IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HERMAN GEORGE WILLIAMS,
Appellant,
vs.
NADINE ALECIA WILLIAMS,
Respondent.

No. 83263-COA

FILED
AUG 19 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART, AND REMANDING

Herman George Williams appeals from a decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Soonhee Bailey, Judge.

Herman and Nadine Alecia Williams married in 2004.[1] They have four children, three boys and one girl. The three boys are currently 9, 12, and almost 14 years of age. The girl, A.W., is the oldest, and she will turn 18 years old in October 2022. During the marriage, Nadine took out student loans and earned a master's degree in nursing; she now works as a nurse. Herman works for Copart as a tow truck driver, earning a fee for each completed tow.

The relevant tensions began in 2018. On one occasion, Nadine physically disciplined A.W. by hitting her with a piece of PVC pipe. This caused a scar on A.W.'s head. This incident gave rise to a CPS investigation, but that case was closed based on the understanding that the children would be in Herman's care. On another occasion, Nadine committed an act of domestic violence on her mother, Phyllis Gayle. In March 2019, Herman took the children and left the marital residence. After the separation, Gayle

[1]We recount the facts only as necessary to our disposition.

moved in with Herman, paying him $700 per month in rent. Soon thereafter, Nadine filed a complaint for divorce.

Before trial, the district court gave Herman temporary physical custody, and Nadine received weekend parenting time that gradually increased. In the early stages, all four children preferred to live with Herman. As time progressed, however, A.W. changed her preference and preferred to live with Nadine. At one point, A.W. even ran away from Herman to be with Nadine. Despite the temporary custody orders providing otherwise, A.W. remained with Nadine by her own choice. Herman's last exercise of parenting time with A.W. took place in January 2020. The children's evolving relationship with both parents was captured by Family Mediation Center (FMC) interviews. While the children indicated a preference for Herman immediately after Herman and Nadine separated, their ratings of Nadine improved as time went on. Reportedly, Nadine ceased using corporal punishment after she was admonished by the district court early in the proceedings. Specifically, the boys later indicated a favorable opinion of both Nadine and Herman. However, A.W. expressed both an improved relationship with Nadine and a worsened relationship with Herman. All the while, both parties frustrated each other's efforts to establish or maintain a relationship with the children.

Eventually, the parties retained counsel and went to trial in February 2021. At trial, the parties stipulated to the admission of most exhibits, including bank records and medical bills. Nadine testified first. She expressed a willingness to cooperate with Herman to meet the children's best interests. She also testified to her income, and that she believed that Herman did not deserve any alimony. Nadine requested

primary physical custody of all four children because she believed she was the better parent.

Herman testified next. During his testimony, he expressed an interest in reforming his relationship with A.W., but he agreed that Nadine could receive primary physical custody of A.W. because he had gone so long without spending time with their oldest child. He mainly desired primary physical custody of the parties' three boys. In addition, he offered testimony on his income and asked for $1,000 per month in alimony from Nadine because, according to Herman, she made more money than he did. Herman made no mention of a possible division of Nadine's master's degree at trial.

Phyllis Gayle also testified at trial to her observations of the family before the separation. She spoke mainly of the incidents of domestic violence committed by Nadine.

After trial, the district court considered the parties' testimonies and the admitted exhibits. On the issue of child custody, the court imposed the presumption against Nadine based on the acts of domestic violence she committed. It concluded, however, that she rebutted the presumption because she stopped using corporal punishment with the children after the court ordered its cessation and the children all noted an improved relationship with Nadine. With respect to A.W., the court acknowledged her low ratings of Herman and her preference for Nadine. Nevertheless, the district court was "persuaded by the positive relationship described by the children," and ordered joint physical custody of all four children.

After custody, the district court considered alimony. It did not find either party credible on the issue of income. As a result, the court calculated each party's income by reviewing the admitted bank records and pay information. Herman provided just eight months of America First bank

records that showed his deposits from Copart, the tow company, as well as transactions and transfers he made between both his savings account and his checking account. At the bottom of each statement, the document showed a "total deposits" figure that included the sum of both Copart's payments to Herman and his deposit transfers from his savings account to his checking account.

The district court mentioned these America First records before concluding that Herman's income over those eight months totaled $73,322. The court calculated Herman's annual income at $114,566. It then added Gayle's $700 per month rent, concluding his monthly income totaled $10,247. This figure put Herman over $120,000 in annual income. It calculated Nadine's income as well, arriving at an annual income of $145,583. The district court then considered each party's monthly expenses. In the end, the court refused Herman's request to award alimony because it concluded "the disparity of income between the parties [was] negligible," and Herman enjoyed the "superior financial position on a monthly basis."

Finally, the district court addressed the parties' debts. Relevant here are the two largest debts held by Herman and Nadine. Herman has unpaid medical bills totaling just over $75,000. Nadine has student debt for just over $76,000. The court identified both debts as community debt and used them to offset each other, assigning Herman the responsibility of paying his medical bills and Nadine the responsibility of the student loans. From there, the district court divided and awarded various other assets; it made no mention of Nadine's master's degree.

