

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID EDWARD GREELEY,  
Appellant,  
vs.  
KELLY ELIZABETH CAMPBELL, F/K/A  
KELLY ELIZABETH GREELEY,  
Respondent.

No. 72531

FILED

FEB 14 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

David Edward Greeley appeals from a post-divorce-decree order modifying child custody. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

David and respondent Kelly Elizabeth Campbell shared joint legal and physical custody of their teenage daughter, Hunter. Pursuant to an agreement of the parties and subsequent order, David and Kelly exchanged custody on a week-on-week-off basis with significant teenage discretion for Hunter, including a provision that Hunter could spend the night at Kelly's residence during David's custodial weeks.

Kelly moved to modify custody in July 2016, claiming that she should be awarded primary physical custody as she was primarily responsible for providing food, shelter, and support for Hunter even during David's custodial time. In response, David argued that, due to Hunter's various activities, her parents were essentially equal in the amount of time spent with her. After holding an evidentiary hearing, the district court determined that the actual parenting time David exercised under the existing arrangement was well below the 40 percent required to constitute joint physical custody. Instead, the court found the arrangement that the

parties' exercised to be "akin to a primary physical custody arrangement." Then, in considering the best interests of the child, the district court found that modification of the physical custody designation was in Hunter's best interest as Kelly bore the majority of the costs of parenting and the change in custody would encourage David in sharing parenting cost obligations. Thus, the district court granted Kelly's motion, awarding her primary physical custody and awarding David parenting time every week-day from 5:00 P.M. to 9:00 P.M. and every other weekend. The court's order did not set an increase in David's child support, but remanded the child support case to the Child Support Court Master. This appeal from the custody determination followed.

On appeal, David's arguments primarily focus on the district court's determination that the parenting time he exercised under the prior arrangement did not reach the 40 percent threshold such that, under the actually exercised time share, Kelly was the primary physical custodian. In particular, David claims that the court improperly defined the custodial arrangement because he cared for the child in excess of 40 percent of the time.

In so doing, David argues that the district court erroneously treated time related to "variations inherent in child rearing, such as school schedules, sports, vacations, and parents' work schedules" as counting towards Kelly's time with the child. According to David, his daily parenting time and time with the child every other weekend is equal to or greater than Kelly's custodial time as most of Hunter's other time was spent away from both parents in school or at other activities, time which David argues should not benefit either parent. In response, Kelly points out that David does not explain how he calculates his custodial time above 40 percent and she

alleges that David does not actually see Hunter more than two to four hours a week. She further asserts that she is responsible for providing for almost all of Hunter's daily needs, including bedding, clothing, extra-curricular fees, meals, insurance premiums, and medical expenses. As a result, Kelly argues that the primary physical custody determination in her favor serves the best interests of Hunter by establishing a basis for the parties to more equably share parental responsibilities.

This court reviews child custody determinations for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). As set forth in *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), when parties to an agreement-based custody order seek to modify custody, the court must determine the nature of the arrangement actually exercised by the parties using the "terms and definitions provided under Nevada law," rather than the terms and labels set forth in the parties agreement. Further, while *Rivero* provides a general 40-percent guideline for examining whether an arrangement constitutes joint physical custody, this rubric "should not be so rigidly applied" as to abrogate consideration of the child's best interest. *Bluestein v. Bluestein*, 131 Nev. \_\_\_, \_\_\_, 345 P.3d 1044, 1049 (2015).

Here, despite David's arguments to the contrary, the record demonstrates that the district court properly determined that David's parenting time did not reach the 40 percent generally required to warrant joint physical custody. *See Rivero*, 125 Nev. at 425-26, 216 P.3d at 224. Notably, in making this determination, the district court evaluated both parties' parenting time with Hunter and found, among other things, that Hunter spent the night at Kelly's residence the vast majority of the time and that Kelly was the parent responsible for Hunter's meals and other

daily needs. Such findings are consistent with the framework outlined in *Rivero*, which provides that “[i]n calculating the time during which a party has physical custody of the child, the district court should look at the number of days during which a party provided supervision of the child, the child resided with the party, and during which the party made the day-to-day decisions regarding the child.” *Id.* at 427, 216 P.3d at 225. And on appeal, David has failed to explain how the district court’s reliance on the parties’ own testimony to make these determinations is contrary to the law or otherwise improper. Finally, David’s insistence on parsing out each parent’s actual time with Hunter so that the child’s time spent at various activities would not count for either parent runs counter to *Rivero*’s declaration that, in examining parties’ custodial time with the child, “[t]he district court should not focus on, for example, the exact number of hours the child was in the care of the parent, whether the child was sleeping, or whether the child was in the care of a third-party caregiver or spent time with a friend or relative during the period of time in question.” *Id.*


Moreover, both in examining the nature of the parties’ arrangement and considering Kelly’s motion to modify custody, the district court carefully considered each of the best interest factors and set forth specific findings regarding whether the factor weighed in favor of the requested relief. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242 (noting that a district court’s factual findings will be upheld if supported by substantial evidence). Significantly, the court weighed heavily the physical, developmental, and emotional needs of Hunter as met by Kelly in bearing the majority of costs associated with parenting. Kelly’s testimony established that, when Hunter stayed overnight at Kelly’s home, Kelly maintained day-to-day care responsibilities for Hunter even during David’s

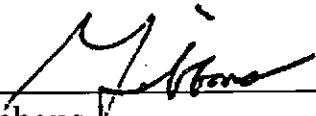
scheduled custodial time. David's testimony does not support a different result. And we conclude that the testimony of the parties upon which the district court relied constitutes substantial evidence in support of the district court's findings. *See Rivero*, 125 Nev. at 428, 216 P.3d at 226 (holding that substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment).

Because, for the reasons set forth above, we conclude that the district court did not abuse its discretion in modifying the custodial arrangement,<sup>1</sup> we affirm the district court's decision.

It is so ORDERED.<sup>2</sup>

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

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

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

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<sup>1</sup>David's appeal does not challenge the alteration to the parties' parenting time schedule, only the custodial arrangement determination. As such, we have only considered the primary custody determination in this appeal.

<sup>2</sup>We grant David's motion to extend the time to file an opposition to Kelly's motion to dismiss. The clerk of the court shall file the opposition, which was provisionally received on September 15, 2017. And having considered the parties' filings, we deny Kelly's motion to dismiss this appeal. We further deny all other requests for relief currently pending in this appeal.

cc: Hon. Thomas L. Stockard, District Judge  
Aaron M. Bushur  
Kelly Elizabeth Campbell  
Churchill County Clerk