

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIELLE TYRA,  
Appellant,  
vs.  
JASON PAUL VAN BUREN,  
Respondent.

No. 72987

**FILED**

APR 17 2018

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

*ORDER OF AFFIRMANCE*

Danielle Tyra appeals from a post-custody decree order modifying custody. Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, Jr., Judge.

After a non-jury trial regarding custody of the parties' minor child, the district court entered its custody decree awarding the parties' joint legal custody and Danielle primary physical custody, subject to respondent, Jason Paul Van Buren's parenting time. Subsequently, Jason moved for a change of custody and, after an evidentiary hearing, the district court concluded that there was a substantial change in circumstances affecting the welfare of the minor child and that the child's best interests would be served by a modification. The district court then entered an order modifying custody to award primary physical custody to Jason, subject to Danielle's parenting time. After Danielle's motion to set aside the order was denied, this appeal followed.

This court reviews a child custody decision for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). We also review a district court's factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

Following the evidentiary hearing, the district court made the following findings that support the conclusion that there was a substantial change in circumstances: Danielle neglected the child's educational needs; there were changes to Danielle's mental and physical fitness as evidenced by her recent surgeries, need for future surgeries, and her threats to a teacher; and Danielle engaged in obstructive behavior toward Jason and the child's relationship, including violating Jason's court ordered parenting time on multiple occasions since the original custody order was entered. Similarly, our review further indicates that the district court made the following findings, which support the best interest of the child factors: Danielle neglected the child's education and acted contrary to his interests as shown by 44 absences in 92 days and his struggle to achieve grade level while in her care; that Danielle insisted the child had certain issues that were not supported by medical evidence; that Danielle's mental and physical fitness were questionable; that she harmed and upset the child by threatening to call the police and have his paternal grandmother arrested for abduction during a custody exchange, thereby interfering with Jason's parenting time; and that Jason was more likely to continue to foster a positive relationship between the child and Danielle. Based on our review of the record, these findings were not clearly erroneous and were supported by the evidence. Thus, we cannot say the district court abused its discretion in concluding there was a substantial change in circumstances affecting the child's welfare and it was in the child's best interest to modify custody.


With regard to these findings, Danielle summarily states Jason failed to allege sufficient facts to justify a change in custody and then claims he lied to the court and the court relied on inaccurate and incomplete school

attendance records.<sup>1</sup> As set forth above, the district court made specific findings and our review of the record indicates the district court's findings were sufficiently supported by the record. Further, the district court considered the school attendance issue before denying Danielle's motion to set aside, and it is not within this court's purview to re-weigh conflicting evidence or assess witness credibility. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007).

Based upon our review of the record on appeal and the parties' arguments, we conclude that the district court's findings were supported by substantial evidence and were not clearly erroneous; thus, the district court did not abuse its discretion in modifying custody. *See Wallace*, 112 Nev. at 1019, 922 P.2d at 543; *Ogawa*, 125 Nev. at 668, 221 P.3d at 704. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

<sup>1</sup>Danielle also summarily alleges that Jason was relitigating school issues, but fails to provide any cogent argument in this regard and as such we need not consider this issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that appellate courts need not consider issues that are not cogently argued). Regardless, we note that "it may at times be necessary for the district court to review the evidence that underpinned its previous rulings to determine whether modification of the existing arrangement is warranted." *See Nance v. Ferraro*, 134 Nev. \_\_\_, \_\_\_, \_\_\_ P.3d \_\_\_, \_\_\_ (Ct. App. 2018).

<sup>2</sup>We have reviewed Danielle's additional filings and requests for relief, and conclude they do not provide a basis for relief.

cc: Hon. T. Arthur Ritchie, Jr., District Judge  
Danielle Tyra  
Michael A. Root  
Eighth District Court Clerk