IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON MICHAEL WESTLY,
Appellant,
vs.
RONDE PAIGE WESTLY N/K/A CHANDLER,
Respondent.

No. 71046

FILED

APR 28 2017

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

ORDER OF AFFIRMANCE

Appellant Brandon Michael Westly appeals from a district court order denying a motion to modify child custody. Eighth Judicial District Court, Family Court Division, Clark County; Denise L. Gentile, Judge.

The district court denied Westly's motion to modify physical custody, concluding that respondent Ronde Paige Chandler had primary physical custody and that Westly did not identify a substantial change in circumstances necessary to modify the physical custody arrangement. The only argument Westly presents on appeal is that the district court abused its discretion by concluding that Chandler had primary physical custody. *See Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (explaining that child custody decisions are reviewed for an abuse of discretion). In this regard, Westly contends that the court improperly included Fridays in Chandler's parenting time, rather than his, and that, if Fridays had been included in his parenting time, the court would have found that the parties shared joint physical custody, such that he only would have needed to show that a modification was in the child's best interest. *See Rivero v. Rivero*, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009)

(providing that a joint physical custody arrangement may be modified whenever modification "is in the child's best interest," but that a primary physical custody arrangement may only be modified "when there is a substantial change in the circumstances affecting the child and the modification serves the child's best interest").

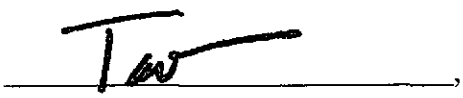
Having reviewed the record and the parties' arguments, we discern no abuse of discretion in the district court's conclusion that Chandler had primary physical custody. *See Wallace*, 112 Nev. at 1019, 922 P.2d at 543. The parties' stipulated agreement, which was filed in court as an order modifying the parties' previous custody arrangement, provided that, during the school year, Westly would have parenting time from after school on Wednesdays until 6:00 p.m. on Fridays, which is just over two days per week or roughly 28 percent of the time, as the district court found. And while the agreement provided for Westly to have an additional half day on Wednesdays when school was not in session, Westly has not shown that his timeshare over the course of a year approached the 40 percent mark or that it would otherwise be in the best interest of the child to consider the parties' arrangement as a joint physical custody arrangement. *See Bluestein v. Bluestein*, 131 Nev. ___, ___, 345 P.3d 1044, 1048-49 (2015) (recognizing that the general guideline for distinguishing primary from joint physical custody is around 40 percent but cautioning courts that the best interest of the child remains the paramount concern).

Thus, Westly has not demonstrated that the district court abused its discretion by finding that Chandler had primary physical

custody or by denying the motion to modify custody.[1] As a result, we affirm the district court's order denying modification.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Denise L. Gentile, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Elisabeth S. Flemming, Chtd.
James S. Kent
Eighth District Court Clerk

[1]Because Westly does not argue on appeal that he met the changed circumstances standard, we do not address that issue in this order. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that arguments not raised on appeal are waived).