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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

QA'JUAN SCOTT,

Petitioner-Appellee,

v. **No. A-1-CA-43258**

CHANELLE SCOTT,

Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Michael H. Stone, District Court Judge

The Sawyers Law Group, LLC
Melissa A. Sawyers
Hobbs, NM

for Appellee

Lauren E. A. Truitt, P.C.
Lauren E. A. Temple
Ruidoso, NM

for Appellant

MEMORANDUM OPINION

ATTREP, Judge.

{1} Respondent Chanelle Martinez (Mother) appeals the district court's entry of a final decree of dissolution of her marriage to Petitioner Qa'Juan Scott (Father). Mother argues the district court abused its discretion in (1) ordering the parties to share equal physical custody of their minor children, (2) denying her request for an independent psychological evaluation of Father prior to making its custody

determination, and (3) declining to order child support. Not persuaded that reversible error occurred, we affirm.

BACKGROUND

{2} Mother and Father share two minor children, Daughter, born in 2016, and Son, born in 2018 (the Children). Father filed a petition for dissolution of the marriage in May 2023. Shortly thereafter, the parties entered into a stipulated "stay away" order that, among other things, ordered physical custody[1] of the Children to rotate on a weekly basis until further order of the district court.

{3} Between August 2023 and May 2024, Mother filed two ex parte motions for emergency custody, asserting in each motion that Father was "mentally unstable to care for the . . . [C]hildren." On the same day she filed the second ex parte motion, Mother moved the district court to order Father to submit to an independent psychological evaluation. The district court issued orders denying both ex parte motions and ordering the "week on/week off" physical custody arrangement to

[1]The district court's orders refer interchangeably to "visitation," "custody," and "time share." For ease of reference, we refer to any determination concerning the parties' respective periods of physical responsibility for the Children using the term "physical custody." *See Hopkins v. Wollaber*, 2019-NMCA-024, ¶¶ 14-15, 458 P.3d 583 (providing that "physical custody" refers to "the period of responsibility for which each parent—whether custodial or noncustodial—has physical care and supervision of the child," while visitation refers specifically to a noncustodial parent's period of responsibility under a sole custody arrangement).

continue.[2] The court additionally denied Mother's motion for a psychological evaluation of Father.

{4} The district court initiated a merits hearing in the divorce proceeding on October 29, 2024. The hearing was not concluded at that time, and a second hearing date was eventually held on October 29, 2025—a full year later. Across the two merits hearing dates, the district court heard testimony from both Mother and Father, as well as from the Children's court-appointed guardian ad litem (GAL), the Children's therapists, and multiple lay witnesses acquainted with the parties. At the close of the merits hearing, Mother requested the district court to adopt the GAL's recommendation that Mother be granted primary physical custody of the Children, with Father having physical custody every other weekend. Mother also renewed her request for an independent psychological evaluation of Father. Father objected to the motion for an evaluation and requested that the weekly rotation of physical custody continue.

{5} Following the merits hearing, the district court entered a final decree of dissolution from which Mother now appeals. Relevant to this appeal, the decree of dissolution (1) granted joint legal custody and ordered the weekly rotation of physical custody to continue, (2) denied Mother's motion for an independent

[2]Before the hearing on the first ex parte motion, the district court issued an emergency order awarding Mother temporary sole physical custody.

psychological evaluation of Father, and (3) ordered that neither parent would be required to pay child support. We address Mother's arguments concerning each of these rulings in turn, reserving discussion of additional facts as necessary to our disposition of the issues.

DISCUSSION

I. Child Custody

{6} Mother first argues the district court "abused its discretion in failing to give primary consideration to the best interests of the [C]hildren when it refused to reduce [Father]'s parenting time." For the reasons that follow, we are not persuaded the district court erred.

