


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTOR UGOCHUKWU EMENIKE
GOLD,
Appellant,
vs.
JUDITH SAPPHIRE EMENIKE GOLD,
Respondent.

No. 86918-COA

FILED

MAY 23 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Victor Ugochukwu Emenike Gold appeals from a district court order modifying child custody. Eighth Judicial District Court, Family Division, Clark County; William O. Voy, Senior Judge, and Paul M. Gaudet, Judge.¹

Victor and respondent Judith Sapphire Emenike Gold were married in 1994 and divorced by stipulated decree entered in 2019. Pursuant to the terms of the decree, the parties shared joint legal and physical custody of their minor children and Victor was ordered to pay child support. Although the decree ordered the parties to share joint physical custody, the parties' timeshare provided that Victor would have the children

¹The Honorable William Voy, acting as Senior Judge, entered the decision and order modifying custody after remand on March 29, 2023, and, following his appointment to Department N, the Honorable Paul M. Gaudet entered the June 20, 2023, order denying Victor's motion to alter or amend.

from Monday at 11:00 a.m. to Wednesday at 11:00 a.m. and that Judith would have the children the remainder of the time each week.

The instant appeal involves a child custody order entered on remand following this court's decision resolving the parties' previous appeal, *Gold v. Gold*, Docket No. 83078-COA, 2022 WL 2387037 (Nev. Ct. App. Jun. 30, 2022) (Order Dismissing in Part, Affirming in Part, Reversing in Part and Remanding). In the proceedings underlying that order, Victor moved the district court to modify the timeshare to a week-on/week-off schedule. The district court denied the motion, and upon review of the decree, found that the parties' original custody schedule was erroneously defined as joint physical custody and actually reflected a primary physical custody schedule. Later, Victor filed a second motion to modify the custody schedule, again requesting an equal week-on/week-off schedule, which the district court denied. On appeal, this court reversed and remanded the portion of the district court's decision modifying the physical custody designation on the basis that the court failed to evaluate the best interest of the child factors under NRS 125C.0035.

After remittitur issued for the prior decision, the district court received briefs from the parties and scheduled an evidentiary hearing on the issue of child custody. Thereafter, the court entered a decision and order wherein it awarded Judith primary physical custody of the children. In so doing, the court expressly analyzed the relevant best interest factors under NRS 125C.0035(4), finding that, while there was no history of mental illness, NRS 125C.0035(4)(f), or abuse/domestic violence from the parents, NRS 125C.0035(4)(j) and (k), the parties have an extensive history of

conflict, NRS 125C.0035(4)(d), and an inability to coparent that prevents them from sharing joint physical custody in a way that would be in the best interests of the children. Additionally, when considering other relevant factors under NRS 125C.0035(4), the court noted that while neither parent had abducted the children, Victor's pattern of interrupting Judith's vacation time with the children, including an incident of Victor following Judith to Nigeria and accusing her of kidnapping the children, resulting in Judith's arrest and temporary detainment, favored an award of primary physical custody to Judith. Additionally, the court found that Judith was the parent more likely to allow the children to have frequent associations with Victor, NRS 125C.0035(4)(c), that neither party cooperates well with the other, that Judith is in the best position to meet the needs of the children, NRS 125C.0035(4)(e), and is well equipped to handle their physical, developmental, and emotional needs, NRS 125C.0035(4)(g).

Following entry of the custody order, Victor retained counsel for the limited purpose of filing a motion to alter or amend the decision and order, arguing that the previous order was erroneous as it failed to address whether a substantial change in circumstances warranted modification of custody, and challenged the district court's evaluation of witness testimony and weighing of the evidence. Following Judith's opposition and a hearing, the district court denied Victor's motion, finding that, at the hearing, the judge made "specific reference to what this Court deems to be a substantial change in circumstances: [t]he inability of the parties to co-parent, [Victor's] history of non-compliance [with] court orders and [his] controlling

personality,” among other things, which warranted the modification to primary physical custody. Victor now appeals.

Having reviewed the record and the parties’ arguments on appeal, we conclude that the district court did not abuse its discretion in modifying the parties’ custody arrangement, or in denying Victor’s post-judgment motion to alter or amend. *See Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 284 (Ct. App. 2023) (reviewing a district court’s child custody order for an abuse of discretion); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (reviewing an order denying an NRCP 59(e) motion to alter or amend a judgment for an abuse of discretion).

On appeal, Victor argues that the district court abused its discretion in entering its order modifying custody because it failed to find a substantial change in circumstances affecting the welfare of the minor child prior to changing the custody designation under *Romano v. Romano*, 138 Nev. 1, 9, 501 P.3d 980, 986 (2022) (concluding that to modify custody a movant must show “there has been a substantial change in circumstances affecting the welfare of the child” and “the modification would serve the child’s best interest”), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). However, Victor failed to raise this issue at any point prior to the evidentiary hearing, and only brought this issue to the district court’s attention in the context of his motion to alter or amend. Moreover, because Victor failed to provide this court with the transcripts of the evidentiary hearing, such that we cannot assess whether this issue was orally raised at

that hearing, we presume that the transcripts support the district court's decision.² See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (observing that “[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision”). Because Victor failed to raise this issue prior to the evidentiary hearing and failed to provide this court with the necessary transcripts for our review on appeal, we conclude that the district court did not abuse its discretion in denying his motion to alter or amend based on this issue. See *AA Primo Builders, LLC*, 126 Nev. at 589, 245 P.3d at 1197.

Nevertheless, even if the district court’s failure to expressly mention its reasoning for a substantial change in circumstances in its order modifying child custody was in error, we conclude that any such error was harmless as the court later clarified its reasoning in the order denying Victor’s motion to alter or amend, and—when read together—the combined orders contain all relevant findings necessary for modifying child custody. Cf. NRCP 61 (“At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party’s substantial rights.”); see also *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (“When an error is harmless, reversal is not warranted.”).

²On July 21, 2023, the supreme court issued a notice to Victor in which it instructed him that appellants who have not been granted in forma pauperis status and have requested a transcript “must serve a copy of the transcript request form on the court reporter/recorder who reported the proceedings” and, upon receipt of the transcript “must file a copy of the transcript in this court,” citing specifically to NRAP 9(b)(1)(B).

Next, Victor argues that the district court's order modifying child custody is not supported by substantial evidence as the district court failed to properly evaluate witness testimony and evidence presented during the evidentiary hearing. But this court cannot evaluate these claims due to Victor's failure to provide this court with the transcript of the evidentiary hearing. We therefore presume that the missing portions of the record support the district court's decision. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. William O. Voy, Senior Judge
Hon. Paul M. Gaudet, District Judge
Victor Ugochukwu Emenike Gold
Judith Sapphire Emenike Gold
Eighth District Court Clerk