IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH SHELLMIRE,
Appellant,
vs.
KYONDA HALL,
Respondent.

No. 88918-COA

FILED
JUL 31 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING AND REMANDING IN PART, AND DISMISSING IN PART

Joseph Shellmire appeals from a district court order awarding Kyonda Hall primary physical custody of the parties' children and child custody arrearages. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

The parties, who were never married, share two minor children: J.S. Jr., born in 2010, and J.S., born in 2016. In March 2022, Shellmire filed a complaint for custody and sought joint legal and physical custody of both children. Shellmire alleged that beginning in 2020, Hall prevented him from seeing either child. Hall filed an answer and counterpetition that sought sole legal and physical custody of the children and denied the allegation she was interfering in Shellmire's relationship with the children.

The district court held an evidentiary hearing in April 2024. During the hearing, the parties stated a California court had previously entered a child support order for J.S. Jr. and that Shellmire's wages were being garnished pursuant to this order. Accordingly, the parties agreed the district court would not address child support for J.S. Jr. and would instead address only child support for J.S., in addition to the child custody issues. Both Shellmire and Hall testified during the evidentiary hearing, and

presented contradictory testimony regarding their relationship, Shellmire's relationship with each child, and the reason for Shellmire's alleged lack of involvement in the children's lives.

Shellmire testified the parties initially moved to Nevada in 2012 and lived together until the relationship ended in 2016 and he moved out of the family home. Shellmire subsequently married his current wife and had another child in 2019. Shellmire claimed that prior to moving out he was very involved in J.S. Jr.'s life and enjoyed going to baseball games and practices with him. Shellmire explained he was not as close to J.S. because he was born shortly before Shellmire moved out of the family home and because he had questions regarding the paternity of J.S.[1] Shellmire stated he married his current wife and in 2019 had another child. Shellmire alleged that after the birth of his new child, Hall began restricting his visits with the children ostensibly because she was concerned about the COVID-19 pandemic. Shellmire claimed that he would contact Hall to arrange parenting time but Hall would maintain the children already had plans and did not allow him to see them. Shellmire testified he wanted to be more involved with the children and that he had a positive relationship with J.S. Jr. Shellmire conceded he did not have a particularly strong relationship with J.S. but that J.S. knew Shellmire was his father.

However, Shellmire acknowledged during cross examination that despite claiming to have not seen the children since 2020, he actually did see the children at Hall's house because the two continued a sexual relationship. Specifically, Shellmire testified that after he moved out of the familial home he continued to engage in a sexual relationship with Hall

[1]Shellmire initially refused to sign J.S.'s birth certificate and parentage was later established following a paternity test.

until 2022 and would see the children when he visited the home. Shellmire claimed he continued the sexual relationship because "at the time, that was the only way I could see my kids." Shellmire asserted that after the parties mutually ended their sexual relationship, Hall began withholding the children and thus he was forced to file the current custody action. Shellmire claimed that after filing the current action, he attempted to schedule reunification therapy visits with J.S. but that Hall would refuse to bring J.S. to these appointments. Further, Shellmire maintained Hall refused to plan a joint birthday party for J.S. Jr. Although Shellmire insisted Hall was restricting his parenting time with the children, Shellmire admitted that Hall permitted him to see J.S. Jr. in excess of the parties' temporary custody order. Shellmire further admitted he only recently learned which school the children attended but that he did not know what time school started. Finally, Shellmire conceded that he refused to pay any child support for J.S., despite the district court entering a temporary child support order in 2023, because California was garnishing his wages to pay child support for J.S. Jr.

In contrast, Hall testified that she never restricted Shellmire's parenting time or relationship with the children and instead Shellmire only wanted the children when it was convenient. Hall testified the couple separated after she became pregnant with J.S. because Shellmire wanted her to terminate the pregnancy and she refused. Hall further testified that Shellmire was not present at J.S.'s birth, did not request his name be on the birth certificate, and otherwise showed a marked preference for J.S. Jr. Hall claimed that both before and after Shellmire moved out she was the parent primarily responsible for the children's care, including taking them to doctor appointments and attending parent-teacher conferences. Hall

denied preventing Shellmire from seeing the children and stated that because the two continued to date, Shellmire saw the children when he visited her home. Hall admitted that she did not ask Shellmire to watch the children when she worked and instead relied on her family for support because she did not want to "beg" Shellmire to see the children.