{7} "We review a district court's child custody determination for abuse of discretion." *Hough v. Brooks*, 2017-NMCA-050, ¶ 18, 399 P.3d 387. "The guiding principle in child custody determinations is the best interests of the child." *Id.* ¶ 28. The district court has "broad discretion and great flexibility in fashioning a custody arrangement that will serve the best interests of the children." *Newhouse v. Chavez*, 1988-NMCA-110, ¶ 23, 108 N.M. 319, 772 P.2d 353. However, "the exercise of discretion by the district court must be consistent with the evidence and statutory requirements." *Hough*, 2017-NMCA-050, ¶ 30 (text only) (citation omitted).

{8} Pursuant to NMSA 1978, Section 40-4-9(A) (1977), the district court is required to "consider all relevant factors" in conducting its best interests analysis, including:

> (1) the wishes of the child's parent or parents as to [their] custody;
>
> (2) the wishes of the child as to [their] custodian;
>
> (3) the interaction and interrelationship of the child with [their] parents, [their] siblings and any other person who may significantly affect the child's best interest;
>
> (4) the child's adjustment to [their] home, school and community; and
>
> (5) the mental and physical health of all individuals involved.

Section 40-4-9(A). Joint custody is presumed to be in a child's best interests in "an initial custody determination." [3] *See* NMSA 1978, § 40-4-9.1(A) (1999). In determining whether to award joint custody, "the district court is required to consider not only the factors discussed above under Section 40-4-9(A), which are applicable

[3]Despite the length of time—over two years—that elapsed between the entry of the first stipulated order adopting a weekly rotation of physical custody and the entry of the final decree of dissolution, neither party disputes that the order of equal physical custody set forth in the final decree amounts to "an initial custody determination." *See* NMSA 1978, § 40-4-9.1(A) (1999). Nor do we see any obvious reason to conclude otherwise given that each of the prior orders addressing custody of the Children was identified as an "interim order," with the record reflecting the parties contemplated additional hearings on the custody issue. *See Hough*, 2017-NMCA-050, ¶ 24 (concluding that an interim custody order created a "durable custody arrangement," modifiable only following a substantial change in circumstances, where there was "no indication that the custody determination would be revisited"). We accordingly proceed to consider whether the district court erred in entering an initial order of equal physical custody.

to all child custody determinations, but additional factors under Section 40-4-9.1(B)." *Hough*, 2017-NMCA-050, ¶ 29. Specifically, the district court must consider the following:

> (1) whether the child has established a close relationship with each parent;
>
> (2) whether each parent is capable of providing adequate care for the child throughout each period of responsibility, including arranging for the child's care by others as needed;
>
> (3) whether each parent is willing to accept all responsibilities of parenting, including a willingness to accept care of the child at specified times and to relinquish care to the other parent at specified times;
>
> (4) whether the child can best maintain and strengthen a relationship with both parents through predictable, frequent contact and whether the child's development will profit from such involvement and influence from both parents;
>
> (5) whether each parent is able to allow the other to provide care without intrusion, that is, to respect the other's parental rights and responsibilities and right to privacy;
>
> (6) the suitability of a parenting plan for the implementation of joint custody, preferably, although not necessarily, one arrived at through parental agreement;
>
> (7) geographic distance between the parents' residences;
>
> (8) willingness or ability of the parents to communicate, cooperate or agree on issues regarding the child's needs; and
>
> (9) whether a judicial adjudication has been made in a prior or the present proceeding that either parent or other person seeking custody has engaged in one or more acts of domestic abuse against the child, a parent of the child or other household member. If a determination is made that domestic abuse has occurred, the court shall set forth findings

> that the custody or visitation ordered by the court adequately protects the child, the abused parent or other household member.

Section 40-4-9.1(B).

{9} "[T]he failure of a district court to apply the applicable statutory guidelines . . . will constitute an abuse of discretion." *Hough*, 2017-NMCA-050, ¶ 18. The district court need not, however, "make point-by-point findings to correspond to the statutory factors," so long as its order of custody "sufficiently tracks the factors, indicating that the court considered them in making its decision." *See Thomas v. Thomas*, 1999-NMCA-135, ¶ 16, 128 N.M. 177, 991 P.2d 7. If the district court's findings sufficiently track its consideration of the relevant statutory factors, "we will uphold the district court's findings if they are supported by substantial evidence." *Hough*, 2017-NMCA-050, ¶ 18. "Substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion." *Id.* (internal quotation marks and citation omitted).

