



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BURKE HALL,
Appellant,
vs.
VANESSA LOFTIS,
Respondent.

No. 90386-COA

ORDER OF AFFIRMANCE

Burke Hall appeals from post-divorce decree orders denying a motion to modify legal and physical custody and a motion for reconsideration of that decision. Eighth Judicial District Court, Clark County; Hon. Gregory G. Gordon, Judge.

The parties were previously married and had three minor children; however, the parties' youngest child died in a tragic accident. Shortly thereafter, the parties divorced and the district court entered a divorce decree awarding respondent Vanessa Loftis sole legal custody and primary physical custody of the two remaining children: S.H., who was born in 2009, and I.H., who was born in 2010. This court subsequently affirmed the decree. *Hall v. Loftis*, No. 81461-COA, 2022 WL 193597 (Nev. Ct. App. Jun. 3, 2022) (Order of Affirmance). The decree originally provided Hall would have supervised parenting time at Loftis's discretion but Hall eventually began exercising parenting time from Friday afternoon until Sunday evening with Loftis's consent.

In January 2024, Hall filed a motion seeking joint legal and physical custody and generally alleged Loftis medically neglected the children and that her husband, Nathan Pressley, is a convicted felon. Loftis

opposed the motion and following a motion hearing, the district court entered an order that: (1) required the children be interviewed at the Family Mediation Center; (2) adopted the parties' informal parenting time agreement as a temporary custody order; and (3) increased Hall's child support obligation based upon his admission that he had secured full-time employment. The court additionally scheduled an evidentiary hearing to resolve the modification motion and subsequently entered an order indicating it had received the children's interview report and intended to admit it as an exhibit at the upcoming evidentiary hearing.

Prior to the evidentiary hearing, Hall, his wife Laura Hall, and S.H. were involved in two disputes that resulted in law enforcement being called. Regarding the first instance, Laura claimed that following a verbal dispute, S.H., who is on the autism spectrum, pushed her, and this caused Laura to throw his backpack, which contained S.H.'s laptop, off the landing of their second-floor apartment. S.H. subsequently left the home and although law enforcement was called, it does not appear S.H. was arrested. As to the second instance, Hall claimed that S.H. refused to put away the new laptop Loftis had purchased for S.H. when Hall told him to. When Hall moved to confiscate the laptop, S.H. allegedly kicked him. Although S.H. appears to have called law enforcement after the second incident he was ultimately arrested and subsequently placed in the Detention Alternative for Autistic Youth (DAAY) court. Based upon these incidents, Loftis filed a motion seeking to suspend Hall's visitation with S.H. and further sought reimbursement for the cost of the replaced laptop. Loftis asserted that S.H. denied the allegations and claimed that when he refused to put away his laptop, Hall took it from him and hit him on the head with it.

Hall filed an opposition that asserted S.H. was the aggressor in both instances, questioned S.H.'s autism diagnosis, and claimed Loftis was alienating S.H. from Hall. Following a hearing, the district court entered a temporary custody order reducing Hall's parenting time with S.H. to Friday from 5 p.m. to 7 p.m. Further, the court ordered Hall to return the laptop to Loftis as Hall admitted he took the laptop and gave it to his wife.

The parties subsequently elected to participate in the Informal Family Trial Court (IFTC) program rather than proceeding with the formal evidentiary hearing that had previously been scheduled. Prior to the parties agreeing to participate in the program, the district court explained that as part of the process, the court would question the witnesses and that neither party could object during testimony. The parties subsequently signed an acknowledgement agreeing to those procedures as well as waiving application of the rules of evidence.

During the informal trial, Hall testified generally regarding his concerns with Loftis's parenting decisions, specifically her alleged failure to obtain medical care for S.H. following a bicycle accident and alleged the children were struggling in school due to Loftis's neglect. Hall additionally asserted that while he now believed that S.H. was on the autism spectrum, he questioned whether I.H. was also on the spectrum and admitted he sought joint legal custody so he could have I.H. evaluated by his preferred doctors. However, Hall spent most of his time discussing Pressley's prior criminal convictions, some of which occurred more than thirty years ago. Additionally, Hall testified he did not believe it was his responsibility to assist the children with their homework because that was a mother's job and further claimed Loftis suffered from "Munchausen syndrome" and that the children did not need her.

Matthew Lehman, who was Loftis's employer, testified that he owned a facility that provided Applied Behavior Analysis therapy to those on the autism spectrum and that both boys attended therapy at the facility. Additionally, Lehman testified his facility offered therapy for parents that provided them an opportunity to learn how to communicate with their children and better support them. Although Loftis routinely participated in the service, Hall did not. Lehman further testified that S.H. was not aggressive and that he had denied assaulting Laura or Hall.