Further, Hall testified that because Shellmire's involvement was inconsistent, she regularly made plans for the children without consulting him but would tell Shellmire if the children had baseball practice. Additionally, Hall told Shellmire he could see the children after school, but he declined this offer because he did not wish to help with homework. Finally, Hall denied refusing to bring J.S. to reunification therapy and testified that Shellmire would not attempt to coordinate these appointments ahead of time and instead scheduled them while she was at work. However, Hall claimed that after her employer's probationary period ended, and she had more flexibility over her schedule, she began scheduling the appointments directly with the therapist. Hall asserted she scheduled four appointments, but Shellmire failed to attend two of them.

The district court subsequently entered a written order awarding the parties joint legal custody and granting Hall primary physical custody of the two children. The court expressly found Hall's testimony more credible than Shellmire's and concluded that Hall had not prevented Shellmire from being an active parent. Instead, the court found that Shellmire wanted to be the "fun dad" and had demonstrated no urgency to be an active parent. The court evaluated each of the best interest factors and concluded that the majority favored awarding Hall primary physical custody. The district court found that because each child had a different

relationship with Shellmire, there would be different parenting time schedules.

Shellmire received parenting time with J.S. Jr. every other week from Friday through Sunday. However, Shellmire would only see J.S. in therapy. The district court further directed that, "[o]nce the relationship [with J.S.] progresses based on the recommendations of the therapist, then that [parenting time] should be expanded." Regarding child support for J.S., the court calculated that Shellmire's monthly obligation pursuant to NAC 425.140 was $889 but in light of the California support order, and that he had other children to support, the court awarded a downward adjustment and set the amount of support at $460. Further, the district court found that because Shellmire admitted he had failed to provide any support for J.S., it would award Hall $43,000 in constructive child support arrears pursuant to NRS 125B.030. Shellmire now appeals.

This court reviews a custody determination for abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). "[W]e will not set aside the district court's factual findings if they are supported by substantial evidence." *Id.* at 149, 191 P.3d at 242. Credibility determinations are left to the district court and we do not reweigh credibility on appeal. *Id.* at 152, 191 P.3d at 244. The district court's sole consideration when determining custody is the best interest of the child. *Id.* at 149, 191 P.3d at 242; NRS 125C.0035(1).

On appeal, Shellmire challenges the district court's order awarding Hall primary physical custody of both children, arguing the court failed to consider that Hall interfered with his ability to parent the children. Specifically, Shellmire argues his lack of contact with the children was due to Hall's interference and that the prior "status quo" is irrelevant to an

initial custody determination. Shellmire reasons that because the district court failed to consider Hall's interference in his relationship with the children, substantial evidence does not support the court's conclusion that various NRS 125C.0035(4) factors support awarding Hall primary physical custody.

We affirm the district court's order awarding primary physical custody to Hall. At its core, Shellmire asks this court to engage in a credibility determination to decide whether his lack of involvement was due to Hall's alleged interference or his alleged disinterest in parenting. However, this court does not reweigh the evidence or reevaluate witness credibility on appeal. *See Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal); *Ellis*, 123 Nev. at 149, 152, 191 P.3d at 244 (refusing to reweigh credibility determinations on appeal). Thus, because both parties presented evidence which "a reasonable person may accept as adequate to sustain a judgment," *Ellis*, 123 Nev. at 149, 161 P.3d at 242, and the district court weighed the evidence and analyzed the best interest factors, we see no basis to conclude the court abused its discretion in awarding Hall primary physical custody.[2]

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[2]Shellmire additionally challenges the district court's finding that factor (d) (level of conflict between the parties) favors Hall. Here, the district court found that this factor favored Hall although both parties testified that there was no real conflict between them, just a lack of communication due to the ongoing custody dispute. However, even if the district court arguably should have evaluated this factor differently, the court found that the majority of factors favored Hall to support its custody determination, and Shellmire has not demonstrated that this one alleged error would have changed the result. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (holding that an appellant must show that but for the alleged error, the result may have been different).

Shellmire next challenges the district court's allocation of his parenting time with J.S. because it effectively awarded Hall sole physical custody of J.S.[3] We agree. As this court recently held in *Roe v. Roe*, sole physical custody is "a custodial arrangement where the child resides with only one parent and the noncustodial parent's parenting time is restricted to no significant in-person parenting time." 139 Nev. 163, 174, 535 P.3d 274, 287 (Ct. App. 2023). Although the court characterized its custody award of J.S. as primary, in actuality it constituted sole physical custody by effectively eliminating Shellmire's parenting time, permitting him to only see J.S. during reunification therapy. *See id.* at 176-77, 535 P.3d at 289 (holding the court mislabeled a sole physical custody order as primary physical custody).

