

WARD V. HARVEY

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MAIDA MARIE WARD,
Petitioner-Appellant,
v.
TIMOTHY BERNARD HARVEY, JR.
Respondent-Appellee.

No. 33,888

COURT OF APPEALS OF NEW MEXICO

May 27, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Alisa Ann
Hadfield, District Judge

COUNSEL

Maida Marie Ward, Albuquerque, NM, Pro Se Petitioner-Appellant

Timothy Bernard Harvey, Jr., Albuquerque, NM, Pro Se Respondent-Appellee

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: CYNTHIA A. FRY, Judge, LINDA M. VANZI, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

{1} Petitioner appeals, pro se, from a district court order reducing her supervised visitation of her children from three hours a week to one hour. We issued a calendar notice proposing to affirm. Petitioner has responded with a memorandum in opposition. [Ct. App. file at red clip] On May 12, Petitioner filed an emergency motion to remand to

the district court to permit it to address new allegations relating to the custody dispute. [Motion is top doc in file] In light of our disposition on the current appeal, we deny the motion as moot, although we note that any new allegations relating to custody may be raised in the district court at any time. See NMSA 1978, § 40-10A-202 (2001). We affirm the current appeal.

{2} Petitioner continues to challenge an order modifying child custody. With respect to the change in custody, “[a] court may modify a custody order only upon a showing of a substantial change in circumstances since the prior order that affects the best interests of the children.” *Thomas v. Thomas*, 1999-NMCA-135, ¶ 10, 128 N.M. 177, 991 P.2d 7. We review the district court’s decision for an abuse of discretion. See *id.* (“We will overturn the [district] court’s custody decision only for abuse of discretion, and we will uphold the court’s findings if supported by substantial evidence.”); *Clayton v. Trotter*, 1990-NMCA-078, ¶ 5, 110 N.M. 369, 796 P.2d 262 (“In matters of custody, the trial courts have wide discretion; we will overturn an award only when there has been a manifest abuse of discretion.”).

{3} Here, the district court found that Petitioner behaved inappropriately during the supervised visits, including inflammatory statements about Respondent. [RP 381, ¶ 15] Based on this, the district court temporarily modified Petitioner’s supervised visitation from three hours to one hour. [RP 381, ¶ 18] In light of Petitioner’s behavior, we conclude the district court acted within its discretion.

{4} With respect to alleged bias, “[r]ulings adverse to a party do not necessarily evince a personal bias or prejudice on the part of the judge against it, even if the rulings are later found to have been legally incorrect.” *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 425, 96 N.M. 155, 629 P.2d 231. We also note that a judge’s opinions based on the facts of the proceedings, even if hostile, do not establish bias. See *US West Commc’ns, Inc. v. N.M. State Corp. Comm’n*, 1999-NMSC-016, ¶ 44, 127 N.M. 254, 980 P.2d 37. Here, Petitioner has not referred us to anything in the record that supports her claim that the judge, or the hearing officer, were biased against her. Instead, Petitioner is relying on the fact that the court ruled against her. [MIO 3] As noted above, this is insufficient to support a claim of bias.

{5} For the reasons set forth above, we affirm.

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

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

CYNTHIA A. FRY, Judge

LINDA M. VANZI, Judge