

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LOUIS CHRIST CHRISTOPOULOS,
Appellant,
vs.
TIFFANY GRACE GARDELLA,
Respondent.

No. 71807

FILED

DEC 23 2017

ELIZABETH L. BROWN
CLERK OF SUPERIOR COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Louis Christ Christopoulos appeals from a district court order dismissing a child custody action for lack of subject matter jurisdiction. Eighth Judicial District Court, Family Court Division, Clark County; William S. Potter, Judge.

Christopoulos and respondent Tiffany Grace Gardella lived with their minor child in Michigan until December 2014, when Christopoulos brought the child to Nevada. The child returned to Michigan with Gardella on March 20, 2015, and Christopoulos filed the underlying complaint for child custody against her on June 1, 2015. Because Gardella failed to answer, the district court initially awarded Christopoulos primary physical custody of the child. Gardella then moved to vacate that order as void, asserting, among other things, that the district court lacked subject matter jurisdiction to enter it under NRS 125A.305(1), which authorized the court to make an initial custody determinations if, as relevant here, Nevada was the child's home state when the proceeding was commenced or within the preceding six months. Christopoulos opposed that motion, and the parties' resulting dispute turned on whether Michigan or Nevada was the

child's home state during the period set forth in NRS 125A.305(1)—December 1, 2014, through June 1, 2015. For purposes of NRS Chapter 125A, a child's home state is the state in which he or she lived for at least six consecutive months, inclusive of any temporary absences, immediately before the commencement of the relevant child custody proceeding. See NRS 125A.085(1) (defining the term "home state"); see also *Ogawa v. Ogawa*, 125 Nev. 660, 662, 221 P.3d 699, 700 (2009) (explaining that "temporary absences do not interrupt the six-month pre-complaint residency period necessary to establish home state jurisdiction").

The district court granted Gardella's motion, finding that the child's time in Michigan after March 20, 2015, was "not incidental" and that Michigan was her home state, such that Michigan, rather than Nevada, had jurisdiction over the matter. But Christopoulos appealed that decision, and we reversed and remanded the case, as the district court failed to make findings with regard to whether the child resided in Nevada and applied the incorrect standard under NRS 125A.085(1) and *Ogawa* in finding that her time in Michigan was "not incidental." See *Christopoulos v. Gardella*, Docket No. 69814 (Order of Reversal and Remand, August 11, 2016). On remand, the district court limited its consideration to the evidence that it received before Christopoulos' appeal and found, among other things, that he failed to prove that the child was only temporarily absent from Nevada following March 20, 2015. And because he therefore could not show that Nevada was the child's home state during the relevant period, the court dismissed Christopoulos' complaint for lack of subject matter jurisdiction under NRS 125A.305(1)(a). This appeal followed.

Insofar as Christopoulos challenges the district court's refusal to consider new evidence or conduct an evidentiary hearing on remand, we discern no abuse of discretion. *See Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993) (recognizing the district courts' broad discretion in child custody matters). In particular, the district court was not required to consider new evidence on remand that Christopoulos failed to adduce at or before the initial hearing on jurisdiction. *See Fox v. Fox*, 87 Nev. 416, 418, 488 P.2d 548, 549-50 (1971) (concluding that equity did not compel an opportunity on remand to submit new evidence that should have been presented at an earlier proceeding); *see also Christopoulos*, Docket No. 69814 (Order of Reversal and Remand, August 11, 2016) (reversing and remanding without directing the district court to consider new evidence).

And while the district court did not conduct a full evidentiary hearing on jurisdiction during the underlying proceeding, the record demonstrates that Christopoulos did not request one until after the remand in Docket No. 69814. Yet even then, he did so in a summary manner without addressing the standard for whether such hearings are warranted in custody matters or explaining how he had met that standard. *See Rooney*, 109 Nev. at 542-43, 853 P.2d at 124-25 (providing that an evidentiary hearing is required on motions to modify custody if the moving party demonstrates a prima facie case and explaining how to do so). Moreover, although a full evidentiary hearing was not conducted, the court did hold a hearing on the jurisdictional issue before Christopoulos' first appeal, and he was sworn in and had an opportunity at that hearing to present pertinent argument, testimony, and evidence. *See NRS 125A.345(1)* (requiring the district court to provide notice and an

opportunity to be heard before addressing jurisdiction in child custody matters). Thus, we turn to Christopoulos' argument with regard to the limited evidence that he submitted prior to his initial appeal.