A. Adequacy of the District Court's Findings in Support of Its Custody Determination

{10} Mother does not challenge the district court's grant of joint legal custody, but contends the district court erred in ordering equal physical custody. In support of this position, Mother first argues the order of equal physical custody was an abuse of discretion because the district court "did not make any specific findings related to any of the statutorily mandated factors it was required to consider when making a

custody determination." Assuming without deciding that the district court was required to consider the factors set forth in Sections 40-4-9(A) and 40-4-9.1(B) as Mother argues, even where the parties disagreed solely as to the precise division of physical custody within a joint legal custody arrangement, we are not persuaded the district court's findings here are insufficient to track its consideration of the relevant factors.[4] *See Thomas*, 1999-NMCA-135, ¶ 16.

{11} Mother's argument before the district court hinged on consideration of Father's and the Children's mental health. *See* § 40-4-9(A)(5) (requiring consideration of the "mental and physical health of all individuals involved"). The crux of Mother's argument below was that equal physical custody was inappropriate because, in Mother's view, Father was subjecting the Children to psychological pressure. In support, Mother provided testimony concerning the incidents underlying her earlier ex parte motions, as well as certain more recent behaviors of the Children, that, according to Mother, established Father's ongoing interference with the Children's therapy and with their relationship with Mother's new partner. Based on

[4] The district court did not issue written factual findings, but provided explanation of its custody determination in its oral ruling at the end of the merits hearing. Mother clarified at oral argument that she does not contend the lack of written findings itself amounted to error, but that the court's oral findings were legally inadequate. We accordingly focus our analysis on the sufficiency of the oral findings. *See Jeantete v. Jeantete*, 1990-NMCA-138, ¶ 11, 111 N.M. 417, 806 P.2d 66 (explaining that appellate courts "may consider the trial court's verbal comments in order to clarify or discern the basis for the order or action of the court below").

this testimony, Mother requested that the district court limit Father's periods of physical custody to every other weekend pending an independent psychological evaluation of Father.

{12} The district court addressed Mother's concerns regarding mental health in its oral rulings at the close of the merits hearing. Specifically, the court acknowledged Mother's allegations of "psychological harm" but found the Children's behaviors to be "fairly normal." The court additionally indicated that it had considered Mother's request for an independent psychological evaluation of Father, but determined there would be little utility in granting the request given a prior evaluation by Father's healthcare provider was available in the record. The district court ultimately found that Father was a "fit and proper" parent, and that limiting Father's time with the Children to every other weekend as Mother requested would be "more hurtful . . . than [anything] going on" under the current custody arrangement. The court did, however, order the parties to "try to agree on new therapists for the [C]hildren" and provided for a mechanism for selection through the court if the parties were unable to agree. We think this record is sufficient to track the court's consideration of Mother's concerns regarding the mental health of the parties, particularly where Mother has offered no specific argument or authority to the contrary. *See Thomas*, 1999-NMCA-135, ¶ 16 (finding no abuse of discretion where the court's order did not "make point-by-point findings to correspond to the statutory factors," but

indicated the court's consideration of the relevant factors, including its "concern[] about the emotional well-being of the children"); *see also Corona v. Corona*, 2014-NMCA-071, ¶ 26, 329 P.3d 701 ("The appellate court presumes that the district court is correct, and the burden is on the appellant to clearly demonstrate that the district court erred.").