Herman filed a motion for reconsideration, or alternatively, a motion for a new trial. He challenged the district court's calculation of his

income, the custody determination on the three boys, and the court's failure to divide the value of Nadine's master's degree after classifying her student loans a community debt. The district court denied the motion and Herman appealed both the original order and the order denying reconsideration here.

On appeal, Herman argues that the district court erred in its income calculation and its custody determination. Herman concedes that he is not requesting primary custody of A.W., and therefore we only consider the physical custodial order for the three boys.[2] He also argues the district court erred by dividing Nadine's student loans as community debt without dividing her master's degree itself. He further argues that alimony was improperly denied because the district court miscalculated his income. Finally, he argues this court should reexamine the district court's credibility determinations. We address each point in turn.

The district court did not abuse its discretion when it awarded joint physical custody of the three boys

First, we address the district court's custody determination with respect to the boys. Herman argues that the court erred in concluding that Nadine rebutted the domestic violence presumption, and therefore, he

---

[2]In his opening brief, Herman seemingly challenged the district court's custody determination with respect to the three boys and A.W. Nadine reemphasized the parties' agreement regarding A.W. in her answering brief. Herman agreed in his reply, narrowing his challenge to the custody of the three boys. And because Nadine did not file an appeal of her own, our review is limited to the custody of the three boys. NRAP 4(a)(1); *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) ("[A] respondent who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal."). Therefore, the district court's custody determination regarding A.W. is undisturbed by this order.

should be awarded primary physical custody. In general, he also argues he is the more capable parent, and asserts Nadine failed to comply with court orders. Nadine recites the district court's custody analysis, arguing the court did not abuse its discretion. We agree with Nadine.

District courts enjoy "broad discretion in making child custody determinations, and we will not disturb the district court's custody determination absent a clear abuse of discretion." *Rico v. Rodriguez*, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005) (internal quotes omitted). In cases involving domestic violence, there is a rebuttable presumption against the perpetrator parent receiving even joint physical custody. *See* NRS 125C.0035(4)(k), (5). Ultimately, "the sole consideration of the court is the best interest of the child." NRS 125C.0035(1). The district court's order must tie the child's best interests to its decision and provide a factual basis for its custody determination. *Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015).

Here, we begin from the district court's application of the domestic violence presumption against Nadine. The district court correctly applied this presumption based upon its findings considering the testimony it received regarding Nadine's acts of violence towards A.W. and Gayle. We conclude, however, the district court was within its discretion to find Nadine rebutted that presumption. The court emphasized Nadine's compliance with court orders against using corporal punishment and the children's increased ratings of and positive feelings toward Nadine expressed during the FMC interviews. These considerations, and the fact that Gayle and Nadine no longer associated, adequately support the district court's decision because Nadine dispelled concerns of future domestic violence, and the children themselves, especially A.W., described Nadine's improvement. We

also note that no other findings of domestic violence were made under the requisite standard to invoke the presumption which requires clear and convincing evidence. *See* NRS 125C.0035(5).

Accordingly, we discern no abuse of discretion because the district court relied on the evidence, including the statements of the three boys, when it awarded joint physical custody to facilitate a relationship between the boys and both parents.

Herman did not preserve the merits of his claim to a portion of Nadine's master's degree

Herman argues on appeal that the district court erred in dividing Nadine's student loans without also dividing the value of her master's degree. Nadine asserts that the student loan proceeds were given to Herman to support him and his businesses and Herman failed to raise this master's degree point below. After reviewing the record, we agree with Nadine that Herman did not preserve the issue.[3]

"A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623

---

[3]Herman raised this issue before the district court in his post-judgment motion for reconsideration or for a new trial and not at the trial itself. Thus, Herman could have argued here that the district court erred in denying him a new trial on the master's degree issue, yet he elected not to make that argument. Without briefing, we do not consider that alternative perspective either. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority); *see also Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (noting that courts follow the "principle of party presentation" on appeal, which requires the litigants to frame the issues).

P.2d 981, 983 (1981). During trial, Herman did not ask the district court to divide Nadine's master's degree, so the parties never developed facts or the law on the matter and the court had no occasion to decide this question at trial. Thus, without a developed record on appeal, we decline to address the merits of whether Nadine's master's degree, acquired during the marriage, is divisible as community property. *See, e.g., Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (declining to address an issue that the district court did not resolve).

Insofar as Herman argues the inverse—that Nadine's loans should have been classified as her separate property along with the degree—we find his point unpersuasive and note he did not argue at trial that the student loans specifically were separate debt. *See LaFrance v. Cline,* No. 76161, 2020 WL 7663476 (Nev. December 23, 2020) (Order Affirming in Part, Reversing in Part, and Remanding) ("[A]ny property acquired during the marriage is community property, NRS 123.220 . . . [and a] spouse[ ] [may] rebut this presumption by showing by clear and certain proof that specific property is separate."); *see also Pascua v. Bayview Loan Servicing, LLC*, 135 Nev. 29, 32, 434 P.3d 287, 290 (2019) ("The party claiming that the property is separate has the burden of demonstrating that it is not community property.").

