

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DIEGO MARIO GALIETTI,
Appellant,
vs.
RUTH DE LA TORRE,
Respondent.

No. 80544-COA

FILED

FEB 25 2021

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

ORDER OF AFFIRMANCE

Diego Mario Galietti appeals from a district court order regarding custody. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.

After his relationship with respondent Ruth De La Torre ended, Galietti brought the underlying action for, among other things, joint legal custody of the parties' minor child. In 2014, the district court awarded De La Torre sole legal custody of the child for medical, dental, and educational decisions, but awarded the parties joint legal custody on all other matters. Several years later, Galietti moved to modify the 2014 custody decree, arguing that joint legal custody was appropriate because he had demonstrated that he could co-parent with De La Torre, who he asserted was violating the 2014 decree by failing to share information with him concerning medical, dental, and educational matters. At a subsequent hearing, the district court orally found that Galietti failed to establish adequate cause for an evidentiary hearing with respect to legal custody. The district court then entered a written order denying Galietti's motion. And while Galietti moved for reconsideration, the district court concluded that reconsideration was unwarranted and denied his motion.

Galietti subsequently appealed the district court's order denying his motion to modify legal custody. On appeal, this court determined that the district court correctly found that Galietti failed to establish adequate cause for an evidentiary hearing, and, therefore, we rejected his argument that the district court abused its discretion by denying his motion to modify legal custody. *Galietti v. De La Torre*, Docket No. 76027-COA (Order Affirming in Part, Reversing in Part and Remanding, June 20, 2019). Nevertheless, we observed that the district court's 2014 order appeared to create an improper amalgam of both sole legal custody and joint physical custody insofar as it awarded De La Torre sole legal custody with respect to medical, dental, and educational decisions, while also granting the parties' joint legal custody with respect to all other matters. *Id.* Consequently, we recommended that the court clarify the true nature of the parties' legal custody arrangement on remand, emphasizing that the court should explain whether Galietti and De La Torre share joint legal custody of the child with De La Torre having decision-making authority regarding medical, dental, and educational matters, or whether De La Torre has sole legal custody. *Id.*

On remand, the district court entered an order in which it stated that the 2014 decree awarded the parties joint legal custody with De La Torre having decision-making authority with respect to medical, dental, and educational decisions. This appeal followed.

This court reviews a district court's decisions regarding child custody for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). But the district court's interpretation of its custody decree presents a question of law, which we review de novo. *Henson v. Henson*, 130 Nev. 814, 818, 334 P.3d 933, 936 (2014).

On appeal, Galietti initially levels several challenges at the portion of the 2014 decree that addressed legal custody, which he contends was invalid such that each of the district court's subsequent rulings that preserved the legal custody arrangement that was established in the decree are likewise invalid. But in Docket No. 76027-COA, this court affirmed the district court's rejection of Galietti's efforts to modify the legal custody arrangement established in the 2014 decree, and our decision in the matter is the law of the case. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) ("Under the law of the case doctrine, [w]hen an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal." (internal quotation marks omitted)). Insofar as Galietti seeks to sidestep our decision in Docket No. 76027-COA by presenting new challenges to the 2014 decree itself,¹ he should have presented those challenges in Docket No. 76027-COA, and because he failed to do so, the challenges are now waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Thus, relief is unwarranted in this regard.

Galietti next seeks to demonstrate that, on remand, the district court acted in a manner inconsistent with this court's decision in Docket No. 76027-COA on grounds that it modified the parties' legal custody arrangement rather than clarifying the nature of that arrangement established by the 2014 decree. *See Mizrachi v. Mizrachi*, 132 Nev. 666,

¹No notice of entry for the 2014 decree was served, thus the 30-day time period for appealing that decision has not expired. *See* NRAP 4(a)(1).

673-74, 385 P.3d 982, 986-87 (Ct. App. 2016) (discussing the distinction between modifying and clarifying a judgment or order). But this distinction is not implicated here. Indeed, in resolving the appeal in Docket No. 76027-COA, we expressly recommended that the district court explain the nature of the parties' legal custody arrangement by articulating whether Galietti and De La Torre share joint legal custody of the minor child with De La Torre having decision-making authority regarding medical, dental, and educational matters; or whether De La Torre has sole legal custody. And in line with our recommendation, on remand, the district court explained that the 2014 decree awarded the parties joint legal custody with De La Torre having decision-making authority regarding, medical, dental, and educational matters. *See Hsu*, 123 Nev. at 629-30, 173 P.3d at 728.

Galietti nevertheless argues that the district court went beyond this court's instructions in Docket No. 76027-COA by including a direction in the order entered on remand that had not been addressed in any of the court's prior written orders. In particular, Galietti asserts that the district court modified the parties' legal custody arrangement on remand by directing that he not attend the child's medical or dental appointments absent an emergency.

As an initial matter, this direction appears to be a logical consequence of De La Torre having decision-making authority concerning medical and dental matters. But regardless, although De La Torre requested this limitation in her supplemental brief on remand, Galietti did not address this point in his supplemental brief, which was filed nearly three weeks after De La Torre's, much less specifically argue that the limitation exceeded the scope of our order in Docket No. 76027-COA or otherwise resulted in a modification of the parties' legal custody

arrangement. And we presume that Galietti also failed to do so at the hearing on remand, as he did not provide this court with a copy of the transcript from that proceeding. See NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not been granted in forma pauperis status to file a copy of their completed transcripts with the court clerk); see also *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"). Consequently, we conclude that Galietti waived any challenge to this limitation on appeal, see *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that "[a] point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal"), and we therefore discern no basis for relief in this regard.

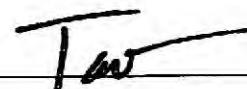
Aside from the foregoing, Galietti challenges the procedural propriety of the order on remand by asserting that the district court was required to conduct an evidentiary hearing before making its decision. But as noted above, our order merely recommended that the district court articulate whether the 2014 decree established a joint legal custody arrangement with De La Torre having decision-making authority over certain matters or whether it gave De La Torre sole legal custody. And Galietti does not argue or explain how an evidentiary hearing would have assisted the district court in explaining the nature of the parties' legal custody arrangement as established by the 2014 decree when the district court already conducted a bench trial in 2014 prior to entering the decree. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d

1280, 1288 n.38 (2006) (stating that this court need not consider issues unsupported by cogent argument). And while Galietti also vaguely contends that he was deprived of his fundamental right to custody of his child without due process, he had notice and an opportunity to be heard on the legal custody issue when the district court conducted a bench trial before entering the 2014 decree, and again on remand when the district court considered the parties' oral argument and supplemental briefs before it explained the nature of their legal custody arrangement in accordance with our order in Docket No. 76207-COA. See *Gordon v. Geiger*, 133 Nev. 542, 545-46, 402 P.3d 671, 674 (2017) (explaining that the Due Process Clause of the Fourteenth Amendment to the United States Constitution protects parents' fundamental right to custody of their children and requires notice and an opportunity to be heard before the right is affected).

Thus, given the foregoing, we conclude that Galietti failed to establish a basis for overturning the district court's order on remand, and as a result, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Insofar as Galietti raises arguments that are not specifically addressed herein, we have considered the same and conclude that they do not provide a basis for relief.

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division
Diego Mario Galietti
Sin City Divorce
Eighth District Court Clerk