

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE MARRIAGE
OF,

EARL SMITH,
Appellant,
vs.
KASSIE SMITH,
Respondent.

No. 66953

FILED

JUN 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Williams*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court post-divorce decree order modifying spousal support and child support. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.¹

In his civil appeal statement, appellant first argues that Judge Michael Montero should have disqualified himself from participating in this matter because he and other members of his family are friends with respondent. The district court record, however, contains no indication that appellant ever moved in that court to disqualify Judge Montero or otherwise challenged his ability to preside over the district court proceedings. As a result, appellant waived this issue, and we will not

¹The case appeal statement identified the judge in the underlying matter as Judge Richard Wagner, but it appears from the documents before us that Judge Michael Montero presided over the district court action and signed the order being challenged on appeal.

address it for the first time on appeal. *See Mason v. Cuisenaire*, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006) (recognizing that failure to raise an argument in district court generally precludes a party from presenting that argument on appeal).


Appellant next argues the district court abused its discretion by modifying his spousal support and child support payments based on the court's finding that appellant was willfully underemployed. He asserts he cannot afford the ordered payments on his current salary, which he insists is not based on underemployment, because he is supporting a fiancé and two minor children. In this regard, the district court based its decision primarily on the evidence, and the lack of evidence, presented at a hearing on the motion to modify appellant's support obligations. Appellant, however, did not provide this court with a copy of the transcript of that hearing, and thus, we presume the contents of the hearing support the district court's conclusions. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").


Finally, to the extent appellant argues the district court's decision was the result of poor representation by counsel, this does not provide a basis for reversal. *See Valente v. First W. Sav. & Loan Ass'n*, 90 Nev. 377, 379, 528 P.2d 699, 700 (1974) ("The general rule is that an attorney's neglect will be imputed to his client and he is held responsible

for it.”). As appellant has not identified any grounds for reversing the district court’s decision in the underlying matter, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Montero, District Judge
Earl Smith
Kyle B. Swanson
Humboldt County Clerk