The district court may have abused its discretion in denying alimony

Herman argues that the district court used the "total deposits" figure from his bank statements in its income calculation, and in doing so, counted some of his income twice. Therefore, the alimony determination was based upon an incorrect factual finding. Nadine does not directly respond to this argument. We agree that calculation errors occurred and it may have affected the alimony determination.

A district court's alimony determination is reviewed on appeal for an abuse of discretion. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 66, 439 P.3d 397, 400 (2019). This court does not disturb a calculation supported by substantial evidence. *Kelly v. Kelly*, 86 Nev. 301, 307, 468 P.2d 359, 363 (1970); *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 669, 704 (2009) ("The district court's factual findings, however, are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence."). "Substantial evidence is that which a sensible person may accept as adequate to sustain a judgment." *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

The district court started its calculation of Herman's income with his financial disclosure form, three pay stubs and his testimony. The court found the records insufficient and his testimony not accurate so it turned to his America First bank statements. It found his eight statements totaled an income of over $73,000. The America First records do not appear to support that total. At first blush, the total deposits do exceed $70,000. However, a closer review of the same records shows the total deposit number on each statement does not reflect Herman's actual income. In short, it appears that Herman received payment from Copart directly into his checking account. He would then deposit some portion of that income into his savings account. Before his next payday, however, Herman transferred money from his savings back into his checking account for spending. This transfer shows up as a deposit in the monthly account summary at the end of each statement. Importantly, his statements also show the activity in his savings account. The savings account summaries show most of the money deposited into savings came from Herman's checking account; in other words, there is no unidentified source of income

that can account for the money arriving in savings and later transferred to his checking account. Nadine does not contest the claim that there was double counting. *See generally Moore v. State*, 93 Nev. 645, 647, 572 P.2d 216, 217 (1977) (discussing respondent's failure to address appellant's argument), *overruled on other grounds by Miller v. State*, 121 Nev. 92, 110 P.3d 53 (2005).

Thus, we vacate the alimony determination and remand for a recalculation of Herman's income because the America First records used by the district court do not support a conclusion that there exists only a "negligible" difference between Herman's income and Nadine's income. If the recalculation shows more than a negligible difference between Herman's income and Nadine's income, the district court is instructed to reconsider its alimony determination using all of the alimony factors. *See* NRS 125.150(1)(a), (9), and (10).

We generally will not review a district court's credibility determinations

Herman invites us to reconsider two of the district court's credibility determinations as a matter of public policy because lower courts base their decisions on credibility findings "to avoid being overturned." However, he cites no authority that holds that public policy supports such a process. Therefore we decline his invitation. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

Nevertheless, we note the Nevada Supreme Court has stated that "we leave witness credibility determinations to the district court and will not reweigh credibility on appeal." *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007). This rule is common across the country. *E.g.*, *In re Alexandria P.*, 204 Cal. Rptr. 3d 617, 643 (Ct. App. 2016) ("Principles of appellate review constrain the appellate courts from making credibility

determinations through transcripts alone."); *State v. Davie*, 264 P.3d 770, 775 (Utah 2011) ("Upon review, we accord deference to the trial court's ability and opportunity to evaluate credibility and demeanor." (quoting *State v. Goodman*, 763 P.2d 786, 787 (Utah 1988)). Finally, contrary to Herman's assertion, the Nevada Supreme Court has not suggested that credibility determinations are reviewable for an abuse of discretion; instead, it reaffirmed that credibility determinations "remain . . . within the district court's discretion." *Ybarra v. State*, 127 Nev. 47, 58, 247 P.3d 269, 276 (2011).

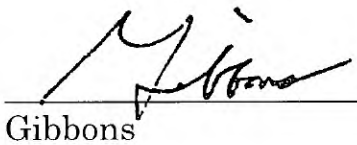
The *Ellis* opinion suggests review of credibility determinations is limited. The practice makes sense. We review witness testimony in the form of transcripts and rarely from recordings. The district court hears the testimony and sees the witnesses. Thus, we have an inferior vantage point with respect to credibility determinations and we will not supplant the district court's live observations with our reading of a cold transcript.

In this case, the abuse of discretion is argued as to the credibility determinations for the child custody and alimony decisions. Therefore, the argument may have some application if the district court's findings were clearly erroneous. *See Real Estate Division v. Jones*, 98 Nev. 260, 645 P.2d 1371 (1982) (stating a court abuses its discretion if a factual finding is not supported by substantial evidence). However, Herman has not demonstrated that the alleged errors require reversal. *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."). As previously stated, we are vacating the alimony determination and remanding. Herman's custody argument on

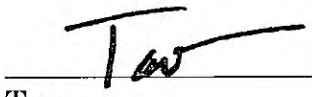
appeal, however, applies to the rebuttal of the domestic violence presumption. Herman has not shown Nadine's credibility is determinative of this issue or the district court's findings were clearly erroneous.

Accordingly, we are not persuaded by Herman's argument. Having considered all his points on appeal, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[4]



_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Soonhee Bailey, District Judge, Family Court Division
Law Offices of F. Peter James, Esq.
The Law Offices of Frank J. Toti, Esq.
Eighth District Court Clerk

---

[4]Insofar as the parties raise 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 given the disposition of this appeal.