

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SANDRA FUENTES,
Appellant,
vs.
CECILIO MARTINEZ,
Respondent.

No. 71693

FILED

JUL 13 2018

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

ORDER OF AFFIRMANCE

Sandra Fuentes appeals from a district court order denying a custody modification. Eighth Judicial District Court, Family Court Division, Clark County; Rebecca Burton, Judge.

In the proceedings below, respondent Cecilio Martinez had sole legal and sole physical custody of the parties' minor child. Pursuant to the custody order awarding Cecilio sole custody, appellant Sandra Fuentes later moved to modify custody and establish visitation, asserting that she was sober and addressing her drug and alcohol abuse issues. At the hearing on Sandra's motion, Sandra agreed to enroll in a 12-week patch program to prove her sobriety to the court and to Cecilio, before reunification would begin. At the follow-up hearing 12 weeks later, the district court found that Sandra's drug patch tests came back positive, and that Sandra's risk assessment indicated she had a 96% severe problem risk for drugs and a 98% severe problem risk for alcohol. Consequently, the district court concluded that custody modification was not warranted and denied Sandra's motion. However, the district court order noted that Sandra could seek reconsideration of the decision if she provided evidence that other substances could cause a positive test result for methamphetamine in the

patch results and that Sandra could re-file her motion upon successful completion of the patch program. This appeal followed.

On appeal, Sandra asserts that the district court abused its discretion in denying her motion to modify custody because the district court failed to consider that Sandra has completed and passed numerous drug tests and that she has successfully completed the felony DUI program. Child custody matters rest in the sound discretion of the district court. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Accordingly, this court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007) (reviewing whether a substantial change in circumstances warranted modifying a primary physical custody arrangement for an abuse of discretion). In reviewing child custody decisions, this court will affirm the district court's child custody determinations if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.*


Here, the record reflects that Sandra attached some evidence to her motion that suggested she was successfully engaged in treatment. However, the district court found this evidence unpersuasive as the results from the patch program indicated that Sandra tested positive for an illicit substance, and Sandra's drug and alcohol assessment indicated that she was at a high risk for a severe problem with both. This court does not reweigh witness credibility or the evidence on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to make credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183; 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). Based on our review of the

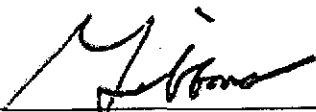
record, we cannot say that the district court abused its discretion in denying Sandra's motion to modify custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Rebecca Burton, District Judge, Family Court Division
Sandra Fuentes
Fine Carman Price
Eighth District Court Clerk

¹To the extent that, on appeal, Sandra relies on additional documents attached to her docketing statement, these documents do not appear to have been presented to the district court and, thus, we do not consider them. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (providing that this court cannot consider matters that do not properly appear in the record on appeal). However, we note that the district court's order does indicate that Sandra may re-file her motion or seek reconsideration upon her providing additional evidence.