

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY IBANEZ,  
Appellant,  
vs.  
PATAMAWADEE CHAISAWANG,  
Respondent.

No. 91075-COA

*ORDER OF AFFIRMANCE*

Anthony Ibanez appeals from district court final orders in a child custody matter. Eighth Judicial District Court, Clark County; Hon. Nadin Cutter, Judge.

Ibanez and respondent Patamawadee Chaisawang never married but share a minor child, born in September 2021. In June 2023, Ibanez filed a complaint for custody seeking sole legal and primary physical custody of the child after Chaisawang moved from Nevada to California with the child. Ibanez further sought an immediate return of the child to Nevada, contending Chaisawang had abducted the child without his consent. Chaisawang filed responsive pleadings, including a motion to relocate with the child, and denied abducting the child.

Ultimately, the matter proceeded to a trial where the parties testified and presented documentary evidence, including text messages between them and a statement given to police by Ibanez the day after Chaisawang moved to California wherein Ibanez reported that she fled with the child without his consent and had blocked his ability to contact her. Following trial, the district court entered a written order awarding the parties joint legal custody and Chaisawang primary physical custody, permitting her

to relocate to California with the child. The court imposed a temporary child support award, but Ibanez subsequently filed a brief on child support and requested a transportation cost adjustment.

Ibanez additionally filed a motion to reconsider the custody order, arguing the district court applied the wrong evidentiary standard to the abduction best interest factor and relied on post-relocation facts in granting Chaisawang's relocation request. Chaisawang opposed the motion, and both parties requested attorney fees. Following a hearing, the district court entered a written order denying Ibanez's motion to reconsider. The court also subsequently entered a written order on child support, finding Ibanez's gross monthly income was \$9,116.67. Based on the statutory formula and awarding Ibanez a \$250 transportation downward adjustment, the court calculated Ibanez's monthly child support obligation to be \$959.33. Ibanez now appeals, challenging the district court's custody order, the denial of his motion to reconsider, and the child support order.

On appeal, Ibanez first challenges the district court's decision to award Chaisawang primary physical custody and to grant her request to relocate to California with the child. This court reviews district court decisions concerning child custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm 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." *Id.* at 149, 161 P.3d at 242.

Courts must consider a pending motion to relocate when making the initial permanent custody determination. *McGuinness v. McGuinness*, 114 Nev. 1431, 1435, 970 P.2d 1074, 1077 (1998). When resolving a request to relocate and making an initial permanent custody determination, "the district

court must base its decision on the child's best interest." *Druckman v. Ruscitti*, 130 Nev. 468, 473, 327 P.3d 511, 515 (2014). "A court cannot adequately evaluate a child's best interest in the custody determination without considering the circumstances of the relocation request." *Id.* at 474, 327 P.3d at 515.

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). In determining the child's best interest, the district court must consider the factors set forth in NRS 125C.0035(4). *See Ellis*, 123 Nev. at 152, 161 P.3d at 243. "Evaluating the child's best interest in determining custody is designed to place the child's welfare and developmental needs at the forefront of all child custody decisions, ensuring that the outcomes support their physical, emotional, and psychological well-being." *Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 848-49 (Ct. App. 2025). 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). The evidentiary standard that applies to the best interest factors is a preponderance of the evidence. *Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 849. However, in addition to the best interest factors, Nevada has adopted a rebuttable presumption against awarding a parent sole or joint physical custody or unsupervised parenting time where it has been established by clear and convincing evidence that the parent committed an act of abduction. NRS 125C.0035(7). The district court's failure to apply the correct evidentiary standard constitutes reversible error. *Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 850.

Ibanez contends the district court improperly applied the clear and convincing standard used for the rebuttable presumption under NRS

125C.0035(7) rather than the lower preponderance of the evidence standard when evaluating the abduction best interest factor. Further, he argues the court improperly concluded that no abduction occurred absent criminal charges, a conviction, or admission by Chaisawang, and asserts that the evidence was sufficient to establish abduction under the best interest factors. Moreover, Ibanez contends that properly evaluating Chaisawang's conduct as an abduction would have impacted other best interest factors, such as NRS 125C.0035(4)(c) (which parent is more likely to allow frequent associations with the other) and that factor should have weighed in favor of him.

Here, the district court made specific findings as to the best interest factors and ultimately concluded that, while some of the factors were close, they favored Chaisawang having primary physical custody of the child in California. Under the abduction factor specifically, the court found that there was no abduction under NRS 125C.0035(8) (setting forth acts which constitute conclusive evidence that an abduction occurred for purposes of the rebuttable presumption under NRS 125C.0035(7)). While Ibanez points to this reference to subsection 8 as proof the court applied the higher clear-and-convincing evidentiary standard to the abduction best interest factor, we are unpersuaded by this contention because the court made findings throughout the order that Chaisawang did not abduct the child and went on to further analyze the abduction factor under NRS 125C.0035(4)(l). The court also subsequently issued an order clarifying that it reviewed that factor under a preponderance of the evidence standard.<sup>1</sup> As such, we conclude Ibanez failed to demonstrate the district court applied the wrong evidentiary standard.

