



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSICA MARIN,
Appellant,
vs.
JOSE HINOJOS,
Respondent.

No. 91209-COA

ORDER OF AFFIRMANCE

Jessica Marin appeals from a child custody decree. Eighth Judicial District Court, Clark County; Hon. Michele Mercer, Judge.

Marin and respondent Jose Hinojos share one child in common, who was born in 2018. In July 2024, Hinojos filed a complaint seeking joint legal and physical custody of the child. Marin answered the complaint and filed a counterclaim. In answering Hinojos' complaint, Marin asserted that joint physical custody was not in the child's best interest because Hinojos had previously committed an act of domestic violence against her and the child and had subsequently been convicted of battery constituting domestic violence. Marin further alleged that Hinojos was in arrears on child support payments, and that Hinojos had minimal contact with the child.

Following a case conference in November 2024, the district court entered an order granting Marin temporary sole physical custody of the child and providing Hinojos with weekend parenting time. The order reflects that during the case conference, Hinojos acknowledged he had committed an act of domestic violence against Marin and the child. The record indicates Hinojos testified that he had been drunk during the 2020 domestic violence incident. The record also indicates he testified he had been sober for three years and

regularly attended and led Alcoholic Anonymous meetings. Further, the record indicates Hinojos testified that the child had methamphetamine in his system at birth, and that Hinojos had stopped residing with Marin and the child in 2022 after discovering Marin was using methamphetamine and had left methamphetamine in a place accessible to the child. Given this testimony, the court ordered Marin to immediately submit to drug testing and ordered Hinojos to cover the costs of the test. The district court also scheduled a trial for July 2025.

Prior to the trial, Marin filed motions challenging the service of process of the complaint. In both motions, Marin argued the court should strike all Hinojos' filings and dismiss the proceeding altogether because she was never properly served with the complaint and summons, and because the affidavit of service was allegedly rife with errors, misrepresentations, and false statements.

In July 2025, the district court conducted a trial to determine child custody. During the trial, Hinojos presented evidence that Marin failed to comply with the court's prior order to submit to drug testing. Marin ultimately conceded she had failed to submit to drug testing and further conceded she falsely stated in text messages to Hinojos that she completed the drug testing. At the close of the evidentiary hearing, the court made oral findings on the record and awarded the parties joint legal and physical custody of the child. The district court also orally denied Marin's motions challenging service of process. A decree of custody was subsequently entered.

In the custody decree, the district court expressed some concern regarding Hinojos' credibility, noting that he filed the custody complaint suspiciously close in time to the State's initiation of an action for child support. Nevertheless, the court found that Hinojos' initiation of the custody case was

motivated by a desire to build a relationship with the child rather than avoid child support obligations. The court made several adverse credibility determinations against Marin. Specifically, based on the evidence presented at trial, the court found that Marin failed to submit to drug testing as directed in the November 2024 temporary custody order. Based on Marin's failure to submit to drug testing, the court made an adverse inference that the test would have come back positive for recreational or nonprescription drugs. The district court also found that Marin testified untruthfully during the trial and was overall less credible than Hinojos.

In evaluating the best interest factors, the district court first found that NRS 125C.0035(4)(c)—which requires an assessment of which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent—was neutral. The court observed that although Marin did not cooperate to ensure the child was communicating with Hinojos and had parenting time with Hinojos, Hinojos was not blameless because “there were many times where he just did not go to pick up the child out of frustration” with Marin's lack of cooperation and the child's apparent reluctance to spend time with Hinojos. The court then found both Marin and Hinojos were at fault for escalating their conflicts regarding custody of the child. *See* NRS 125C.0035(4)(d). The court also found factor 4(e)—which requires assessing the ability of the parents to meet the needs of the child—was neutral. Based on Marin's failure to complete drug testing, the court found that Marin was using illicit drugs. *See* NRS 125C.0035(4)(f). With regard to NRS 125C.0035(4)(g)—which requires consideration of the physical, developmental, and emotional needs of the child—the court essentially found this factor to be neutral as well, observing that the child was very sensitive and did not want to be in the middle of the parents' litigation. The court then

found that Marin had a stronger relationship with the child, *see* NRS 125C.0035(4)(h), concluding that Hinojos' failure to consistently exercise parenting time left the child feeling abandoned and rejected. The court further found that although Hinojos had been convicted for an act of domestic violence against Marin and the child, *see* NRS 125C.0035(4)(k), that factor was ultimately neutral because Hinojos was "actively seeking to change how he handles frustration and anger," had maintained his sobriety for over three years, and was an active participant in AA meetings.¹ Finally, in considering the domestic violence presumption codified at NRS 125C.0035(5), the district court found Hinojos had overcome the presumption that joint physical custody would not be in the best interest of the child.

