

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEGAREGE MELASHU ABATE,
Appellant,
vs.
YALEMBURHANE ABUHAY GENBER,
Respondent.

No. 73366

FILED

MAY 18 2018

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

ORDER OF AFFIRMANCE

Degarege Melashu Abate appeals from a district court order setting a child custody arrangement. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

Abate and respondent Yalemurhane Abuhay Genber previously entered into a stipulation and order providing the parties shared joint custody of their first child. After their second child was born and the parties could not agree on a custody arrangement, Genber filed a motion to modify custody for their first child and to determine custody for the second.¹ After discovery and related motion practice, the district court held an evidentiary hearing. Following the hearing, the district court entered an order awarding primary physical custody of both children to Genber with Abate having parenting time two days a week and on Jewish holidays. A

¹Genber also sought child support for both children, but Abate does not challenge the support awards on appeal.

week after the court entered its order, it filed an amended order that, among other things, clarified the time of the custody exchange. This appeal followed.

On appeal, Abate argues that the district court abused its discretion by purportedly clarifying the Jewish holidays in its child custody determination. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007) (noting that the standard of review for child custody determinations is abuse of discretion). Abate contends that any ambiguity in defining the Jewish holidays should be construed against Genber, whose counsel drafted the prior stipulations, and that the court failed to make adequate findings to show a change of circumstances warranting a modification of custody relating to Abate's parenting time during Jewish holidays.

But Abate's appellate arguments do not comport with what actually took place below. Importantly, the challenged order does not clarify the award of the Jewish holidays in the prior custody order, but instead resolves a motion to modify custody as to the eldest child and establish custody as to the parties' youngest child. *See Mizrachi v. Mizrachi*, 132 Nev. ___, ___, 385 P.3d 982, 986-87 (Ct. App. 2016) (discussing the differences between clarifying and modifying a prior custody order in the context of a dispute over what holidays are encompassed by the Jewish holidays). Moreover, unlike the situation addressed in *Mizrachi*, there is nothing in the record indicating that either party presented arguments indicating that the Jewish holidays should be interpreted so as to include

or exclude particular holidays. Indeed, while the district court's order incorporates a standard court holiday schedule by reference in the course of modifying and establishing a new custody order, there is nothing in the record indicating that any objection to the incorporation of this schedule was made and, on appeal, Abate presents no arguments taking issue with the specific holiday allotment based on that schedule.² Under these circumstances, it cannot be said that the district court abused its discretion with regard to its award of the Jewish holidays to Abate. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

To the extent Abate presents arguments that could be construed as asserting that the district court abused its discretion in its overall decision modifying the designation on the parties' arrangement for custody of their eldest child, and simultaneously setting custody for their youngest child, we see no abuse of discretion in the custody determination. *See id.* The district court properly determined that Genber had de facto primary physical custody of both children prior to these proceedings and

²Per the district court minutes, the parties were provided the standard court holiday schedule in open court during the related evidentiary hearing. Abate requested transcripts of the evidentiary hearing, but did not follow through with his request and ensure their inclusion in the appellate record. As the appellant, Abate is responsible for making an adequate appellate record, and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

that it was in the best interests of the children to maintain the current arrangement with Abate having two days of parenting time each week and, upon notice, on the Jewish holidays. *See Rivero v. Rivero*, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009) (“When considering whether to modify a physical custody agreement, the district court must first determine what type of physical custody arrangement exists”); *see also Bluestein v. Bluestein*, 131 Nev. 106, 111, 345 P.3d 1044, 1048 (2015) (explaining that once custody is brought before the court, the court must consider the best interests of the child in modifying the custody arrangement); NRS 125C.0035(4) (setting forth factors to be considered in determining the best interests of the child).


Moreover, the factual arguments that Abate raises with regard to the overall custody arrangement are either improperly directed at enforcement of the challenged custody order or ask this court to reweigh the evidence, which we will not do. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244 (stating that weighing conflicting evidence and/or assessing witness credibility are not within this court’s purview). The district court’s findings are supported by substantial evidence such that a reasonable person may accept them as adequate to sustain this determination. *See Ellis*, 123 Nev.

at 149, 161 P.3d at 242 (defining substantial evidence to support a judgment).³

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Mathew Harter, District Judge
Degarege Melashu Abate
Cuthbert Mack Chtd.
Eighth District Court Clerk

³Abate filed a motion to file an amended fast track statement, which we now grant. The clerk of the court is therefore directed to file the amended statement, which was received on April 24, 2018. And while we have considered the arguments set forth in this amended fast track statement, because we determine that substantial evidence supports the district court's determination and we will not reweigh the evidence, we conclude that Abate's additional assertions do not alter the outcome here. See *Ellis*, 123 Nev. at 152, 161 P.3d at 244. To the extent that appellant seeks any further relief in this matter, his request is denied.