

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACQUELYN WHITECLIFF,  
Appellant,  
vs.  
WASHOE COUNTY DEPARTMENT OF  
SOCIAL SERVICES,  
Respondent.

No. 67361

**FILED**

OCT 16 2015

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

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying grandparent visitation. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

After appellant's son's parental rights were terminated, appellant petitioned the district court for visitation of her grandchildren.<sup>1</sup> Respondent Washoe County Department of Social Services opposed the petition, and the district court held an evidentiary hearing. Following the hearing, the district court concluded that appellant had not demonstrated by a preponderance of the evidence that visitation was in the best interest of the children, and thus, the court denied the petition for visitation. This appeal followed.

As an initial matter, appellant asserts that the district court combined two scheduled hearings into one, which prevented her from presenting certain witnesses who were planning to testify on her behalf at

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<sup>1</sup>The children's mother voluntarily relinquished her parental rights, and the children were in respondent's custody when appellant filed her petition.

the second hearing. The record demonstrates that the district court originally scheduled the evidentiary hearing regarding appellant's visitation petition for January 12, 2015, but on respondent's motion to expedite the hearing, the court rescheduled the hearing for November 24, 2014.

Appellant was served with notice of the rescheduled hearing more than one month before the new hearing date, such that she had the opportunity to reschedule any witnesses who intended to appear on her behalf at the January 12, 2015, hearing. Although appellant asserts on appeal that she did not understand until the November hearing that the January hearing had been cancelled, the district court's order expediting the hearing states that the matter set for January 12, 2015, was being expedited and ordered the parties to appear on November 24, 2014, for an evidentiary hearing to resolve appellant's request for visitation. As appellant was informed of the new hearing date and the nature of the hearing more than one month before the rescheduled hearing, we conclude that this argument does not provide a basis for reversal of the district court's order. *See Pub. Serv. Comm'n of Nev. v. Sw. Gas Corp.*, 99 Nev. 268, 271, 662 P.2d 624, 626 (1983) (recognizing that, to be meaningful, a hearing must be noticed with a statement regarding the matters to be considered).

As to the merits of the district court's decision to deny visitation, the court concluded that appellant had not met her burden of demonstrating that visitation with her would be in the children's best interest. *See* NRS 125C.050(7) (providing that the court may order grandparent visitation if the court finds "by a preponderance of the evidence, that the visits would be in the best interests of the child in light

of the considerations set forth in [NRS 125C.050(6)(a)-(i)]”). In this regard, the district court found that (1) appellant had allowed the children contact with their father, who is incarcerated based on a guilty plea for attempted lewdness with a child, which involved one of the children with whom appellant is seeking visitation; (2) appellant refused to believe the children’s allegations regarding their father, despite evidence to support these allegations, which had the potential for psychologically harming the children; and (3) the three children who were old enough to express a preference had clearly asserted that they did not wish to have visitation with appellant.

Each of the district court’s findings was relevant to the factors the court is required to consider when determining whether to order grandparent visitation and supported the district court’s decision to deny visitation in this case. See NRS 125C.050(6)(b)(1), (d), (f), (h). Moreover, the district court’s findings were supported by the evidence before that court.<sup>2</sup> To the extent that appellant argues that other evidence supported

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<sup>2</sup>In particular, letters written by the children’s therapists are included in the record and support the district court’s findings. Additionally, the district court’s findings were apparently based at least partly on testimony presented at the evidentiary hearing. Although the transcript of the hearing is not in the record on appeal, appellant does not dispute that the therapists testified in the manner recited by the district court in its order. Thus, we conclude that she has waived any argument that the therapists’ testimony was contrary to the court’s findings. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that an issue not raised on appeal is deemed waived). In light of the letters in the record and the lack of dispute as to the therapists’ testimony, we conclude that the transcripts are not necessary to our resolution of this appeal. Accordingly, to the extent that appellant’s February 23, 2015, transcript request form may be construed as a motion for transcripts at government expense, we deny that motion.

granting her visitation, we will not reweigh the evidence or witness credibility. See *Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004); *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (providing that a district court's ruling as to visitation is a custody determination that is within the trial court's discretion); see also *Schwartz v. Schwartz*, 126 Nev. 88, 91, 225 P.3d 1273, 1275-76 (2010) (explaining that, under an abuse of discretion standard, the appellate court "will not substitute [its] judgment for that of the district court"). And in light of the reasoning provided by the district court in its order, we cannot conclude that the district court abused its discretion in denying appellant visitation with the children. See *Schwartz*, 126 Nev. at 91, 225 P.3d at 1275-76; *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.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Deborah Schumacher, District Judge, Family Court Division  
Jacquelyn Whitecliff  
Washoe County District Attorney  
Washoe District Court Clerk