

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID BUTTE,
Appellant,
vs.
WENDY ROWLAND,
Respondent.

No. 89543-COA

FILED

MAY 08 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Butte appeals from the denial of his motion to modify child custody. Second Judicial District Court, Washoe County; Dixie Grossman, Judge.

Butte and respondent Wendy Rowland are the parents of three minor children and Rowland is also the mother of a teenage daughter, E.B., from another relationship.¹ Both Butte and Roland filed competing petitions seeking sole legal and physical custody of their children. The district court held an evidentiary hearing to determine custody. During the hearing, the parties stipulated to share joint legal and physical custody of their children, and the district court entered an order adopting the stipulation and awarding the parties joint legal and physical custody.

Approximately nine months after the district court entered the joint legal and physical custody order, a separate district court overseeing the custody and financial support of E.B., entered an order awarding sole

¹The determination of custody and financial support of E.B. is not at issue in this matter.

legal and physical custody to E.B.'s biological father.² That court addressed the fact that, years earlier—before Rowland had met Butte—Rowland had moved three times with E.B. without seeking permission from the court or E.B.'s father. Ultimately the district court in E.B.'s custody case determined that these unapproved moves equated to an abduction for child custody purposes. The court entered an order denying Rowland joint legal or physical custody of E.B. but permitted her supervised parenting time.

Subsequently, on December 11, 2023, less than a year after the entry of the initial custody order in the underlying case, Butte filed a petition for reconsideration of the prior child custody order granting joint legal and physical custody of the children, arguing that he learned a district court had found that Rowland abducted E.B. several years before, and therefore, Butte argued he was entitled to sole legal and physical custody of the parties' minor children pursuant to NRS 125C.0035(9) (setting forth the procedure for seeking reconsideration of a prior custody order if it is later determined that an act of abduction had occurred). Rowland opposed Butte's request and filed a countermotion for sole legal and physical custody of the children.

The district court held an evidentiary hearing at which both Butte and Rowland testified. During her testimony, Rowland maintained that she relocated with E.B. to New Zealand because E.B.'s father did not wish to be involved and had previously been physically abusive to Rowland. She acknowledged that she and E.B. lived in New Zealand for a period of time before they were deported back to the United States. Rowland testified

²Butte was not a party to those proceedings and did not participate in the evidentiary hearing that led to the entry of the custody order concerning E.B.

that she and E.B. returned to Alabama and then subsequently relocated to Reno. Rowland disputed the findings made by the district court in E.B.'s custody case, including the determination that she had abducted E.B., but acknowledged that she no longer had legal or physical custody of the child.

Butte then testified that Rowland informed him that she was legally allowed to relocate with E.B. to New Zealand and that he was aware she had relocated there with E.B. before he stipulated to joint legal and physical custody of their shared children. However, Butte asserted that he was not aware of the circumstances surrounding Rowland's relocation until the court in E.B.'s custody case issued its decision concluding she had abducted the child. Butte maintained that he learned of this situation shortly before he filed his motion to modify custody. He claimed that, had he been aware of the circumstances surrounding Rowland's relocation with E.B., he would not have agreed to share joint legal and physical custody with Rowland. Despite this testimony, however, Butte conceded that the parties had been sharing joint legal and physical custody for approximately two years without any significant issues.

Following the hearing, the district court entered a written order resolving both parties' motions to modify custody. Although the district court acknowledged that another district court found that Rowland engaged in an act of abduction of E.B. as defined in NRS 125C.0035(7), the court concluded that in this case she had rebutted the presumption against joint legal and physical custody set forth in that statute on three grounds. First, the district court found Rowland rebutted the presumption because the parties had been successfully sharing joint physical custody without incident since 2023. Second, the Washoe County Human Services' Agency (WCHSA) had conducted an investigation and determined that both parties

were safe placements for their children. Third, Butte had stipulated to joint legal and physical custody despite knowing Rowland had relocated to New Zealand with E.B. On this point, the court emphasized that while Butte “may not have known at the time of trial how certain facts may have given him an advantage regarding custody in the case, he nonetheless agreed to and has been sharing joint custody for an extended period.”

Based on these findings, the district court declined to reconsider the stipulated joint custody order as Butte requested. The court then went on to analyze the NRS 125C.0035(4) best interest factors and determined those factors did not support awarding either party sole legal or physical custody. Accordingly, the district court denied both motions and maintained its prior order for joint legal and physical custody. Butte now appeals.