In that regard, Christopoulos challenges the district court's conclusion that he failed to show that Nevada was the child's home state during the relevant period. In particular, Christopoulos asserts that the documentation purportedly showing that Gardella received public assistance from Nevada demonstrates that Gardella (and by extension the parties' child) was a Nevada resident and that the child was only temporarily absent from Nevada from March 20 to June 1, 2015, while she was in Michigan with Gardella.

But the district court determined that Christopoulos' documentation was unpersuasive because it was not addressed to Gardella and did not show that she applied for the benefits or made any representations with regard to her residence. And it is not an appellate court's role to reweigh the evidence that was presented to the district court. *See Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (recognizing that appellate courts are not at liberty to weigh the evidence anew). And while Christopoulos also argues that Gardella left Nevada to avoid liability for a DUI and remained in Michigan because she started a new relationship, we likewise defer to the district court's determination that the pre-appeal documentation he submitted on these points did not support his assertion that the child was only temporarily absent from Nevada following March 20, 2015. *See id.* As a result, we conclude that the district court did not abuse its discretion in finding that Christopolous failed to show that Nevada was the child's home state. *See Ogawa*, 125 Nev. at 668,


221 P.3d at 704 (explaining that the district court's factual findings are entitled to deference unless they are "clearly erroneous and unsupported by substantial evidence).

To the extent Christopoulos further attempts to establish Nevada's jurisdiction over this matter on the basis that neither of the parties' resided in Michigan, his argument fails. To support this argument, Christopoulos relies only on the documentation he used to show Gardella resided in Nevada. But just as these materials were insufficient to prove she was a Nevada resident, they likewise are insufficient to demonstrate that the parties did not reside in Michigan. Moreover, the parties' residence is not solely determinative of whether a Michigan court has jurisdiction to make an initial custody determination. See Mich. Comp. Laws Ann. § 722.1201(1) (West 2011) (setting forth the circumstances in which Michigan courts have jurisdiction to make initial custody determinations).

Given the foregoing, Christopoulos failed to demonstrate that the district court improperly determined that Nevada did not have jurisdiction to make an initial custody determination under NRS 125A.305(1). See *Morrison v. Beach City, LLC*, 116 Nev. 34, 36, 991 P.2d 982, 983 (2000) (placing the burden of establishing subject matter jurisdiction on the plaintiff). We therefore conclude that the district court properly dismissed his complaint for lack of subject matter jurisdiction. See *Ogawa*, 125 Nev. at 667, 221 P.3d at 704 ("Subject matter jurisdiction is a question of law subject to de novo review."); see also *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (reviewing

legal questions in a district court dismissal order de novo). Accordingly, we
ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹We have considered Christopoulos' remaining arguments and conclude they do not provide a basis for relief. As to Gardella's fast track response, she challenges the district court's February 10, 2016, order to the extent that it awarded Christopoulos primary physical custody on a temporary, emergency basis. See 125A.335(1) (setting forth the district courts' jurisdiction to make temporary custody determinations based on certain emergency circumstances). Although Gardella's challenge to that award is not properly before us in the context of Christopoulos' appeal from the final judgment, see *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) (requiring a respondent who seeks to alter the rights of the parties to file a notice of cross-appeal), we nevertheless note that, while our order of reversal and remand in Docket No. 69814 was focused on the district court's jurisdictional ruling, we reversed the February 10, 2016, order in its entirety. And because the district court never reentered the portion of that order that awarded Christopoulos primary physical custody of the child on a temporary, emergency basis, this issue 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).

cc: Hon. William S. Potter, District Judge, Family Court Division
Louis Christ Christopoulos
Tiffany Grace Gardella
Eighth District Court Clerk