


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CONSTANTIN PETRIUC,
Appellant,
vs.
DIANA MATAS F/K/A DIANA
VICTORIA PETRIUC,
Respondent.

No. 88710-COA

FILED
NOV 14 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Constantin Petriuc appeals from a district court order denying his motion to modify custody and granting respondent Diana Matas's countermotion to modify the parenting time schedule. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Petriuc and Matas were married in November 2012 and have two minor children together. In August 2014, Matas filed a complaint for divorce and child custody; the following month, the district court entered a decree of divorce and child custody order by default, finding that Petriuc had been served but failed to file an answer.¹ Pursuant to this initial custody order, Matas was granted sole legal custody and primary physical custody of the children, subject to Petriuc's parenting time on the children's birthdays on even numbered years and one day per week from 9:00 a.m. to 5:00 p.m.

After the entry of the decree, without Petriuc's knowledge or permission from the court, Matas absconded with the children to Arizona, where she lived with her parents. In 2018, again without Petriuc's knowledge, Matas initiated guardianship proceedings in Arizona, and her

¹Petriuc later disputed that he was served with Matas's complaint.

parents became legal guardians of both children. Matas had no contact with Petriuc, who was living in Las Vegas, until June 2019, when she informed him that she and the children were living in Arizona. Between September and October 2019, Petriuc visited the children on three occasions, but Matas cut off all communication with Petriuc and refused to permit him any further parenting time with the children.

In December 2020, Petriuc filed a motion to modify custody, alleging that there was a substantial change in circumstances due to, among other reasons, Matas's "instability," her interference with Petriuc's attempts to visit the children, and her decision to relocate the children to Arizona without his consent or the court's permission. Petriuc also noted that a petition for guardianship had been filed in Arizona, though he did not provide any documentation in support of his guardianship claim. Matas opposed, arguing that Nevada did not have proper jurisdiction to modify the children's custody due in part to an "Arizona Legal Guardianship provision."

In April 2022, the district court entered an order granting Petriuc's motion. The court found that there was a substantial change in circumstances affecting the welfare of the children because Matas had relocated the children to Arizona without Petriuc's consent or permission and because of the apparent Arizona guardianship.

In its order, the district court analyzed the children's best interests using the factors set forth in NRS 125C.0035(4). Notably, as to factor (b), "[a]ny nomination of a guardian for the child by a parent," the court found that Petriuc presented no documentation of the alleged guardianship, and "with such limited evidence presented," the court was "unable to determine whether said guardianship exists." The district court

also expressly acknowledged Matas's conduct alienating the minor children from Petriuc as well as her "erratic behavior and instability," which the court found heavily favored modification.

The district court awarded the parties joint legal custody of both children. When evaluating physical custody, the court found that it was not in the children's best interests to uproot them from their home in Arizona to relocate to Las Vegas. The court ordered that Matas would retain primary physical custody of the children subject to Petriuc's significantly expanded parenting time schedule. Beginning with a reunification process, the schedule provided that Petriuc would exercise parenting time for the entirety of the children's summer break every year. Lastly, the district court noted that "should [Petriuc] present additional evidence to the Court regarding [Matas's] parental fitness or any other evidence indicating that it would be in the minor children's best interest to be relocated to Las Vegas, the Court is inclined to consider a further modification to joint physical custody." The parties generally abided by the parenting time schedule without incident.

In July 2023, Petriuc filed a second motion to modify custody. He argued, based on the district court's invitation to file for another modification in the prior order, that the children's best interests would be served by relocating to Las Vegas. Specifically, Petriuc attached documentation proving the existence of the Arizona guardianship and stated that he successfully reunified with the children, both of which he claimed constituted a substantial change in circumstances.

Matas filed an opposition and countermotion to modify the parenting time schedule. Specifically, Matas requested to have parenting

time for four weeks over the children's summer breaks. Petriuc did not oppose Matas's countermotion.

The district court held an evidentiary hearing in March 2024, and both Petriuc and Matas testified.² In April 2024, the district court issued an order that denied Petriuc's second motion to modify custody and granted Matas's countermotion to modify the parenting time schedule. The court found that Petriuc failed to show a substantial change in circumstances since the entry of the last custody order in April 2022. The court recognized the guardianship issue, but noted that Petriuc's new documents regarding the guardianship could have been obtained with reasonable diligence prior to his first motion to modify custody. Further, the court determined that because the guardianship was dissolved prior to the hearing, that issue was moot.³ The court also found that Petriuc's successful reunification with the children did not constitute a change in circumstances and, after reviewing the best interest factors set forth in NRS 125C.0035(4), determined that Petriuc did not show that relocating the children to Las Vegas was in their best interests. Specifically, the district court found that the children were "thriving socially, academically, and developmentally in Arizona," and Petriuc was able to develop and maintain

²Approximately one month prior to the hearing, Matas and her parents stipulated to dissolve the Arizona guardianship, thereby restoring all of Matas's parental rights.

