

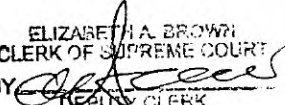
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WALTER GEOFFREY SALVATIERRA,  
Appellant,  
vs.  
MARLENE DIANA SALVATIERRA,  
Respondent.

No. 83653-COA

FILED

SEP 12 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Walter Geoffrey Salvatierra appeals from a decree of divorce. Eighth Judicial District Court, Family Court Division, Clark County; Mary D. Perry, Judge.

In the proceedings below, respondent Marlene Salvatierra initiated a divorce action in January 2020, Walter filed his answer and counterclaim, and the parties attended a case management conference. Based on allegations that Walter committed domestic violence, the district court awarded Marlene temporary sole legal custody and primary physical custody of the parties' two minor children and ordered Walter to have supervised parenting time at Donna's House on Saturdays. At a return hearing in November 2020, the district court awarded Walter parenting time on Saturdays and Sundays from noon until 6:00 pm each day, ordered Walter to submit to a random drug test, and set the matter for trial in May 2021. In March 2021, Marlene filed a motion seeking to suspend Walter's parenting time, asserting that he failed his drug test and that he was convicted of battery constituting domestic violence and attempt child abuse, neglect, or endangerment.

The district court held a trial in May 2021, but Walter did not appear and was not represented by counsel. Pursuant to the decree of divorce, the district court awarded Marlene sole legal and sole physical custody of the two minor children, but noted that once Walter was released from prison, he could move to modify the parenting time schedule and begin reunification if he demonstrated six months of sobriety. The decree also divided the parties' community assets and debts. This appeal followed.

On appeal, Walter challenges the divorce decree, asserting that he did not receive notice of the trial as he was taken into custody in April 2021 and, therefore, he was unable to present his case regarding child custody and the division of community property. This court reviews the district court's decisions in divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004). Similarly, 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). And this court will not disturb a district court's decision that is supported by substantial evidence. *Id.* at 149, 161 P.3d at 242; *Williams*, 120 Nev. at 566, 97 P.3d at 1129. 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). Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

Here, Walter asserts that entry of the decree was unfair and that his rights were violated because he never had notice of the trial, but his assertion is belied by the record. The record indicates that Walter was present at the hearing held in November 2020 when the district court set

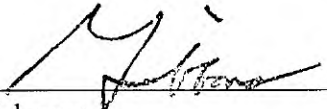
the trial date and that the order entered following the November hearing was mailed to Walter's address in January 2021, well before he was taken into custody in April 2021. And Walter fails to cogently argue why he believes this was insufficient to provide him notice of the trial or otherwise argue how his rights were violated. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider issues that are not cogently argued). Thus, we cannot conclude that Walter did not receive sufficient notice or that the district court abused its discretion in entering the divorce decree after he failed to appear at trial. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241; *Williams*, 120 Nev. at 566, 97 P.3d at 1129; *see also Gordon v. Geiger*, 133 Nev. 542, 545-46, 402 P.3d 671, 674 (2017) (explaining that due process requires notice and an opportunity to be heard).

Moreover, to the extent Walter contends that he could not present his case because he was incarcerated, "[a]n appellate court is not particularly well-suited to make factual determinations in the first instance." *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012). The proper mechanism for challenging a judgment on these grounds is through a motion or action pursuant to NRCP 60(b) in the district court. *See Schulman v. Bongberg-Whitney Elec., Inc.*, 98 Nev. 226, 228-29, 645 P.2d 434, 435-36 (1982); *Norris v. Phillips*, 86 Nev. 619, 619-20, 472 P.2d 347, 347 (1970). And Walter did not seek to set aside the divorce decree on these grounds, but instead filed the instant appeal, such that the district court had no opportunity to consider his argument in the first instance. *See Ryan's Express*, 128 Nev. at 299, 279 P.3d at 172; *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623

P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”).

Based on the foregoing, Walter has failed to demonstrate that reversal is warranted, and we therefore

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

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

cc: Hon. Mary D. Perry, District Judge, Family Court Division  
Walter Geoffrey Salvatierra  
Legal Aid Center of Southern Nevada, Inc.  
Eighth District Court Clerk

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<sup>1</sup>Insofar as Walter raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.