Wirsz defeated Ocasio's motion to modify custody and prevailed on his motion for sole legal custody and various other motions. On appeal, Ocasio fails to challenge any of these findings and thus has forfeited any challenge thereto. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015).

In addressing whether there was a disparity in the parties' income as required by *Wright*, the district court reviewed the parties' financial disclosure forms and found that Ocasio's gross monthly income was \$9,488.61 whereas Wirsz's was \$1,331.10. Based on this information, the district court found that, for the purpose of determining how much Wirsz should be awarded

⁹In reaching that number, the district court rejected Wirsz's request for fees incurred prior to our 2022 order reversing and remanding the court's previous denial of Ocasio's motion to modify custody.

in attorney fees, “there is no disparity in income at this time to consider.” In reaching this conclusion, the court declined to consider Wirsz’s assets and wealth, and while Ocasio argues that the court was required to do so in determining whether there was a disparity in income, there is nothing in the *Wright* decision defining income as including wealth or assets. Indeed, Ocasio cites no authority mandating that assets and wealth be included as part of a party’s income under the *Wright* analysis and, in the absence of authority supporting this position, we conclude that Ocasio’s argument does not provide a basis for relief. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Our review of the record demonstrates that the district court’s income findings are supported by substantial evidence. As a result, to the extent Ocasio’s argues Wirsz earned significantly more than she did, rendering the award unreasonable, this argument is belied by the record. And because the court recognized that it could only award reasonable attorney fees and properly examined the reasonableness of the requested fees under *Brunzell* and *Wright*, we conclude that the award of \$69,214.51 in attorney fees to Wirsz can be affirmed under NRS 125C.250. *See Rosenstein*, 103 Nev. at 575, 747 P.2d at 233; *Pelz v. Perea*, No. 90584-COA, 2026 WL 1017534, at *2-3 (Nev. Ct. App. Apr. 14, 2026) (Order of Affirmance) (affirming an award of attorney fees where the mother sought fees pursuant to NRS 125C.250 and substantial evidence supported the award under that statute, even though the award was made on other grounds, and thus the father failed to show that awarding fees on the other grounds was not harmless).

The district court did not abuse its discretion by awarding Wirsz \$85,844.22 in costs

Finally, we need not consider Ocasio’s challenge to the district court’s award of costs as Ocasio failed to timely file a motion to retax and settle costs below. NRS 18.110(4) provides that, “[w]ithin 3 days after service of a

copy of the memorandum [of costs], the adverse party may move the court, upon 2 days' notice, to retax and settle the costs." As the district court recognized, Ocasio improperly filed an opposition to Wirsz's memorandum of costs rather than the required motion to retax and settle costs. And without such a motion, appellate review of the costs award is forfeited. *See Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 493, 117 P.3d 219, 227 (2005) (concluding that because a party "did not move the district court to retax and settle costs," the party "waived appellate review of this issue"). Even if we were to treat Ocasio's opposition as a motion to retax and settle costs, this document was filed more than three days after service of the memorandum of costs and thus it need not be considered. *See Rondono v. Turk*, 86 Nev. 123, 132, 466 P.2d 218, 224 (1970) ("The trial court committed no error in denying appellants' motion to retax costs, since it was not timely filed.").

In summary, for the reasons set forth above, we affirm the award of attorney fees and costs at issue in the appeal in Docket No. 87695-COA.

Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹⁰



Bulla, C.J.



Gibbons, J.



Westbrook, J.

¹⁰Insofar as Ocasio raises other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Dawn Throne, District Judge
Israel Kunin, Settlement Judge
Hofland & Tomsheck
The Jimmerson Law Firm, P.C
Eighth District Court Clerk