Prior to the entry of the custody decree, Marin filed two motions in which she challenged the district court's oral custody determinations. Two days after the trial, Marin filed an "ex parte emergency motion to stay custody order pending appeal." In that ex parte motion, Marin argued a stay was warranted because she had a strong likelihood of success on her anticipated appellate claims. Later, approximately eleven days prior to the entry of the custody decree, Marin filed a motion she styled as a "motion to vacate judgment and dismiss case and dismiss case for lack of subject matter jurisdiction, caption fraud, absence of paternity determination, falsified/irregular motion to stay denial." In that motion, Marin argued that: (1) the district court lacked subject matter jurisdiction because there was no determination that Hinojos was the father of the child; (2) the case caption "was fraudulently altered . . . in an apparent attempt to cure fatal jurisdictional defects;" (3) the service of the complaint and summons was defective; and (4) the order denying her motion

¹The district court further determined that NRS 125C.0035(4)(a), (b), (i), (j), and (l) were either inapplicable or neutral.

to stay was “falsified or irregular” because the district court had interlineated a proposed order she had included with her ex parte motion. Hinojos filed a response opposing these motions. The district court subsequently entered an omnibus order denying Marin’s pretrial and posttrial motions. This appeal followed.

On appeal, Marin first asserts that the district court lacked subject matter jurisdiction over Hinojos’ custody action because Hinojos “lacked legally established parentage” at the time he filed the action. Marin argues that “legal parentage” is a “threshold prerequisite to the exercise of custody jurisdiction,” and that a person cannot bring an action for custody of a child unless they have first been legally determined to be the parent.

Marin’s argument lacks merit. Pursuant to NRS 3.223(1)(a), the family courts have “original, exclusive jurisdiction in any proceeding” brought pursuant to, among other chapters, NRS 125C. Here, Hinojos filed a complaint for child custody pursuant to NRS Chapter 125C. Thus, the court had subject matter jurisdiction in this matter. *See Landreth v. Malik*, 127 Nev 175, 184, 251 P.3d 163, 169 (2011) (discussing the jurisdiction of the family courts). Accordingly, the district court did not err in exercising subject matter jurisdiction over this matter, and Marin therefore has not demonstrated she is entitled to relief based on this argument.

Marin next asserts the district court erred in determining her challenges to the sufficiency of service of process were waived. We review the district court’s decisions regarding service of process for an abuse of discretion. *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010). Before a defendant files a responsive pleading such as an answer, that defendant may move to dismiss for insufficiency of service of process. *See* NRCP 12(b)(4). “Alternatively, a defendant may raise [her] defenses, including

those relating to jurisdiction and service, in a responsive pleading.” *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 656, 6 P.3d 982, 986 (2000). Objections to service of process are waived, however, if not made in a timely motion or not included in a responsive pleading such as an answer. *Id.*; *see also* NRCP 12(h)(1) (listing insufficient service of process as a defense that is waived if not made in a Rule 12 motion or raised in a responsive pleading).

Here, Hinojos served the complaint and a summons on Marin via a third-party process server. After Marin failed to timely file a responsive pleading, Hinojos moved the court for entry of a default judgment. Shortly thereafter, Marin moved the district court for an extension of time for filing a responsive pleading. In her motion, Marin alleged she had not been served with the complaint and summons. Marin did not, however, separately move the court to dismiss for insufficient service. *See* NRCP 12(b)(4). And critically, when Marin ultimately filed her answer and counterclaim, she did not raise insufficient service of process as defense. Although Marin argues she preserved her challenge to the sufficiency of service in her motion for an extension of time, such a procedural motion is not a “pleading.” *See* NRCP 7(a) (identifying filings which constitute “pleadings”). Accordingly, Marin has not demonstrated the district court erred by determining she waived any challenge to the sufficiency of service of process. Marin therefore is not entitled to relief based on this argument. *See Hansen*, 116 Nev. at 656, 6 P.3d at 986; NRCP 12(h)(1).

Third, Marin challenges the sufficiency of the district court’s findings regarding the NRS 125C.0035(4) best interest factors. Marin specifically argues the district court’s findings regarding the best interest factors “do[] not meaningfully address” the child’s relationship with her, the

consequences of imposing the custody schedule, or the emotional impact of the custody decree on the child.

This court reviews district court decisions regarding child custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence, "which is evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* at 149, 161 P.3d at 242. Further, "we presume that the district court properly exercised its discretion in determining the best interests of the child." *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

When making a custody determination, the sole consideration is the best interest of the child. *Ellis*, 123 Nev. at 149, 161 P.3d at 242; NRS 125C.0035(1). When evaluating a child's best interest, the district court must consider all twelve factors set forth in NRS 125C.0035(4), and a written custody decree must contain findings regarding those factors and tie the findings to the ultimate custody determination. *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015) ("Crucially, the decree or order must tie the child's best interest, as informed by specific, relevant findings respecting [the statutory factors] and any other relevant factors, to the custody determination made.").

Having reviewed the record on appeal, we conclude the district court made adequate findings regarding the best interest factors. As discussed above, the court made extensive written findings regarding the best interest factors, including the child's relationship with Marin. The court expressly concluded that NRS 125C.0035(4)(h) favored Marin because she was a more consistent presence in the child's life. The court also considered the physical

and emotional needs of the child in its discussion of NRS 125C.0035(4)(g). Further, the court plainly considered the child’s physical and emotional safety by assessing whether Hinojos’ prior act of domestic violence militated against joint physical custody in its discussion of NRS 125C.0035(4)(k).

