


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTURAS KAIRYS,  
Appellant,  
vs.  
KRISTINA KAIRIENE,  
Respondent.

No. 71992

**FILED**

SEP 14 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Arturas Kairys appeals from post-divorce-decree district court orders denying a motion to modify child custody and awarding attorney fees. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge.<sup>1</sup>

Arturas and respondent Kristina Kairiene divorced in 2013. Kristina was awarded primary physical custody of the couple's young daughter, and Arturas received approximately 4 hours of supervised parenting time each week. Arturas' most recent supervised parenting time took place at Donna's House, but this arrangement ended in August 2015.

Arturas then moved the district court to allow him unsupervised parenting time, claiming that Kristina was engaging in parental alienation against him. In response, the district court ordered Arturas to have a custody evaluation conducted. The parties then spent

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<sup>1</sup>Although Senior Judge Kathy A. Hardcastle signed the order from which Arturas appeals, the rulings memorialized in that order were made by Judge Linda Marquis.

several months arguing about various issues surrounding the custody evaluation. In March 2016, the district court ordered that evaluations of Arturas, Kristina, and the child would each occur separately. Arturas subsequently sought clarification of the order, which the court denied, and then filed another motion seeking reconsideration of the court's order, claiming that he could not complete the custody evaluation as ordered.

Following a hearing, the district court issued an order denying Arturas' requests for unsupervised parenting time and reiterated that Arturas could not be present for the custody evaluation session of his daughter or Kristina. The district court later sanctioned Arturas pursuant to NRCP 11, awarding Kristina \$2,160.00 in attorney fees. This appeal followed.

On appeal, Arturas argues that he should be allowed unsupervised parenting time and that he should be able to be evaluated with his daughter for the purpose of the custody evaluation. He further asserts that he should not have to pay the attorney fees award.<sup>2</sup>

This court reviews child custody determinations for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). "[A] modification of primary physical custody is warranted only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Id.* at 150, 161 P.3d at 242. Both prongs of this test must be satisfied for

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<sup>2</sup>Arturas also challenges the January 2017 post-judgment decision placing restrictions on his ability to petition the court for relief. But this issue is not properly before us in the context of this appeal, as no statute or court rule provides for an appeal from such a ruling. See NRAP 3A(b) (setting forth the determinations from which an appeal may be taken).

the modification to occur. *Id.* at 150-51, 161 P.3d at 242-43. Custody should not be modified if the circumstances that existed at the time of the last custody order are the same. *Mosley v. Figliuzzi*, 113 Nev. 51, 58-59, 930 P.2d 1110, 1115 (1997), *overruled in part on other grounds by Castle v. Simmons*, 120 Nev. 98, 105-06, 86 P.3d 1042, 1047-48 (2004) (concluding that the changed circumstances doctrine does not preclude presentation of past domestic violence under certain circumstances).

Here, Arturas has not argued nor otherwise demonstrated that a change in circumstances had occurred to support a modification of the primary physical custody order. Instead, he asserts that Kristina should not have been awarded primary physical custody in the first place, but such arguments do not provide a proper basis for modifying the existing custody award. *See id.*

And while Arturas points to his custody evaluation as demonstrating he is a fit parent, the record demonstrates that the district court directed that Kristina and the parties' daughter be evaluated as well, and those evaluations were not completed as directed. On this last point, Arturas seeks to justify his failure to comply with the court's evaluation directive by arguing that the district court improperly refused to allow him to be present when his daughter was evaluated. We conclude that this argument lacks merit. Notably, if his chosen psychologist was unwilling to do the evaluation without him being present, Arturas could have utilized one of the court approved psychologists for the evaluation, but rather than seeking to move the evaluation process along, Arturas opted to repeatedly challenge the court's ruling, resulting in the ultimate denial of his motion to modify. Under these circumstances, and in the absence of any demonstrated changed circumstances to support modifying

the custody arrangement, the district court did not abuse its discretion in denying the motion to modify custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Turning to the court's award of attorney fees as NRCP 11 sanctions, we review such awards for an abuse of discretion. *Simonian v. Univ. & Cmty. Coll. Sys. of Nev.*, 122 Nev. 187, 195, 128 P.3d 1057, 1063 (2006). NRCP 11 sanctions should be imposed for actions that are "both baseless and made without a reasonable and competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993). The district court must describe what conduct violated NRCP 11 and the basis for the sanction imposed. *See NRCP 11(c)(3)*.

On appeal, Arturas argues that he should not be sanctioned for the actions of his former counsel, but does not present any recognizable argument as to why the award of attorney fees was an abuse of discretion. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued). And while the sanctions order itself does not fully explain the grounds on which fees were awarded, Arturas failed to provide a copy of the transcript from the hearing at which the award was made, and thus, we necessarily presume that the district court properly awarded sanctions for actions violative of NRCP 11.<sup>3</sup> *See Cuzze*

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<sup>3</sup>While Arturas filed a transcript request form, he did not provide the requested transcripts, request that the court reporter be compelled to prepare them, or otherwise act to ensure this court received a copy of the 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 transcript with the clerk of the supreme court).


*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 [information] supports the district court’s decision.”).

Accordingly, for the reasons set forth above, we affirm the district court’s denial of the motion to modify custody and the award of attorney fees as NRCP 11 sanctions.

It is so ORDERED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Hon. Kathy A. Hardcastle, Senior Judge  
Hon. Linda Marquis, District Judge  
Arturas Kairys  
Smith Legal Group  
Eighth District Court Clerk