

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATHRYN MEAD,  
Appellant,  
vs.  
BRIAN MEAD,  
Respondent.

No. 88915-COA

**FILED**

DEC 18 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Kathryn Mead appeals from a district court order regarding child custody and support. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Kathryn and respondent Brian Mead were divorced in 2007 and shared joint physical and legal custody of their three children following entry of the divorce decree. On May 30, 2022, the district court, on Brian's motion, entered an order awarding him primary physical custody of the minor child who had not yet reached the age of majority and awarded him child support. Kathryn appealed that decision, and this court reversed the district court's order on grounds that the district court failed to make the underlying finding that a substantial change in circumstances warranted a modification of the joint physical custody arrangement and because the court modified physical custody without analysis of the best interest of the child factors under NRS 125C.0035(4). *Mead v. Mead (Mead I)*, Docket No. 84843-COA, No. 84878-COA, 2023 WL 8828889, \*2 (Nev. Ct. App. Dec. 20, 2023) (Order Dismissing Appeal in Docket No. 84843-COA, and Reversing

and Remanding in Docket No. 84878-COA). This court further reversed the district court's award of child support in light of the custody reversal and remanded the matter for further proceedings.<sup>1</sup> *Id.* Following our reversal and remand in *Mead I*, the district court scheduled an evidentiary hearing on the issues of child custody and support related to Kathryn and Brian's youngest child and ordered that the parties would have joint physical custody of the child on a week-on-week-off basis pending the evidentiary hearing.

Prior to the evidentiary hearing, Kathryn moved for primary physical custody of the parties' minor child on the grounds that Brian's house had burned down in February 2024, resulting in the minor child residing with her full time due to Brian's alleged inability to care for the child's physical and emotional needs. Among other things, Kathryn alleged that the child was traumatized from experiencing the fire, and that Brian nonetheless insists on having the child stay with him "when there is no functioning kitchen, toilets, electricity, etc." in the home. Although Brian did not file a written response to that motion, the record reflects that the district court held a hearing wherein it found that there was "adequate cause to have an evidentiary proceeding concerning the matter." Despite determining there was "adequate cause" on this issue, the district court nevertheless orally denied Kathryn's motion to modify without further

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<sup>1</sup>Because the parties two eldest children had reached the age of majority, our remand only directed the district court to reconsider the issue of child support as it related to the two adult children, if necessary. *Id.*, at \*2 n.4.

analysis as reflected in the court minutes prior to the scheduled evidentiary hearing concerning the issues on remand.

The evidentiary hearing proceeded as originally scheduled and, following the hearing, the district court entered a decision and order wherein it analyzed the best interest of the child factors under NRS 125C.0035(4) and concluded that awarding the parties joint physical and legal custody of the child would be in the child's best interest. The court further concluded that Brian made \$6,000 per month in income and that Kathryn's income would be imputed at \$3,000 per month. Accordingly, the court determined that Brian would owe Kathryn \$480 a month in child support for the next year until the child reached the age of majority and graduated high school. However, because Kathryn owed Brian \$5,242 in past arrears, the court concluded that Brian would simply pay Kathryn a one-time sum of \$518 as his support payment. Kathryn now appeals.

We review a district court's child custody and support determinations for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 438, 216 P.3d 213, 226, 232 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Additionally, this court "will not set aside the district court's factual findings if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment." *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1).

On appeal, Kathryn challenges the district court's custody and support determinations. As to child custody, Kathryn argues that the district court abused its discretion by failing to consider her arguments regarding the February house fire alongside its other findings related to the best interest of the child. Further, she argues that, because Brian's home no longer had running water or electricity and because she had "de facto" primary physical custody of the child prior to the evidentiary hearing, she demonstrated a prima facie case for primary physical custody of the child. As to child support, Kathryn argues that the district court abused its discretion when it used the imputed income information from 2013 rather than updated financial forms from 2022 and 2023 in making its support determination. Kathryn additionally argues that the district court abused its discretion by making several improper evidentiary determinations and ignoring her evidence. Brian did not file a fast track response.

This court is unable to evaluate Kathryn's claims, or the alleged errors regarding the district court's evidentiary determinations, as Kathryn failed to request and file the transcripts from the April 3, 2024, hearing on her motion to modify and the May 23, 2024, evidentiary hearing, despite the supreme court's notice and instruction to do so.<sup>2</sup> As a result, this court

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<sup>2</sup>On June 28, 2024, the supreme court issued a notice to Kathryn in which it instructed her that she must either file a completed transcript request form with the court, NRAP 9(b)(1)(c), or file a notice indicating that no transcripts were being requested, NRAP 9(b). *See also* NRAP 3E(c)(2). As the supreme court entered an Order Amending the Nevada Rules of Appellate Procedure on June 7, 2024, which became effective on August 15, 2024, we cite the prior versions of the NRAP herein. *See In re Creation of a*

cannot assess whether the district court failed to properly consider Kathryn's arguments regarding the house fire as she suggests or whether these arguments were rejected for some other reason. *Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (stating appellant has the responsibility to make an adequate appellate record). Likewise, absent the missing transcripts, we are unable to adequately assess the district court's reasoning for relying on the 2013 imputed income information rather than the more recent financial forms or review the court's evidentiary determinations that Kathryn challenges on appeal.

Here, the district court's order reflects that it considered the best interest of the child factors set forth in NRS 125C.0035(4), made findings regarding those factors, and found that, based on its assessment of the factors, maintaining joint physical custody was in the best interest of the child. Similarly, with regard to child support, the district court's order includes findings indicating that Kathryn failed to show "sufficient proof to support a finding of changes in financial circumstances" sufficient to alter her previously imputed income for purposes of child support or to rebut the presumption that she is willfully underemployed. Because Kathryn failed to provide this court with transcripts from the April 3, 2024, hearing on her motion to modify and the May 23, 2024, evidentiary hearing, we necessarily presume these missing portions of the record support the district court's

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*Commission on the Nevada Rules of Appellate Procedure, ADKT (Order Amending the Nevada Rules of Appellate Procedure, June 7, 2024).*

child custody and support determinations, and therefore we conclude substantial evidence supports the district court's findings and its ultimate conclusions with regard to these issues. *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”). Under these circumstances, we can discern no abuse of discretion in the district court’s decision, and we therefore affirm the court’s child custody and support determinations. *See Rivero*, 125 Nev. at 428, 438, 216 P.3d at 226, 232.

It is so ORDERED.<sup>3</sup>

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

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

  
\_\_\_\_\_, J.  
Westbrook

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<sup>3</sup>Insofar as Kathryn raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Division  
Kathryn Mead  
Brian Mead  
Eighth District Court Clerk