Laura then testified that generally the children had an excellent relationship with Hall but that Loftis encouraged S.H. to be disrespectful. Regarding the backpack incident, Laura claimed S.H. was being disrespectful and that she told him to leave the home and picked up his backpack, which caused S.H. to shove her. Laura then admitted she threw the backpack out the front door, which was located on the second floor, because she feared S.H. would assault her. Further, Laura admitted that despite the district court's prior order, she refused to return the replacement laptop to S.H. or Loftis, asserting the court lacked jurisdiction over her.

Finally, Loftis testified as to her efforts to obtain medical care for the children, including obtaining their autism diagnoses and additional therapy services. Loftis admitted the children struggled with school but asserted this was due to their autism diagnoses and that they had shown great improvement. And Loftis likewise testified that S.H. was not aggressive and that he denied assaulting either Laura or Hall. According to Loftis, S.H.'s relationship with Hall was severely damaged by the reports to the police, along with a prior incident in which S.H. learned Hall had publicly shared S.H.'s mental health struggles online. Loftis testified she

did not believe joint legal custody would be in the children's best interest as she was concerned Hall would undo the work she had done in finding the children therapists and obtaining support services because he disagreed with their autism diagnoses.

After evaluating the best interest factors, the district court found Hall demonstrated changed circumstances as the parties had informally modified the prior time share agreement but nevertheless denied Hall's request for joint legal and physical custody because of its best interest findings. Instead of modification, the court issued an order awarding Hall weekly parenting time with I.H. from Friday afternoon until Sunday afternoon and parenting time with S.H. from Friday at 5 p.m. to 7 p.m. However, the court awarded S.H. teenage discretion to extend his parenting time with Hall if he wished. As a result, Loftis retained sole legal and primary physical custody. Additionally, the court found Hall's claim that he is medically unable to work was not credible and accordingly imputed income before setting Hall's child support obligation. Hall filed a motion for reconsideration that alleged the court failed to consider his arguments and that he had new evidence demonstrating I.H. was not autistic. The district court denied the motion and Hall now appeals.

On appeal, Hall challenges the order denying his motion for joint legal and physical custody.¹ Hall argues the district court violated his

¹Hall's notice of appeal also identifies the order denying his motion for reconsideration as a challenged order on appeal. However, because Hall presents no argument regarding this order in his appellate briefing, he has forfeited his challenge and thus we necessarily affirm the order denying reconsideration. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (providing that arguments not raised on appeal are deemed forfeited).

due process rights during the informal trial by prohibiting him from objecting to testimony and by asking witnesses questions or otherwise eliciting certain testimony, which Hall contends transformed the court from a neutral tribunal into an advocate. Hall further argues the court erred by permitting Lehman to testify despite only being identified in a pretrial memorandum and not the pretrial witness list.

We conclude Hall voluntarily agreed to participate in the IFTC and thus waived his objection to its procedures. *See, e.g., Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 479, 215 P.3d 709, 717 (2009) (holding when a litigant consents to the district court's action "his consent . . . prevents him from now complaining of the district court's [action]"). As discussed above, the court expressly informed the parties they would not be permitted to object during witness testimony and Hall voluntarily signed the informal trial process selection form which stated he waived application of the rules of evidence, the court could admit all relevant evidence, and that the court was permitted to ask witnesses questions. *See generally* D.C.R. 27. Furthermore, the record demonstrates the court did not act as an advocate for either party but instead questioned the witnesses to obtain necessary information to evaluate the best interest factors. Accordingly, the district court did not abuse its discretion. *See Cox v. Copperfield*, 138 Nev. 235, 239, 507 P.3d 1216, 1222 (2022) ("A district court's decision to admit or exclude evidence [is reviewed] for an abuse of discretion and will not be disturbed absent a showing of palpable abuse." (alterations original) (internal quotation marks omitted)). And with regard to Lehman, we conclude the court did not err as he was identified as a witness and the court must consider all relevant evidence when evaluating the best interest factors. *See Nance v. Ferraro*, 134 Nev. 152, 155, 418 P.3d 679, 683 (2018) (holding a

court must consider all “evidence relevant to the child’s best interest” when determining a custody arrangement); *see also* D.C.R. 27(4)(g) (a court may permit a non-expert to testify upon a showing of good cause).²

Hall next argues the district court abused its discretion by failing to meaningfully consider his evidence, by relying on findings in the custody decree to evaluate pending custody issues, and by making an adverse credibility determination based upon Hall’s demeanor rather than relying upon Hall’s evidence. 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.

²The district court implicitly found that there was good cause to permit Lehman to testify to avoid any prejudice of not being able to present his testimony as a result of participating in the informal trial program. Further, the court equitably allowed both parties to present lay witness testimony. The court’s reasoning reflects a determination that there was good cause for the testimony, and Hall, who also called a lay witness, does not challenge it on appeal. *See Palmieri*, 131 Nev. at 1033 n.2, 367 P.3d at 446 n.2.