Based on the district court’s findings under the best interest factors and its related decision to determine joint physical custody was in the child’s best interest, we conclude the court sufficiently tied its decision to the child’s best interest. *See Davis*, 131 Nev. at 451, 352 P.3d at 1143. To the extent Marin argues the court should have weighed the evidence differently or challenges that court’s credibility findings, this court does not reweigh the evidence or reevaluate witness credibility on appeal. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 365-66, 212 P.3d 1068, 1080 (2009) (explaining that “credibility determinations and the weighing of evidence are left to the trier of fact”). Accordingly, we conclude Marin has not demonstrated that the district court abused its discretion in its consideration of the best interest factors. Thus, Marin is not entitled to relief based on this argument.

Fourth, Marin asserts the district court did not apply NRS 125C.0035(5)’s domestic violence presumption correctly because the decree “never identifies the evidence that rebutted the presumption, never explains what burden was applied, and never shows how the ordered arrangement adequately protects the child.” Marin’s arguments that the decree did not “explain[] what burden was applied” and did not identify the evidence rebutting the domestic violence presumption appear to be premised on a misapprehension of how NRS 125C.0035(4)(k) and (5) operate. NRS 125C.0035(4)(k) requires the court to consider “[w]hether either parent . . . has engaged in an act of domestic violence against the child [or] a parent of the child.” Although NRS 125C.0035(4)(k) contains no language specifying an

applicable evidentiary standard, this court has concluded that a party must prove by a preponderance of the evidence that a parent engaged in an act of domestic violence. *Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 848-49 (Ct. App. 2025). As for NRS 125C.0035(5), that provision separately states that “a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has engaged in one or more acts of domestic violence against the child [or] a parent of the child . . . creates a rebuttable presumption that sole or joint physical custody of the child by the perpetrator of the domestic violence is not in the best interest of the child.” See also NRS 125C.230(1) (also discussing the “rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child”).

Here, Hinojos expressly acknowledged that he had previously been convicted for an act of domestic violence against Marin and the child. Hence, there was no need for the district court to make express findings regarding whether the evidence established that Hinojos had committed an act of domestic violence under either the preponderance-of-the-evidence standard applicable to NRS 125C.0035(4)(k) or the clear-and-convincing standard applicable to NRS 125C.0035(5). As to whether the court considered “how the ordered arrangement adequately protects the child,” the district court’s above-referenced analysis of NRS 125C.0035(4)(k) and NRS 125C.0035(5) reflects the court considered whether joint physical custody was in the child’s best interest, notwithstanding Hinojos’ prior act of domestic violence. And, as previously explained, the court specifically found that Hinojos successfully rebutted the aforementioned presumption against awarding him joint physical custody, as the incident occurred years ago and was while he was under the influence of

alcohol, but that Hinojos has since been sober for 3.5 years and regularly attends AA meetings. Thus, while more detailed findings regarding the safety of the child would have been preferable, the court provided sufficient factual findings in support of its decision showing that the court believed Hinojos had been rehabilitated and the child was not in danger. Therefore, in this case, the record demonstrates that statutory mandates were met. To the extent Marin argues the district court should have weighed the evidence differently, this court does not reweigh the evidence on appeal. *See Grosjean*, 125 Nev. at 365-66, 212 P.3d at 1080. Marin therefore has not demonstrated that the district court abused its discretion, and she is not entitled to relief based on this argument.

Finally, Marin argues the district court deprived her of due process by failing to resolve her motions regarding service of process and her contention regarding the alleged absence of subject matter jurisdiction before entering the custody decree.² As set forth above, the district court entered an order resolving Marin's arguments of insufficient service of process and subject matter jurisdiction, and Marin presents no cogent argument as to why the timing of the district court's entry of that order impacted her due process rights. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130

²Marin argues for the first time in her reply brief that Hinojos' custody action was barred by the doctrine of laches. Marin also adds new dimensions to her due process claim, arguing for the first time that the district court deprived her of her right to due process by setting an "impossible" deadline for drug testing, and ignoring her trial evidence, and further argues her due process rights were impacted by the fact that Hinojos was able to retain counsel for unbundled services. However, Marin forfeited these challenges by waiting until her reply brief to present them. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (providing that issues raised for the first time in a reply brief are deemed forfeited).

P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider issues that are not supported by cogent argument). Accordingly, Marin fails to demonstrate she is entitled to relief.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.³



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Michele Mercer, District Judge
Jessica Marin
Jose Hinojos
Eighth District Court Clerk

³Marin also requests that this court reassign this matter to a different district court judge. However, because this case is not being remanded, reassignment is unnecessary. Further, Marin fails to demonstrate this is one of the exceedingly rare cases where reassignment is necessary to preserve public confidence and trust in the fairness of a judicial proceeding. *See Williams v. Second Jud. Dist. Ct.*, 142 Nev., Adv. Op. 5, 583 P.3d 223, 230 (2026). Moreover, insofar as Marin raises additional arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached give the disposition of this appeal.