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<sup>1</sup>We note Ibanez contends that this court should not consider the district court's order denying his motion to reconsider in which it clarified its custody

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In reaching this conclusion, we are similarly unpersuaded by Ibanez’s argument that the evidence demonstrated Chaisawang abducted the child and that such a finding would have caused other best interest factors to be in his favor and resulted in him being awarded primary physical custody.

Here, the district court repeatedly declined to find Chaisawang abducted the child. The court’s findings regarding the best interest factors were based on the parties’ testimony and documentary evidence, including text messages between them, showing that Chaisawang attempted to reach a custody agreement with Ibanez after she moved to California but he refused to compromise. As such, the court’s findings were based on substantial evidence. *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Ibanez essentially argues that his evidence and version of events were more persuasive than Chaisawang’s. However, ultimately both parties testified as to their versions of events, and it was the district court’s responsibility to weigh the evidence and determine the credibility of the witnesses. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009) (explaining that “credibility determinations and the weighing of evidence are left to the trier of fact”). In weighing the evidence and the parties’ credibility, the court found that there was no abduction and that the best interest factors favored Chaisawang, albeit

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decision, contending that appellate review should be limited to only the district court’s initial order. However, in the notice of appeal and his opening brief, Ibanez specifically identified the district court’s July 10, 2025, order as an order from which he appealed, and thus his contention lacks merit. *See Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) (concluding that “if the reconsideration order and motion are properly part of the record on appeal from the final judgment, and if the district court elected to entertain the motion on its merits, then we may consider the arguments asserted in the reconsideration motion in deciding an appeal from the final judgment”); NRAP 3(c)(1)(B), (2).

narrowly, which this court is not at liberty to reweigh. *See id.* We therefore conclude that Ibanez fails to demonstrate the district court abused its discretion. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

We next consider Ibanez's contention that the district court abused its discretion by granting Chaisawang's request to relocate to California with the child. Ibanez argues the district court erroneously based its decision upon post-relocation factors when reaching its decision and contends substantial evidence did not support the district court's decision.

When a district court has not issued a custodial order and both parents have equal custody rights to their children, "one parent may not relocate his or her child out of state over the other parent's objection without a judicial order authorizing the move." *Druckman*, 130 Nev. at 473, 327 P.3d at 515. When evaluating a request to relocate to another state "and determining the parents' custodial rights, the court must decide whether it is in the best interest of the child to live with parent A in a different state or parent B in Nevada." *Id.* at 474, 327 P.3d at 515 (internal quotation marks omitted).

Initially, a court must determine whether the moving parent established a "sensible, good faith reason for the move." *Id.* at 473, 327 P.3d at 515 (internal quotation marks omitted). Should the moving party satisfy that initial hurdle, the court must consider:

- (1) the extent to which the move is likely to improve the quality of life for both the child and the custodial parent;
- (2) whether the custodial parent's motives are honorable, and not designed to frustrate or defeat visitation rights accorded to the noncustodial parent;
- (3) whether, if permission to remove is granted, the custodial parent will comply with any substitute visitation orders issued by the court;
- (4) whether the noncustodian's motives are honorable in resisting the motion for permission to remove, or to what extent, if any, the opposition is intended to secure a financial

advantage in the form of ongoing support obligations or otherwise; (5) whether, if removal is allowed, there will be a realistic opportunity for the noncustodial parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship with the noncustodial parent.

*Id.* at 474, 327 P.3d at 515 (internal brackets omitted); *see also Shahrokhi v. Burrow*, Nos. 81978, 82245, & 83726, 2022 WL 1509740, at \*3 (Nev. May 12, 2022) (Order of Affirmance (Docket Nos. 81978, 82245, & 83726) and Dismissing Appeal in Part (Docket No. 83726)) (explaining that the test for evaluating relocation requests set forth in *Druckman* applies in the absence of a court order finally establishing custody).

Preliminarily, we note that NRS 125C.007 did not govern Chaisawang’s request to relocate because there had not been a prior permanent order determining custody in this matter. *See Druckman*, 130 Nev. at 472-73, 327 P.3d at 514 (holding that NRS 125C.200, the predecessor to NRS 125C.007, applies only to instances where there is a prior custody determination). However, the district court properly elected to utilize NRS 125C.007 to guide its evaluation of this issue. *See id.* at 473, 327 P.3d at 515 (explaining the statutory framework for relocation may be used “as a guide in instances where no custodial order exists and the parents dispute out-of-state relocation” (citing NRS 125C.200 (1999))).

