

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAVIER RAMIREZ RIVAS,
Appellant,
vs.
MAYRA ARREGUIN,
Respondent.

No. 71908

FILED

OCT 11 2017

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

ORDER OF AFFIRMANCE

This is an appeal from a district court post-divorce decree order modifying custody. First Judicial District Court, Carson City; James Todd Russell, Judge.

The underlying divorce decree awarded appellant Javier Ramirez Rivas and respondent Mayra Arreguin joint physical custody of their minor children, but the district court later temporarily modified that arrangement. In particular, the district court awarded Mayra temporary primary physical custody of the children based on police reports and a report and testimony from the children's Court-Appointed Special Advocate (CASA) regarding a physical altercation between the parties and an incident where Javier apparently used excessive force to discipline one of the children. Protracted litigation with regard to custody ensued, resulting in a permanent modification order that awarded Mayra primary physical custody of the children subject to Javier's limited parenting time privileges. Javier appealed that decision, however, and this court reversed and remanded after concluding that the district court abused its discretion by modifying the custody arrangement without making any factual findings

with regard to NRS 125C.0035(4)'s best interest factors. *See Ramirez Rivas v. Arreguin*, Docket No. 69823 (Order of Reversal and Remand, September 20, 2016).

On remand, the district court considered the best interest factors in light of testimony from the parties and the children's CASA and therapist, and, once again, entered an order that awarded Mayra primary physical custody subject to Javier's limited parenting time privileges. In support of that decision, the district court found that a number of the best interest factors weighed in Mayra's favor, including Javier's history of child abuse. This appeal followed.¹

On appeal, Javier begins by attacking the testimony from the CASA and the therapist with regard to their belief that awarding Mayra primary physical custody was in the children's best interest. In particular, Javier asserts that, in so testifying, these witnesses ignored certain purported issues with Mayra's parenting and willingness to let him exercise his parenting time privileges. The transcript from the hearing on remand, however, demonstrates that these witnesses addressed numerous issues in response to questions from both Javier and the district court, including the matters identified above, and ultimately testified that it was in the children's best interest for Mayra to have primary physical custody. And while Javier apparently disagrees with these witnesses' testimony, this

¹Insofar as Javier seeks relief from the district court's first order permanently modifying custody, his arguments are moot in light of our decision in Docket No. 69823. *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).

disagreement does not provide a basis for relief because it is not this court's role to reweigh the evidence or to revisit the district court's credibility determinations. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (explaining that appellate courts will not reweigh the evidence or witness credibility).

While Javier similarly asserts that the district court ignored evidence with regard to the cause of the parties' older child's medical condition, his assertion is belied by the transcript from the hearing on remand. In particular, that transcript demonstrates that, based on testimony from the CASA and therapist that refuted Javier's evidence, the district court found that the child's medical condition was caused by the high level of conflict in the parties' divorce, which it largely attributed to Javier, rather than Mayra. Likewise, despite Javier's similar contention that the district court ignored Mayra's occasional failure to follow the parties' parenting time schedule, the transcript demonstrates that the district court considered the noncompliance issue, but concluded that it was not significant and that Mayra was nonetheless the party who was most likely to allow the other parent to have parenting time.

Moreover, the district court's decision in this regard was part of its overall evaluation of the best interest factors set forth in NRS 125C.0035(4), which resulted in the conclusion that a number of these factors' weighed in favor of Mayra's position and that the remaining pertinent factors were either neutral or weighed against Javier. Indeed, the district court made specific findings on these points in the challenged custody order and, based on our review of the record, we conclude the court's findings are supported by substantial evidence. *See Davis v. Ewalefo*, 131

Nev. ___, ___, 352 P.3d 1139, 1143 (2015) (explaining that, in making custody determinations, the district courts “must tie the child’s best interest, as informed by specific, relevant findings respecting the [statutory] factors, to the custody determination”).


Lastly, to the extent that Javier asserts that, in making its best interest findings, the district court incorrectly found that he had two convictions for child abuse, we conclude that his argument lacks merit. Notably, the district court did not make any findings with regard to child abuse convictions. Indeed, a review of the challenged order reveals that the court found that Javier had a *history* of child abuse. And to the extent that Javier challenges that finding on the basis that the allegations underlying it were false and unsupported by the record, his argument fails. In particular, Javier failed to provide this court with a transcript from the August 20, 2014, hearing at which the district court took evidence and testimony with regard to whether he committed child abuse and, as a result, we presume that the missing transcript supported the district court’s ultimate finding that Javier had a history of child abuse. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant’s burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, “we necessarily presume that the missing [documents] support[] the district court’s decision”).

Based on the forgoing analysis, we conclude that the district court did not abuse its discretion in modifying the parties’ custody arrangement to award Mayra primary physical custody subject to Javier’s limited parenting time privileges. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (reviewing a district court’s custody determination

for an abuse of discretion and explaining that the court's factual findings are entitled to deference unless they are unsupported by substantial evidence or clearly erroneous). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Javier Ramirez Rivas
Mayra Arreguin
Carson City Clerk

²We have considered Javier's remaining arguments with regard to the district court's custody determination and conclude they do not provide a basis for relief. And while Javier also asks us to consider certain post-appeal disputes between the parties, we cannot do so since those matters arose after he filed this appeal. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (explaining that appellate courts cannot consider materials that are not a proper part of the record on appeal).