On appeal, Butte argues the district court abused its discretion by failing to award him sole legal and physical custody of the children despite upholding another court’s determination that Rowland engaged in an act of abduction and that the district court improperly concluded Rowland rebutted the presumption against awarding joint legal and physical custody to both parties.

We review the district court’s custody determinations for an abuse of discretion. *Castle v. Simmons*, 120 Nev. 98, 101, 86 P.3d 1042, 1045 (2004). NRS 125C.0035(9) permits a district court, upon a motion to modify physical custody, to reconsider its prior custody order if “a magistrate determines there is probable cause to believe that an act of abduction has been committed against the child or any other child.” Once a court determines, by clear and convincing evidence, that either parent has committed an act of abduction against any other child, a rebuttable

presumption against sole or joint physical custody is created.³ NRS 125C.0035(7). Unless the parent rebuts the presumption, the court “shall not enter an order for sole or joint physical custody or unsupervised visitation of the child by the perpetrator.” *Id.* In modification of child custody cases, the district court’s sole consideration is the child’s best interest. NRS 125C.0035(1); *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). NRS 125C.0035(4) sets forth a nonexclusive list of factors the district court shall consider when deciding the custody arrangement that is in a child’s best interest.

Having considered the parties’ arguments and the record before us, we discern no abuse of discretion in the district court’s denial of Butte’s motion for reconsideration and, thus, we affirm that decision. *See Castle*, 120 Nev. at 101, 86 P.3d at 1045. As detailed above, NRS 125C.0035(7) expressly provides that the presumption against awarding joint physical and legal custody in abduction cases is *rebuttable*. And here, the district court found Rowland successfully rebutted this presumption.

On appeal, Butte only challenges the district court’s reliance on his having stipulated to share joint legal and physical custody with Rowland to rebut the presumption against joint physical custody, asserting—as he did below—that he was unaware of the circumstances surrounding her relocation with E.B. when he entered into the stipulation. But the district court found that while Butte “may not have known at the time of trial how certain facts may have given him an advantage regarding custody in the

³We note NRS 125C.240(1) likewise contains a rebuttable presumption against awarding joint physical and legal custody if a court determines a parent has engaged in an act of abduction. However, neither the district court nor the parties relied upon this statute and thus we need not address it here.

case, he nonetheless agreed to and has been sharing joint custody for an extended period.”

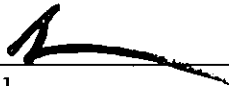
Because Butte does not address the district court’s factual determination that the presumption was rebutted because the parties successfully shared joint legal and physical custody for approximately two years and WCHSA found both he and Rowland were safe placements, he has waived any challenge to these conclusions. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (“Issues not raised in an appellant’s opening brief are deemed waived.”); *see also Hung v. Berhad*, 138 Nev. 547, 552, 513 P.3d 1285, 1289 (Ct. App. 2022) (holding an appellant must successfully challenge all independent alternative grounds supporting an order). Indeed, Butte conceded at the hearing that he and Rowland had been sharing joint legal and physical custody of their children for approximately two years without any significant issues, thereby supporting this independent ground that Rowland had successfully rebutted applying the presumption against joint legal and physical custody in this case.

Further, the district court carefully considered the NRS 125C.0035(4) best interest factors and concluded that the applicable factors all supported maintaining the existing joint custody arrangement and did not support awarding either party sole legal or physical custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242 (providing that, in resolving requests to modify child custody, the sole consideration is the child’s best interest); *see also Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 287 (Ct. App. 2023) (defining sole physical custody “as a custodial arrangement where the child resides with only one parent and the noncustodial parent’s parenting time is restricted to no significant in-person parenting time”). On appeal Butte

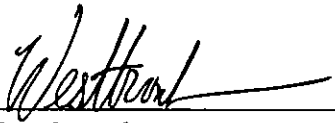
has not challenged the district court's findings regarding the best interest factors and, thus, has waived any challenge to the district court's determination. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3 (holding issues not raised in an appellant's opening brief are deemed waived). Thus, we conclude that the district court did not abuse its discretion in determining that Rowland rebutted NRS 125C.0035(7)'s presumption and in finding that maintaining joint legal and physical custody is in the best interest of the children.

Accordingly, we affirm the district court's order denying Butte's petition for reconsideration to modify custody.

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Dixie Grossman, District Judge
David Butte
Wendy Rowland
Washoe District Court Clerk