

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 77818-COA

FILED

DEC 27 2019

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

ORDER OF AFFIRMANCE

Javier Ramirez Rivas appeals from a district court post-divorce decree order denying his motion to modify custody. First Judicial District Court, Carson City; James Todd Russell, Judge.

The protracted custody proceedings underlying this appeal eventually resulted in the district court awarding respondent Mayra Arreguin primary physical custody of the parties' two minor children subject to Rivas' limited parenting time rights, and the court later modified that arrangement by making Rivas' limited parenting time rights subject to the children's discretion. Rivas then moved for, among other things, an award of joint physical custody, arguing that he was being deprived of his parenting time. The district denied that motion, however, reasoning that the best interest factors supported Arreguin continuing to have primary physical custody of the children. In so doing, the district court acknowledged that the children were having some difficulties in school with math, but found that arrangements had been made with representatives from the children's school to assist them and that the children's

developmental needs were being handled by Arreguin, the children's Court-Appointed Special Advocate (CASA), and school representatives. This appeal followed.

On appeal, Rivas contends that, under *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007), the district court was required to modify the parties' custodial arrangement once it determined that the children were having difficulty in school with math.¹ But while the children's difficulties in school are certainly a relevant consideration in evaluating whether to modify the parties' custodial arrangement, *Ellis* simply explains that modifying a primary physical custody arrangement is only warranted where there has been "a substantial change in circumstances affecting the welfare of the child" and "the child's best interest is served by the modification." 123 Nev. at 150, 161 P.3d at 242. And here, while Rivas attached an email that noted the children's math difficulties to a filing subsequent to his motion, he never asserted that there had been a substantial change in circumstances warranting a modification. Moreover, that was not the focus

¹To the extent that Rivas challenges the district court's original decision to award Arreguin primary physical custody subject to his limited parenting time rights, this court already affirmed the award, *see Rivas v. Arreguin*, Docket No. 71908 (Order of Affirmance, October 11, 2017), and thus, that decision cannot be again challenged as part of this appeal. Insofar as Rivas also challenges the district court's subsequent decision to make his exercise of parenting time subject to the children's discretion, his challenge should have been presented in an appeal from that decision. *See* NRAP 3A(7) (authorizing appeals from orders finally altering the custody of minor children). As a result, this latter issue is likewise not properly before us as part of this appeal.

of his motion to modify custody, which instead argued that he was being deprived of parenting time.

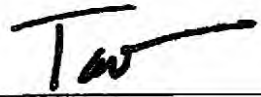
Nevertheless, while the district court did not address *Ellis*' changed-circumstances prong, it did determine that the best interest factors favored Arreguin because, among other things, she was handling the children's developmental needs with the assistance of the children's CASA and representatives from the children's school. Insofar as Rivas now vaguely asserts that Arreguin and the children's CASA failed to provide the district court with relevant documentation and that Arreguin has a language barrier, he seems to challenge the district court's best interest determination. But Rivas has not demonstrated that relief is warranted as he has failed to support his challenge to the district court's order with cogent arguments as he does not explain what documentation is missing or how Arreguin's purported language barrier prevents her from assisting the children with their math work, particularly in light of the assistance that is also being provided by the children's CASA and representatives from the children's school. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider issues that are not supported by cogent argument). Consequently, we conclude that Rivas failed to demonstrate that the district court abused its discretion by denying his motion to modify custody.² See

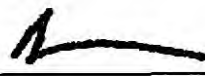
²Although Rivas also contends that the district court should have modified custody based on issues that he raised in a prior motion to modify custody, his contention fails, as the court could not properly consider those issues in the context of the underlying motion to modify custody. See *Nance v. Ferraro*, 134 Nev. 152, 157-60, 418 P.3d 679, 684-86 (Ct. App. 2018)

Ellis, 123 Nev. at 149, 161 P.3d at 241 (reviewing a district court order modifying custody for an abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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

(observing that parties are not free to relitigate previously decided custody issues and explaining the limited circumstances in which the district court may consider evidence that predates the latest custody order).

³Insofar as Rivas raises additional arguments, we have considered them and conclude that they do not provide a basis for relief.