Like in *Roe*, the district court limited Shellmire's parenting time so severely he "has less parenting time than other parents in cases the supreme court has addressed who were incarcerated or residing at in-person rehabilitation programs." *Id.* The district court's order includes very few findings why such a restriction was warranted, even though such findings are required under *Roe*, especially when a court severely restricts or eliminates parenting time. *Id.* Accordingly, we conclude the district court abused its discretion by restricting Shellmire parenting time so severely it constituted a sole physical custody order without making adequate findings to support its decision. *See id.* at 175-76, 535 P.3d at 288 (holding that separate and additional findings beyond findings regarding the best interest factors are required to support an award of sole physical

[3]Shellmire's opening brief does not contain any argument regarding the parenting time allocation for J.S. Jr. and thus we do not discuss the portion of the order regarding J.S. Jr.

custody). Therefore, we reverse that award and remand the portion of the challenged order to provide Shellmire's parenting time with J.S. consistent with primary custody or to make findings in support of restrictions placed on Shellmire's parenting time with J.S.[4]

Next, Shellmire challenges the portion of the order setting child support for J.S. and awarding constructive child support arrearages.[5] Regarding Shellmire's claim that the district court abused its discretion by failing to consolidate this matter with the California case governing J.S. Jr.'s support, we conclude that he waived this argument by failing to present it below. *See 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 waived and will not be considered on appeal."). We note that Shellmire never filed a motion requesting the district court assert jurisdiction over J.S. Jr.'s child support order nor did he ever provide the district court with a copy of the order.

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[4]During the underlying case, Shellmire testified that the therapeutic visits have occasionally been halted due to his inability to afford them and that the children's Medicaid coverage resulted in delays in finding an approved therapist. On remand, the district court should take care to avoid imposing significant financial obstacles to Shellmire's exercise of parenting time that would unreasonably interfere with his fundamental rights concerning custody of J.S. *Id.* at 177-78, 535 P.3d 290 (reversing a district court's order that imposed unreasonable financial liabilities on parenting time without considering any less restrictive or financially feasible options, such as supervised parenting time).

[5]Shellmire's opening brief further challenges the award of attorney fees. However, the appeal challenging the award of attorney fees was already dismissed, *Shellmire v. Hall*, No. 89181, 2025 WL 1322613 (Nev. May 6, 2025) (Order Dismissing Appeal), and thus we likewise dismiss the portion of this appeal challenging the order awarding attorney fees.

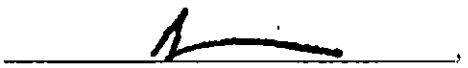
Turning to Shellmire's constructive arrearages claim, we affirm the district court's decision to impose arrearages. We review questions of statutory interpretation de novo. *See Harvey v. State*, 136 Nev. 539, 541, 473 P.3d 1015, 1018 (2020). Shellmire argues the district court cannot order constructive child support arrearages pursuant to NRS 125B.030 because NRS 125C.0015(1) states that absent a court order, parents share joint legal and physical custody. We reject Shellmire's argument on this point because such an interpretation would render NRS 125B.030 nugatory.

NRS 125B.030 states that "where the parents of a child do not reside together, the physical custodian of the child may recover from the parent without physical custody a reasonable portion of the cost of care . . . provided by the physical custodian." This statute further provides that, in the absence of a prior child support order, "the parent who has physical custody may recover not more than 4 years' support furnished before the bringing of the action to establish an obligation for the support of the child." *Id.*

Under Shellmire's reasoning, no unmarried parent could ever utilize NRS 125B.030 to obtain constructive arrearages because NRS 125C.0015(1) states that absent a court order the parents have joint physical custody. Such a reading would render NRS 125B.030 nugatory and defeat the very purpose of the statute by ensuring a custodial parent is unable to obtain child support arrearages without first obtaining a child support order. *See Blackburn v. State*, 129 Nev. 92, 97, 294 P.3d 422, 426 (2013) (holding that a basic rule of statutory interpretation requires courts to read statutes in a way to avoid rendering one nugatory); *see also* NRS 125C.001(2),(3) (stating that it is this state's policy that both parents should share the responsibilities of child rearing and have an equivalent duty to

provide their minor children with financial support). Accordingly, we affirm the district court's decision to award child support arrearages in accordance with NRS 125B.030.[6]

It is so ORDERED.



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Stacy Michelle Rocheleau, District Judge, Family Division
Joseph Shellmire
Kyonda Hall
Eighth District Court Clerk

[6]Insofar as Shellmire raises 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 our disposition of this matter.