{13} As for the remaining statutory factors, the district court found, based on undisputed testimony from both parties, that both parents were "good parents" and that there was "no doubt" the Children loved both parents. The district court additionally found both parents were "taking care of [their Children]," noting Father's involvement in sports and Mother's involvement in schooling. The court sought input from the parties concerning the terms of a parenting plan for joint custody, determining that custody exchanges no longer needed to occur at a third-party location and that prior bans on the parties communicating by telephone and attending the same public events could be lifted. Neither party objected to these changes. Given the apparent lack of dispute between the parties as to these issues, we think this record is sufficient to track the district court's consideration of the Children's relationship with each parent, *see* § 40-4-9(A)(3); § 40-4-9.1(B)(1); the Children's adjustment and development in the care of each parent, *see* § 40-4-9(A)(4); § 40-4-9.1(B)(4), and the parties' ability to provide adequate care and comply with the terms of a parenting plan for joint custody, *see* § 40-4-9.1(B)(2),

(3), (5), (6), (8). While Mother summarily raises that the district court did not interview the Children in camera, she fails to provide any explanation as to why the court was required to do so given both Children were well under age fourteen at the time of the final merits hearing. *See* § 40-4-9(B) ("If the minor is fourteen years of age or older, the court shall consider the desires of the minor as to with whom [they] wish[] to live before awarding custody of such minor."). Moreover, there is no indication in the record that geographic distance between the parties' homes or prior adjudication of domestic abuse were at issue here. *See* § 40-4-9.1(B)(7), (9); *see also Hopkins v. Wollaber*, 2019-NMCA-024, ¶ 26, 458 P.3d 583 (explaining that a district court's custody determination "will be affirmed if [the court's] order reflects that it considered the *relevant* factors" (emphasis added)).

{14} We finally observe that Mother did not submit requested findings to the district court despite the court directly inquiring of the parties at the merits hearing whether they intended to do so. *See* Rule 1-052(B) NMRA (providing that a party may file requested findings of fact and conclusions of law within ten days of the district court's announcement of a decision). Given this, and in the absence of a specific explanation as to how the findings entered by the district court were inadequate, Mother fails to persuade us that the district court's findings were insufficient to track its consideration of the relevant factors. *See Corona*, 2014-NMCA-071, ¶ 26.

B. Sufficiency of the Evidence Supporting the District Court's Custody Determination

{15} Mother also argues the district court's order of equal physical custody was in error because "the [district court] was supplied with overwhelming testimony from its most neutral players in the [C]hildren's lives, that they were being subjected to extreme psychological pressure from Father." In response, Father highlights that there was conflicting evidence sufficient to support the district court's custody determination. For the reasons that follow, Mother fails to persuade us that the evidence presented to the district court was not of the type that a reasonable mind might accept in support of the court's custody order. *See Hough*, 2017-NMCA-050, ¶ 18.

{16} To the extent Mother contends that testimony pertaining to the events underlying her earlier ex parte motions provided overwhelming evidence that equal physical custody was not in the Children's best interests, we observe that the final merits hearing took place well over a year after these events and that the GAL testified there were no further "big red flag[s]" involving Father over that period. Moreover, Father testified that he attended counseling following the earlier events and was not experiencing further issues with his mental health. Additionally, multiple lay witnesses testified to Father's positive engagement with the Children and to their lack of concern regarding Father's mental health or the Children's behavior.

{17} To the extent Mother argues there was overwhelming testimony of ongoing psychological pressure from Father, her argument appears to rely on testimony—primarily from the GAL and from Son's therapist—that certain of the Children's behaviors were indicative of interference by Father with their participation in therapy and with their relationship with Mother's new partner.[5] There was, however, contrary testimony that Daughter engaged successfully in therapy, that the behaviors of concern were improving, that both Children generally liked Mother's new partner, and that it is not uncommon for children to experience emotional difficulties following parental separation. Moreover, the district court indicated that it gave less weight to the testimony of Son's therapist because she also served as Mother's therapist, creating a potential conflict of interest in the court's view. The district court likewise gave less weight to the GAL's testimony, which relied heavily on

