

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL KLETT,  
Appellant,  
vs.  
DANIELLE MEYERS F/K/A DANIELLE  
PATELLA,  
Respondent.

No. 55418

**FILED**

SEP 28 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's motion to modify custody and to relocate with the child and granting respondent's motion to modify visitation. Second Judicial District Court, Washoe County; Linda M. Gardner, Judge.

Having considered appellant's civil proper person appeal statement and the district court record, we conclude that the district court did not abuse its discretion when it denied appellant's request for a continuance and his motion to modify custody and to relocate with the child and then modified appellant's visitation. See Bongiovi v. Sullivan, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006) (providing that this court reviews the district court's decision to deny a continuance for an abuse of discretion); Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (noting that the district court's failure to rule on a request constitutes a denial of the request); Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996) (providing that a district court's child

custody decision, including visitation, will not be overturned absent an abuse of discretion); NRS 125.480(1) (“[T]he sole consideration of the court [in child custody matters] is the best interest of the child.”); Ellis v. Carucci, 123 Nev. 145, 161 P.3d 239 (2007) (providing that custody may be modified if the moving party demonstrates a substantial change in circumstances that affects the child’s welfare and the child’s best interest is served by the modification).


Regarding the continuance issue, no abuse of discretion occurred because, despite appellant having purportedly consulted with an attorney, no attorney ever filed a notice of appearance on behalf of appellant. Also, to the extent the district court denied appellant’s request for a continuance because it determined that the testimony of a school teacher and a child protective services’ employee were not necessary, the district court has discretion to limit testimony, see Hansen v. Universal Health Servs., 115 Nev. 24, 28, 974 P.2d 1158, 1161 (1999), and it did not abuse that discretion.

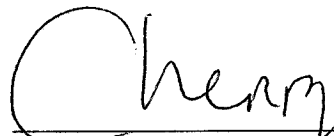
Concerning the district court’s custody and visitation decision, we note that while the child’s grades are troubling, appellant failed to prove that it was in the child’s best interest to award appellant primary physical custody. Thus, appellant had no standing to move the district court to relocate with the child. See NRS 125C.200. Further, appellant’s visitation with the child was modified for the best interest of the child. See NRS 125C.010(1) (providing, in relevant part, that a party’s right of visitation must ensure that the child’s best interest is achieved); Wallace, 112 Nev. at 1019, 922 P.2d at 543 (“It is presumed that a trial court has

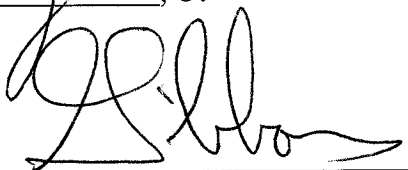
properly exercised its discretion in determining a child's best interest.")

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Linda M. Gardner, District Judge  
Michael Klett  
Danielle Meyers  
Washoe District Court Clerk

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<sup>1</sup>We deny appellant's request for the appointment of appellate counsel, as there is no right to the appointment of counsel in civil cases not involving incarceration for contempt, see Rodriguez v. Dist. Ct., 120 Nev. 798, 813, 102 P.3d 41, 51 (2004), and the challenged order does not concern abuse and neglect proceedings under NRS Chapter 432B or the termination of appellant's parental rights. NRS 432B.420(1) (giving the district court discretion to appoint an attorney in child abuse and neglect proceedings); NRS 128.100 (giving the district court discretion to appoint counsel in parental termination rights cases).