³The district court acknowledged that Matas was not entirely forthcoming about the guardianship issue during the proceedings on Petriuc's first motion to modify custody. The court provided that "it appears that a fraud, misrepresentation, or misconduct was committed by [Matas] which may have warranted a motion for relief from judgment under NRCP 60(b)(3). However, no such motion has been made." Petriuc does not address this finding on appeal.

a meaningful, loving relationship with the children under the existing parenting time arrangement. Further, the court found that “uprooting the children from their lives in Arizona” was not in their best interest “when they continue to flourish in that environment.”

Lastly, the district court modified the parenting time arrangement and granted Matas parenting time with the children for four weeks, split into two two-week periods, during the children’s summer vacations. The court noted that Matas’s countermotion was unopposed, and “[p]ursuant to DCR 13(3), the Court may construe the failure of an opposing party to serve and file a written opposition as an admission that the motion is meritorious and as a consent to granting the same.” Petriuc timely appealed challenging the custody decisions.

The district court may modify primary physical custody “only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child’s best interest is served by the modification.” *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007). In determining the best interest of the child, the court “shall consider and set forth its specific findings concerning” the enumerated best interest factors and any other relevant factors. NRS 125C.0035(4); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

This court “will not disturb the district court’s custody determinations absent a clear abuse of discretion.” *Ellis*, 123 Nev. at 149, 161 P.3d at 241. “An abuse of discretion occurs when a district court’s decision is not supported by substantial evidence or is clearly erroneous.” *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018).

Petriuc claims the district court should have modified custody because he presented documents proving the existence of the Arizona

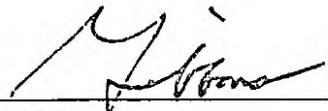
guardianship, which demonstrated Matas's prior lack of candor to the court. However, Petriuc fails to present any argument as to how the district court abused its discretion in declining to modify custody on this basis, nor does he argue that his subsequent presentation of additional documents constituted a substantial change in circumstances affecting the welfare of the children. The district court considered Petriuc's claims regarding the Arizona guardianship but concluded that the issue was moot because the guardianship had been dissolved. Petriuc does not challenge these findings on appeal. Notably, Petriuc also does not argue that the district court abused its discretion in finding that his successful reunification with the children did not amount to a substantial change in circumstances. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Absent any cogent argument, we decline to consider whether Petriuc established a substantial change in circumstances warranting a custody modification. *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 claims that are not cogently argued).

However, even assuming the district court erred in finding there was no substantial change in circumstances, Petriuc similarly fails to argue how the district court abused its discretion in finding that a custody modification was not in the children's best interest. *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Specifically, the district court found that it was not in the children's best interest to uproot them from Arizona when they "flourish[ed] in that environment." Petriuc asserts only a conclusory statement that it was in their best interest to do so—without reference to the statutory best interest factors under NRS 125C.0035(4)—but Petriuc

does not address the district court's best interest analysis or assert that the court's findings as to the children's best interest were unsupported by substantial evidence. Therefore, because Petriuc also did not present any cogent argument on this claim, we decline to consider it. *Edwards*, 122 Nev. at 330 n. 38, 130 P.3d at 1288 n.38.

Petriuc lastly contends the district court abused its discretion in "sua sponte" modifying the parties' parenting time arrangement and providing Matas additional time with the children for four weeks over their summer breaks. Petriuc asserts, without supporting legal authority, that "it defies logic to award [Matas] more visitation." However, Petriuc's conclusory assertion does not address the district court's determination that Matas's countermotion was unopposed, which the court construed as an admission that her request was meritorious. In addition, the court found this modification was in the children's best interest, which Petriuc does not specifically challenge on appeal. Because Petriuc did not present any cogent argument on this claim as well, we decline to consider it.⁴ *Id.* Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

⁴Insofar as Petriuc has raised other claims not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Michael Montero, District Judge
Flangas Dalacas Law Group, Inc.
Hutchison & Steffen, LLC/Las Vegas
Hutchison & Steffen, LLC/Reno
Humboldt County Clerk