

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN JOHN CAMPFIELD,  
Appellant,  
vs.  
ALENA DEDEIKO CAMPFIELD,  
Respondent.

No. 69373

**FILED**

DEC 21 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a district court order denying a petition for an annulment. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

On appeal, appellant argues the district court abused its discretion in allowing respondent to testify telephonically at the parties' annulment trial and in denying the petition for annulment. The Nevada Rules Governing Appearance by Telephonic Transmission Equipment for Civil and Family Court Proceedings (Tele. R.) permit a party to appear by telephone in certain proceedings, but a trial is not one of the identified proceedings. *See* Tele. R. 4(1) (listing hearings where a party may appear telephonically and not including trial as one of those hearings). And the rules further state that any proceeding not identified therein "require[s] personal appearances or appearances by use of simultaneous audiovisual transmission equipment." *See* Tele. R. 4(2); *see also* Rules Governing Appearance by Simultaneous Audiovisual Transmission Equipment for Civil and Family Court Proceedings R. 4(1) (providing that a party may

appear at trial by simultaneous audiovisual transmission). Thus, under these rules, it would have been appropriate for the court to require respondent to appear by simultaneous audiovisual transmission equipment, but not by telephone, if she was not able to appear personally.

Additionally, even if a telephonic appearance was allowed under the rules, the party seeking to appear telephonically must give notice that she wishes to do so, and the court may only allow the party to appear telephonically without such notice "on a showing of good cause." Tele. R. 4(5)(a), (d). In this case, nothing in the record shows that respondent gave proper notice to appellant or the court that she intended to appear telephonically. *See* Tele. R. 4(5)(a) (providing how a party must give notice of its intent to appear telephonically). Moreover, in overruling appellant's objection to the telephonic appearance,<sup>1</sup> the court appears to have relied on the fact that respondent had never been to Nevada, which we conclude does not, in and of itself, constitute good cause to allow a telephonic appearance without the required notice. *See* Tele. R. 4(5)(d) (giving the district court discretion to allow a party to appear telephonically for the specified hearings even if the party did not give proper notice of the telephonic appearance, so long as good cause is shown).

Finally, if the court allows a party to appear telephonically, "[t]he court must ensure that the statements of participants are audible to

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<sup>1</sup>Respondent was not given a chance to respond to this objection as the court immediately overruled it.

all other participants and the court staff.” Tele. R. 4(8)(a). Here, the district court failed to ensure that respondent’s statements were audible to all participants as the transcript of the trial shows that the parties repeatedly had difficulty hearing one another and also contains numerous portions of respondent’s testimony that were deemed “unintelligible.” See *id.*

Under these circumstances, we conclude that the district court abused its discretion in allowing respondent to appear telephonically at trial. See Tele. R. 4(3), 5(d); *Barry v. Lindner*, 119 Nev. 661, 667, 81 P.3d 537, 541 (2003) (reviewing a decision refusing to allow telephonic testimony for an abuse of discretion). Moreover, we cannot say that the court’s decision was harmless error, as the omissions from the transcript hamper this court’s ability to review the trial testimony. As a result, we cannot conclude that the district court properly exercised its discretion in denying the annulment petition.<sup>2</sup> See *Irving v. Irving*, 122 Nev. 494, 498, 134 P.3d 718, 721 (2006) (reviewing annulment proceedings for an abuse of discretion).


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<sup>2</sup>Appellant also asserts that the district court abused its discretion in relying on instant messages between the parties to support its decision to deny the annulment petition because portions of the messages were not in English, and those portions could alter the meaning of the English portions. Appellant did not raise this specific objection below, however, as he only objected to the court considering the portions of the messages that were not in English, and the court sustained that objection. Thus, we decline to address this argument as it was not raised below. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that arguments not raised below are waived on appeal).

Accordingly, we reverse the district court's decisions permitting respondent to appear telephonically and denying the annulment petition and remand this matter to the district court for further proceedings consistent with this order.

It is so ORDERED.<sup>3</sup>

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

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

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

cc: Hon. Nathan Tod Young, District Judge  
Kalicki Collier, PLLC  
Alena Dedeiko Campfield  
Douglas County Clerk

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<sup>3</sup>We deny appellant's request for oral argument of this matter.