We conclude the district court's findings are supported by substantial evidence and thus the court did not abuse its discretion by declining to award Hall joint legal and physical custody. Although Hall contends he submitted more evidence in support of his claims than Loftis, and that the court's adverse credibility determination is erroneous, this court does not reweigh the evidence or reassess credibility on appeal.³ 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). As to legal custody, the court found Loftis initiated and advocated for the children to receive additional academic support and participated in the children's therapeutic treatment. Further, the court noted Loftis's "substantial efforts" to obtain medical care for the children and ensure they receive all support services they are entitled to by law. In contrast, the court found Hall refused to recognize or appreciate Loftis's efforts, referred to her as "crazy", and was primarily motivated by his hatred and animosity towards Loftis. Importantly, the district court found Hall had no interest in co-parenting the children and was instead "interested in selfishly controlling and pursuing an agenda" that was not in the children's best interest. Because these findings are supported by substantial evidence we affirm the award of sole legal custody to Loftis.

³Further, the district court did not abuse its discretion by considering its findings in the prior custody decree as courts are permitted to consider prior orders when adjudicating a request to modify custody. 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").

The district court's physical custody award is likewise supported by substantial evidence. Although Hall maintains that the court should have afforded more weight to Pressley's prior criminal convictions, we do not reweigh evidence on appeal. *Ellis*, 123 Nev. at 152, 161 P.3d at 244. Instead, the court appropriately focused on the children's current environment and how the parties' ongoing behaviors, including Hall's inability to cooperate with Loftis and his contribution to the conflict between the parties, affected the children as issues concerning the criminal conviction were fully litigated in the prior custody decree. Notably, the court found that Laura's testimony regarding her dispute with S.H. was not credible as multiple witnesses testified S.H. was not aggressive. Furthermore, the court found Hall should have managed his dispute with S.H. more effectively and that his claim that S.H. was the aggressor was likewise not credible. And Hall admitted he did not believe he was responsible for helping the children with their schoolwork as that was Loftis's responsibility. Considering this evidence, as well as Loftis's testimony regarding her parenting efforts, we conclude substantial evidence supports the court's order.⁴

⁴Hall additionally argues the district court abused its discretion by considering the report from the children's Family Mediation Center interview as it was not admitted into evidence. Although the court issued an order indicating it intended to rely upon the interview as an exhibit, the court never admitted the interview during the informal trial. We conclude to the extent the court's consideration of the interview could constitute error, it was nevertheless harmless as the court found the children lacked the capacity to form an intelligent preference as to the custody arrangement, gave the interview little weight, and further found that all of the best interest factors either favored Loftis or were neutral or inapplicable. *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

Hall next argues the district court abused its discretion by imputing income to him without any evidence of voluntary unemployment and that the court's income findings are not supported by substantial evidence but instead based upon the court's own speculation. This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). This court will not disturb the factual findings underlying a child support order if they are supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018). District courts are authorized to impute income to an obligor if the court determines the obligor is underemployed or unemployed without good cause. NAC 425.125(1); *Rosenbaum v. Rosenbaum*, 86 Nev. 550, 554, 471 P.2d 254, 256-57 (1970) (holding that a district court may impute income to a party that "purposefully earns less than his reasonable capabilities permit"). The key issue is the good faith of the parent.⁵ *Rosenbaum*, 86 Nev. at 554, 471 P.2d at 257.

Here, Hall contends he is not voluntarily unemployed but was instead forced to resign his employment due to a medical condition that renders him unable to drive or operate heavy machinery. Hall argues he presented medical documentation supporting his claim. However, the district court found that after carefully considering Hall's testimony and

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").

⁵We reject Hall's claim that the district court could not impose a child support obligation without Loftis's updated financial disclosure form as Loftis was awarded primary physical custody, and thus, only Hall's financial information was necessary to calculate the child support obligation. See NAC 425.115(2).

documents, Hall's claim that he is entirely unable to work was not credible. The court's order provided a meticulous timeline which demonstrated that Hall initially provided inconsistent information regarding his employment after filing his motion to modify custody. Furthermore, substantial evidence supports the court's finding that Hall voluntarily resigned his position only a week after the court increased his child support obligation. And the medical paperwork Hall submitted did not indicate he could not work in any capacity, only that he could not drive or operate heavy machinery, which the court found was not compelling. The court thus reasonably inferred that Hall resigned his employment, and failed to obtain new employment, not because of his medical condition, but because the court imposed an increased child support obligation on him. *Cf. Clark Cnty, Sch. v. Payo*, 133 Nev. 626, 636, 403 P.3d 1270, 1278 (2017) (providing that appellate courts "must assume" that the fact finder drew reasonable inferences from the evidence presented).⁶

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

⁶Insofar as Hall raises additional arguments we have considered them and conclude they do not provide a basis for relief.

cc: Hon. Gregory G. Gordon, District Judge
Burke Hall
Vanessa Marie Loftis
Eighth District Court Clerk