IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL LEE MCDONALD,
Appellant,
vs.
CANDACE MCDONALD,
Respondent.

No. 71426

FILED

AUG 23 2017

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

ORDER OF AFFIRMANCE

Michael Lee McDonald appeals from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; Linda Marquis, Judge.

After the parties separated, respondent Candace McDonald filed a complaint for divorce against Michael seeking, as relevant here, primary physical custody of the parties' two minor children, child support and division of the parties' community property and debts. Based on Candace's allegations that Michael placed a tracking device in her car and was behaving erratically and neglecting the children's medical needs, the district court later extended a temporary protection order (TPO) against Michael that she had previously obtained in an independent action, adding a provision that suspended his previously awarded parenting time with the children. In its final custody order and divorce decree, however, the district court awarded Candace primary physical custody subject to Michael's parenting time, finding that Michael committed domestic violence against her and that he failed to rebut NRS 125C.0035(5)'s presumption against perpetrators of domestic violence having primary or joint physical custody. The district court also ordered Michael to pay $875 per month in child

support and divided the parties' community property and debts. This appeal followed.[1]

With regard to custody, Michael challenges the district court's finding that he committed domestic violence, arguing that while he restrained Candace a few times or otherwise prevented her from leaving the marital residence, he was not the aggressor in those instances. But the district court specifically rejected Michael's contention that he was not the aggressor on the ground that he was not credible, and we do not reweigh the district court's credibility determinations. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) ("[W]e leave witness credibility determinations to the district court and will not reweigh credibility on appeal."). Moreover, to the extent they were pertinent, the district court also found that NRS 125C.0035(4)'s remaining best interest factors either

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[1]On appeal, Michael challenges the district court's order extending the TPO, and we may review that challenge in the context of this appeal from the divorce decree. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (recognizing that interlocutory orders may be challenged in the context of an appeal from the final judgment). To the extent Michael's arguments are directed at reversing the order extending the TPO, any such challenge is moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (explaining that appellate courts generally will not consider moot issues). In particular, the portion of the TPO that suspended Michael's parenting time was superseded by the divorce decree while the remainder of that order expired on June 28, 2017, pursuant to the decree. And while Michael contends that he was entitled to make up parenting time because the order extending the TPO was improper, he failed to provide this court with a transcript from the relevant hearing, and we therefore presume that the missing transcript supported the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that the appellate court presumes that missing portions of the record support the district court's decision).

weighed in Candace's favor or were neutral. And, while Michael disputes the district court's findings with regard to the best interest factors,[2] we are unable to fully evaluate his arguments in light of his failure to provide a transcript from the relevant hearing,[3] as much of the relevant evidence appears to have been testimonial. As a result, we necessarily presume that the missing transcript supported the district court's findings and the resulting decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[ ] the district court's decision"). Given the foregoing, and because the district court considered the best interest factors and made specific findings

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[2]Insofar as Michael asserts that the award of primary physical custody to Candace was improper because he was unrepresented at the related evidentiary hearing due to his counsel's death, his assertion is belied by the record, which demonstrates that he obtained replacement counsel who filed a pre-trial memorandum and appeared at the related evidentiary hearing on his behalf. And while Michael further argues that the circumstances surrounding his former counsel's death prevented him from conducting discovery or presenting evidence at the evidentiary hearing, there is nothing in the record to indicate that he presented these arguments below, and thus, they are not properly before us in this appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

[3]While Michael filed a transcript request form, he never provided the requested transcripts, requested that the court reporter be compelled to prepare them, or otherwise followed up to ensure that this court received these transcripts. *See* NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not been granted in forma pauperis status to file a copy of their completed transcripts with the court clerk).

relating them to this case, we cannot conclude that the court abused its discretion in awarding Candace primary physical custody of the parties' children. *See Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1142-43 (2015) (explaining that the district court's custody determinations are reviewed for a clear abuse of discretion and that, in determining child custody, the district court must make specific, relevant findings as to the child's best interest).

Michael next baldly asserts that the district court should have set his child support obligation at $400, as opposed to $875, per month. But child support obligations are dictated by a statutory formula that is based on gross monthly income. *See* NRS 125B.070, NRS 125B.080.[4] And because Michael does not dispute the district court's finding that his gross monthly income was $3,500 or otherwise identify a basis for deviating from the statutory formula, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived), we perceive no abuse of discretion in the district court requiring him to pay $875 per month, which is 25 percent of his gross monthly income, in accordance with the statutory formula. *See Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (reviewing a district court's child support order for an abuse of discretion).

Lastly, although Michael presents several summary arguments challenging the district court's adjudication of the parties' community property and debts, we cannot fully evaluate his arguments because he

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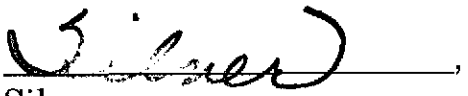
[4]The 2017 Nevada Legislature repealed NRS 125B.070 and amended NRS 125B.080, effective upon the Department of Health and Human Services' promulgation of certain regulations. 2017 Nev. Stat., ch. 371, § 2, 13, at 2284, 2292. Those actions have no effect on the disposition of this appeal, however, as it is governed by pre-2017 law.

failed to provide this court with a copy of the transcript from the evidentiary hearing on that matter. As a result, we presume that the missing transcript supported the district court's decision, *see Cuzze*, 123 Nev. at 603, 172 P.3d at 135, and conclude that Michael failed to demonstrate that the district court abused its discretion in dividing the parties' community property and debts. *See Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916. 918-19 (1996) (reviewing the division of community property in a divorce action for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]



_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

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[5]To the extent Michael challenges the district court's post-divorce decree orders concerning child support arrears and attorney fees, those challenges are not properly before us because he did not file notices of appeal from those decisions. *See In re Duong*, 118 Nev. 920, 922, 59 P.3d 1210, 1212 (2002) (explaining that "the proper and timely filing of a notice of appeal is jurisdictional"). We likewise do not consider Michael's arguments with regard to his post-divorce decree amended motion to modify custody and motion to set aside the divorce decree, as he did not file those motions in the district court until after he appealed from the divorce decree. *Cf. Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) ("We cannot consider matters not properly appearing in the record on appeal."). As to Michael's remaining appellate contentions, we conclude that they do not provide a basis for reversal.

cc: Hon. Linda Marquis, District Judge, Family Court Division
Michael Lee McDonald
Oblad Smith & Collings, Chtd.
Eighth District Court Clerk