

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RYAN PATRICK DAVIS,  
Appellant,  
vs.  
KELLY L. HIGGINS,  
Respondent.

No. 72063

**FILED**

MAR 28 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Ryan Patrick Davis appeals from a post-divorce decree order imposing a child support obligation and reducing child support arrearages to judgment. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

When the parties divorced, they agreed to joint physical custody with an equal timeshare and no child support was ordered at that time. A little over three years later, respondent Kelly L. Higgins moved to modify the child support order, arguing both that her gross monthly income had decreased and that she now effectively had physical custody of the children full time. A hearing master recommended modifying child support and the district court affirmed the recommendation over Davis' objections. Davis appealed and this court affirmed in part, reversed in part, and remanded the matter for further proceedings consistent with the child support statutes and specifically stating that the district court was required to make findings regarding whether modification of support was in the best interest of the children and whether a deviation from the statutory formula was appropriate. *See Davis v. Higgins*, Docket No. 66683 (Order Affirming in Part, Reversing in Part and Remanding, November 20, 2015).

On remand, the master held another hearing and again recommended modifying child support, consistent with his prior recommendation. This time, the findings and recommendations specifically set forth that it was in the children's best interest to receive support from Davis and that a deviation from the statutory formula was proper. This decision was based in large part on the disparity in income between the parties, with Higgins having a gross monthly income of \$2,692 and Davis having a gross monthly income of \$10,820 at the time of the second hearing. It was also largely based on the finding that, despite the custody order and despite the children being available to Davis, Higgins effectively has sole physical custody of the children.

Over Davis' objection, the district court confirmed the master's recommendations and this appeal followed. On appeal, Davis argues that the modification is not in the best interest of the children because it will have no effect on their well-being or their standard of living.<sup>1</sup>


A district court's child support decision is reviewed for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 438, 216 P.3d 213, 232 (2009). "It is presumed that a trial court has properly exercised its judicial discretion in determining the best interests of the children." *Culbertson v.*


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<sup>1</sup>Davis also asserts that the support award is improper because it encourages the status quo, which denies the children a relationship with Davis. But the challenged order did not modify the existing custody order, which provides for joint physical custody with an equal timeshare. Moreover, the district court specifically found that there was credible evidence that the children are available to Davis and that he has not availed himself of the opportunity to spend time with them. And on appeal, Davis does not challenge this finding. 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 in an appellant's opening brief are waived.). As a result, this argument lacks merit.

*Culbertson*, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975). After a review of Davis' arguments and the record on appeal, we cannot say the district court abused its discretion in modifying child support. Specifically, the district court found that, in light of Higgins' income and the fact that she relied on outside help in order to support the children, it could not be questioned that support from Davis would provide the children with the opportunity to have a better overall life and thus, it was in their best interest to receive such support. And the district court's findings in this regard are supported by substantial evidence. See *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007) (explaining that the district court's factual findings will not be disturbed if they are supported by substantial evidence). Accordingly, we affirm the district court's order.

It is so ORDERED.

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

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

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

cc: Hon. Nathan Tod Young, District Judge  
Ryan Patrick Davis  
Kelly L. Higgins  
Douglas County District Attorney/Minden  
Douglas County Clerk