[5] Mother has not designated the GAL's written report—or any other documentary exhibit presented to the district court—as an exhibit to this Court. *See* Rule 12-212(A) NMRA ("A designation of . . . exhibits . . . shall be filed by the appellant within fifteen (15) days after service of the general calendar assignment."); *see also Sandoval v. Baker Hughes Oilfield Operations, Inc.*, 2009-NMCA-095, ¶ 65, 146 N.M. 853, 215 P.3d 791 ("It is the duty of the appellant to provide a record adequate to review the issues on appeal."). Thus, we do not have the benefit of these exhibits in our appellate review, and to the extent that the testimony at the merits hearing relied on documentary exhibits, we presume the district court weighed the contents of those exhibits appropriately. *See Reeves v. Wimberly*, 1988-NMCA-038, ¶ 21, 107 N.M. 231, 755 P.2d 75 ("Upon a doubtful or deficient record, every presumption is indulged in favor of the correctness and regularity of the trial court's decision, and the appellate court will indulge in reasonable presumptions in support of the order entered.").

reports from Mother and from Son's therapist. We agree with Father that this Court may not set aside such determinations on appeal. *See, e.g.*, *N.M. Tax'n & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶ 23, 336 P.3d 436 ("It is the sole responsibility of the trier of fact to weigh the testimony, determine the credibility of the witnesses, reconcile inconsistencies, and determine where the truth lies, and we, as the reviewing court, do not weigh the credibility of live witnesses." (text only) (citation omitted)). Given all this, we are not persuaded by Mother's argument that the district court's order of equal physical custody was not supported by substantial evidence. *See Hough*, 2017-NMCA-050, ¶ 18; *Grant v. Cumiford*, 2005-NMCA-058, ¶¶ 14-20, 137 N.M. 485, 112 P.3d 1142 (concluding, where a parent argued that the testimony of a guardian ad litem and court-appointed psychological expert provided "overwhelming evidence" contrary to a district court's custody determination, that the court did not abuse its discretion where it was "not persuaded" by the cited testimony and there was evidence to the contrary). We accordingly affirm the district court's custody determination.

II. Independent Psychological Evaluation

{18} Mother next argues the district court "abused its discretion in . . . failing to order [Father] to submit to an independent psychological evaluation," which she argues was necessary "to inform the [district court] regarding the best interests and psychological and emotional safety of the [C]hildren." The sole authority Mother

cites in support of her request is Section 40-4-9(A)(5)'s requirement that a district court consider the "mental and physical health of all individuals involved." Mother cites no authority to suggest Section 40-4-9(A)(5)'s general requirement obligated the district court to order an independent psychological evaluation of Father here—either as a matter of course or under the specific circumstances of this case. *See Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists."). As a result, we lack any basis to conclude that the district court abused its discretion in denying Mother's request—particularly given that a prior evaluation by Father's healthcare provider was available in the record and the district court determined that an additional evaluation would not be of "any utility." *See Thomas*, 1999-NMCA-135, ¶ 14 (rejecting a party's argument that the district court abused its discretion in declining to order an updated psychological evaluation before modifying custody). Accordingly, we affirm the district court's denial of Mother's request for an independent psychological evaluation of Father.

III. Child Support

{19} Mother finally argues that the district court improperly deviated from the child support guidelines in ordering that neither party would be required to pay child support. "The determination of child support is within the district court's discretion and we review it on appeal only for an abuse of discretion." *Klinksiek v. Klinksiek*,

2005-NMCA-008, ¶ 4, 136 N.M. 693, 104 P.3d 559. The district court's discretion in entering a child support order "must be exercised in accordance with the child support guidelines." *Id.* Specifically, the district court must apply the child support guidelines to determine a "rebuttable presumption" of the amount of child support due, NMSA 1978, § 40-4-11.1(A) (2023), and any deviation from the presumptive support amount "shall be supported by a written finding in the decree, judgment or order of child support that application of the guidelines . . . would be unjust or inappropriate," NMSA 1978, § 40-4-11.2 (2023).

