

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FOROZAN KHAN,
Appellant,
vs.
MARIO JAMES CANCHOLA,
Respondent.

No. 72262

FILED

JUN 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order establishing child custody. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.

Appellant Forozan Khan was in a relationship with respondent Mario James Canchola. The couple never married and had one child, G.B.C., born on June 6, 2013. The couple separated shortly after G.B.C.'s birth, and nearly two years later, Canchola filed a complaint for custody. The district court awarded the parties joint legal and physical custody.¹

On appeal, Khan argues that the evidence presented below supported a statutory preference against joint physical custody pursuant to NRS 125C.003, and that the district court erred by failing to make specific findings regarding this presumption. Canchola counters that the district court's decision was proper and supported by substantial evidence. We agree with Canchola.


We decline to address Khan's arguments on appeal that the evidence required application of NRS 125C.003's presumption against joint physical custody because Khan did not argue this before the district court. Nor did Khan contend below that the court was required to address that

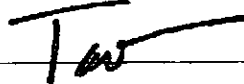
¹We do not recount the facts except as necessary to our disposition.

presumption.² See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52-53, 623 P.2d 981, 983-84 (1981) (holding that a point not raised in the district court is deemed to have been waived); cf. *Truax v. Truax*, 110 Nev. 437, 438, 874 P.2d 10, 11 (1994) (concluding that appellant waived his argument that the district court applied the wrong legal standard when modifying joint custody when he failed to object below).

Having reviewed the record on appeal, we further conclude that the district court properly considered the best interest factors and that substantial evidence supports the district court's custody award. See NRS 125C.0035(1) ("In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child."); *Gordon v. Geiger*, 133 Nev. ___, ___, 402 P.3d 671, 674 (2017) (noting that an appellate court will not overturn a district court's custody determination, absent an abuse of discretion, when it is supported by substantial evidence). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²In addition, Kahn did not argue below or on appeal that the newly enacted NRS 125C.003 applied to the underlying facts supporting a finding of abandonment which may have occurred prior to NRS 125C.003's enactment, and the filing of this case, and we note that our presumption is not to apply statutes retroactively. See *McKellar v. McKellar*, 110 Nev. 200, 203, 871 P.2d 296, 298 (1994) (holding that "[t]here is a general presumption in favor of prospective application of statutes unless the legislature clearly manifests a contrary intent or unless the intent of the legislature cannot otherwise be satisfied").

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Smith Legal Group
Lizada Law Firm, Ltd.
Eighth District Court Clerk