

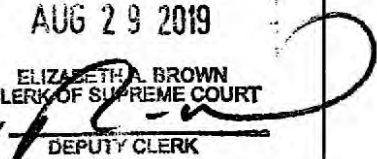
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILSON F. PALMA,  
Appellant,  
vs.  
ANDREA M. LOPEZ,  
Respondent.

No. 77539-COA

**FILED**

AUG 29 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Wilson F. Palma appeals from a district court order modifying child custody and granting relocation. Second Judicial District Court, Washoe County; Bridget E. Robb, Judge.

Pursuant to a decree of custody, entered in 2014, the parties shared joint physical custody of their minor child. However, following the entry of that decree, the parties agreed to modify the time-share, such that respondent Andrea Lopez primarily had custody of the child during the week and appellant Wilson Palma exercised custodial time on the weekends. In December 2017, Andrea moved to modify the 2014 custody order, seeking primary physical custody for the purpose of relocating with the minor child to Florida. After an evidentiary hearing, the district court granted the motion, awarding Andrea primary physical custody and permitting her relocation to Florida with the minor child. This appeal followed.

On appeal, Wilson challenges the district court's order granting Andrea primary physical custody and allowing her to relocate with the

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child, arguing that the district court failed to make adequate best interest findings and that the evidence does not support the district court's order. 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). Similarly, we review a district court's decision to grant a motion for relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.*

When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Additionally, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn*, 120 Nev. at 440, 92 P.3d at 1226-27.

When a parent seeks primary physical custody for the purposes of relocating, the district court must determine whether the relocating parent has a good faith, sensible reason for relocating; that the move is not intended to deprive the non-relocating parent of parenting time; that the best interests of the child are served by allowing the relocation; and that the relocation will result in an actual advantage to the benefit of the child and relocating parent. NRS 125C.007(1). If this threshold standard is met, the district court must consider: whether the move will likely improve the quality of life for the child and relocating parent; whether the relocating parent's motives are to frustrate the non-relocating parent's custodial time;

whether the relocating parent will comply with visitation orders; whether the non-relocating parent's opposition to the move is honorable; and whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that preserves and fosters the non-relocating parent's relationship with the child. NRS 125C.007(2).

Here, the district court found that Andrea has a sensible, good faith reason for seeking relocation—namely, residing with her fiancé and their child. Additionally, the district court found that Andrea will realize an actual benefit from the relocation by way of a better career opportunity, a lower cost of living, a larger home, and an increased standard of living, amongst other things, all of which will also benefit the child. Moreover, the district court noted that while little evidence was presented about the school the child attends now compared to the school the child would attend in Florida, it was evident that the child was not thriving in her current school. Additionally, the court noted that, based on the parties' agreement to modify their time-share, Andrea has effectively been the child's primary custodian since approximately August 2016. The district court also made specific findings concluding that the quality of life for the child and Andrea will improve in relocating, that Andrea's motives in relocating were honorable and not designed to defeat Wilson's relationship with the child, that Andrea would comply with the court's visitation orders, that Wilson's opposition to the relocation was also honorable, and that the custody order could provide an adequate alternative visitation schedule to preserve Wilson's relationship with the child. These findings are all supported by

substantial evidence in the record. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241-42.

The district court's order goes on to make factual findings as to each of the factors governing the child's best interest. For example, the district court found that there is conflict between the parents, largely based on dad's conduct, that despite their conflict, the parties have attempted to cooperate to meet the needs of the child, and that the child has a half-sibling with whom she will reside in Andrea's custody. While the district court found that the remaining best interest factors were neutral or inapplicable, the relevant findings are all supported by substantial evidence in the record. Thus, we cannot conclude that the district court abused its discretion in making its findings as to the best interest of the child or concluding that granting Andrea primary physical custody and allowing her to relocate with the child was in the child's best interest. *Ellis*, 123 Nev. at 149, 161 P.3d at 241-42.

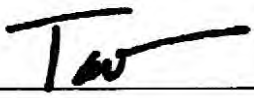
To the extent that Wilson argues the new custody schedule limits his time with the child, whereas he previously saw the child weekly, "the district court may not deny a motion to relocate solely to maintain the existing visitation pattern, even if relocation entails a shift away from consistent day-to-day contact." *McGuinness v. McGuinness*, 114 Nev. 1431, 1437, 970 P.2d 1074, 1078 (1998). Moreover, to the extent Wilson challenges the weight of the evidence, this court does not reweigh witness credibility or the weight of the evidence on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523

(2000) (refusing to reweigh evidence on appeal). Thus, we cannot conclude that the district court abused its discretion in awarding Andrea primary physical custody or in allowing her to relocate with the child. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241; *Flynn*, 120 Nev. at 440, 92 P.3d at 1227.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Bridget E. Robb, District Judge  
Fennemore Craig P.C./Reno  
Jonathan H. King  
Washoe District Court Clerk