{20} Mother argues that the district court's child support determination was an abuse of discretion because "the [c]ourt did not determine or entertain a finding of the amount due under the guidelines." We are not persuaded. The parties clarified at oral argument that each parent submitted a proposed form of order to the district court containing differing child support calculations. Along with his proposed form of order, Father submitted a completed child support worksheet, *see* § 40-4-11.1, which indicated that the parties had substantial and essentially equal incomes and that Father presumptively owed $12.88 per month under the guidelines—amounting to approximately one tenth of one percent of each party's income. The district court produced its final decree by interlineating handwritten revisions onto Father's proposed form of order. With respect to child support, the district court struck Father's proposed language providing that he was to pay $12.88 per month and

replaced this language with a handwritten statement that "neither party shall pay child support as their financial responsibility is virtually identical." The district court expressly cited Father's child support worksheet in making this determination, and attached the worksheet to the final decree as an exhibit. Thus, contrary to Mother's position that the district court failed to "entertain a finding" of the amount due under the guidelines, *see* § 40-4-11.1(A), we think it clear that the district court accepted Father's calculation of $12.88 as the presumptive monthly child support obligation. Notably, the district court invited the parties to "file a written motion" if they "desire[d] to oppose" the court's interlineated revisions, and Mother did not do so.

{21} To the extent Mother argues the district court erred in accepting Father's calculations rather than her own, we observe that neither Mother's proposed form of order, nor any of the documentary evidence submitted to the district court concerning the parties' income, has been designated as exhibits to this Court. *See* Rule 12-212(A) NMRA ("A designation of . . . exhibits . . . shall be filed by the appellant within fifteen (15) days after service of the general calendar assignment."); *see also Sandoval v. Baker Hughes Oilfield Operations, Inc.*, 2009-NMCA-095, ¶ 65, 146 N.M. 853, 215 P.3d 791 ("It is the duty of the appellant to provide a record adequate to review the issues on appeal."). Accordingly, we presume the district court properly considered the evidence before it in determining that Father's child support calculations were correct. *See Reeves v. Wimberly*, 1988-NMCA-038, ¶ 21,

107 N.M. 231, 755 P.2d 75 ("Upon a doubtful or deficient record, every presumption is indulged in favor of the correctness and regularity of the trial court's decision, and the appellate court will indulge in reasonable presumptions in support of the order entered.").

{22} To the extent Mother argues the district court did not adequately explain its reasons for deviating from the presumptive child support amount, we observe that she offers no argument or explanation as to why we should not construe the district court's handwritten determination not to order child support in light of the "virtually identical" presumptive obligations of the parties as a finding that it would be "unjust or inappropriate" to order Father to pay the presumptive amount. *See* § 40-4-11.2; *see also Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("We will not review unclear arguments, or guess at what a party's arguments might be." (text only) (citation omitted)). Nor does she argue such a finding would be improper as a matter of law. *See Elane Photography, LLC*, 2013-NMSC-040, ¶ 70. Instead, Mother simply quotes *Tedford v. Gregory*, 1998-NMCA-067, 125 N.M. 206, 959 P.2d 540, in which this Court concluded that a district court abused its discretion in deviating from the presumptive child support amount where it (1) gave no indication that it had determined the presumptive amount, (2) did not explain how it calculated the amount ordered, and (3) offered no explanation as to why an order in the presumptive amount would be unjust or inappropriate. *Id.* ¶¶ 26-34. Mother

offers no explanation as to how *Tedford* applies to the facts of this case—in which the district court determined the presumptive amount due and articulated its basis for departing from that amount. Given the limited appellate record before us and in the absence of a developed argument from Mother, we are not persuaded the district court abused its discretion in declining to order child support under the specific circumstances of this this case. *See Corona*, 2014-NMCA-071, ¶ 26; *Elane Photography, LLC*, 2013-NMSC-040, ¶ 70. We accordingly affirm the district court's child support determination.

CONCLUSION

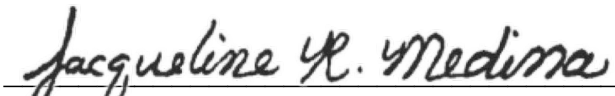
{23} For the foregoing reasons, we affirm.

{24} **IT IS SO ORDERED.**



JENNIFER L. ATTREP, Judge

WE CONCUR:



JACQUELINE R. MEDINA, Chief Judge



JANE B. YOHALEM, Judge