


IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON RONNIE NEW,
Appellant,
vs.
RANAE KAY NEW N/K/A RANAE KAY
HOGAN,
Respondent.

No. 56063

FILED

DEC 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

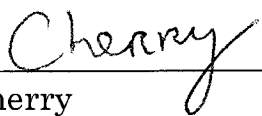
This is an appeal from a district court order regarding child custody. Sixth Judicial District Court, Lander County; Michael Montero, Judge.

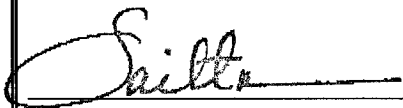
In the proceedings below, appellant sought a change in child custody based on new evidence that the parties' children were not safe while in respondent's custody and that the older child was failing in school. Respondent opposed the motion. After an evidentiary hearing, the district court determined that a change in custody was not warranted when the children's welfare had not been affected by the incident between respondent and her husband. The district court also found that there was not a significant change in the older child's school performance and that modification did not serve the children's best interests. Thus, it denied appellant's motion to modify child custody.


Appellant seeks reversal of the district court's order on appeal, and respondent presents arguments supporting the order. Having considered the parties' arguments and the appellate record, we conclude that the district court did not abuse its discretion by denying appellant's motion to modify child custody. Ellis v. Carucci, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007) (recognizing that the district court has broad

discretionary powers in child custody matters that will not be reversed absent a clear abuse of discretion). We disagree with the court's finding that the incident between respondent and her husband did not affect the children's welfare simply because they were unaware of the danger posed by respondent's husband. As to the finding regarding the oldest child's school progress, however, we conclude that the district court did not abuse its discretion. Further, we conclude that appellant failed to demonstrate that it was in the children's best interests to change custody. *Id.* at 150, 161 P.3d at 242 (providing that custody may be modified if the moving party demonstrates a substantial change in circumstances that affects the child's welfare and that the child's best interest is served by modification). Thus, while appellant may have satisfied the first prong of the child modification test, substantial evidence supports the district court's finding that the second prong—best interests—was not proven. *Id.* at 149, 161 P.3d at 242 (providing that the district court's factual findings will not be set aside if supported by substantial evidence). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michael Montero, District Judge
Carolyn Worrell, Settlement Judge
Hillewaert Law Firm
Kyle B. Swanson
Lander County Clerk