With respect to the relocation factors, the district court first found there was a sensible, good faith reason for the move—a better school with additional services for a child with a speech delay, in addition to Chaisawang’s family and some of Ibanez’s family, and Chaisawang’s remote work schedule which allowed her to create her own schedule and be available for the child’s school and medical appointments. The court found the best interest factors favored the child residing primarily with Chaisawang, and both Chaisawang

and the child would benefit from the relocation based on the school and having family nearby. The court further concluded the child's quality of life would benefit because he would have the ability to be with one of his parents and attend a school with more resources. In evaluating Chaisawang's motives for relocating, the court determined there was no abduction and the evidence demonstrated Chaisawang had actively sought an agreement with Ibanez as to custody. Nevertheless, the court did not find Ibanez's motivation in resisting the relocation to be dishonorable and instead was borne out of love for the child. Further, Chaisawang had demonstrated that she would comply with court orders. The court concluded that Ibanez would have a realistic opportunity to maintain a parenting time schedule with the child. The court found that Ibanez would receive additional parenting time during school breaks and that the distance was relatively close, which ensured "both parents have ample opportunities to hug, kiss, and cherish their time" with the child. These findings were supported by substantial evidence based on the parties' testimony, and similar to the above analysis, Ibanez merely disagrees with how the district court weighed the evidence before it. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080.

Ibanez also argues the district court improperly considered the California school, a post-relocation benefit, which he asserts rewarded Chaisawang for wrongfully relocating. However, in its denial of Ibanez's motion to reconsider, the district court clarified that it did not find there was a wrongful removal and did not rely on post-relocation benefits in its analysis; instead, the court explained it focused on prospective benefits the child would receive, such as access to a particular school program in California and the advantages of Chaisawang's work, "based on forward-looking, objective evidence presented at the hearing." The court stated its analysis was not based

on accrued benefits but instead on anticipated benefits available to the child in the future. As such, Ibanez failed to show the district court abused its discretion in its evaluation of the relocation factors or its ultimate decision to grant Chaisawang's request to relocate. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Next, Ibanez challenges the district court's child support determination, arguing the court improperly calculated his gross monthly income which led to an inflated child support obligation. He further argues he is responsible for all transportation costs, and the child support award should be adjusted for transportation costs pursuant to NAC 425.150(1)(e).

This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). This court will not disturb the factual findings underlying a child support order if they are supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018). NAC 425.025(1)(a) provides that gross income includes, as relevant here, "[m]onetary compensation incident to employment, including, without limitation, salary, wages, commissions and money earned from overtime pay or bonuses if such compensation is substantial, consistent and can be accurately determined." Further, income through self-employment, and all other income of a party, regardless of whether such income is taxable, unless otherwise excluded by NAC 425.025(2), is included in the calculation of gross income. NAC 425.025(1) (n) and (o). NAC 425.150(1)(e) provides that any child support obligation by the court may be adjusted based on the cost of transportation of the child to and from parenting time. Further, "[t]he district court may not impose transportation costs separately without determining the impact on the overall child support obligation." *Martinez v. Martinez*, 140 Nev., Adv. Op. 73, 559 P.3d 863, 867 (2024).

Here, the district court determined Ibanez's gross monthly income was \$9,116.67.<sup>2</sup> That determination was based on his financial disclosure form, which reflected a gross monthly income of \$6,516.67, in addition to regular transfers from his paternal grandmother of a minimum of \$1,500, which the court determined constituted a regular payment which could be considered part of his gross monthly income, and an additional \$1,100 in deposits from rental income. Ibanez's financial brief acknowledged the regular monthly deposits from his grandmother, which he stated were for contributions to his mortgage and utilities. Despite Ibanez's contentions, our review of the record shows the district court's findings with regard to the regular monthly deposits into his account are supported by substantial evidence. *See Miller*, 134 Nev. at 125, 412 P.3d at 1085; NAC 425.025(1)(a), (n), and (o) (defining gross monthly income); *see also Ginsbach v. Ginsbach*, Nos. 59568 & 61578, 2013 WL 3291458, \*2 (Nev. May 16, 2013) (Order of Affirmance in Docket No. 59568 and Vacating District Court Order in Docket No. 61578) (concluding consideration of a party's passive income and monetary gifts from extended family in awarding child support, among other things, was not an abuse of discretion). Moreover, Ibanez requested a downward adjustment of \$250 for transportation costs pursuant to NAC 425.150(1)(e), and the child support order reflects that the district court awarded him that \$250 downward adjustment. Ibanez therefore has failed to demonstrate the district court

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<sup>2</sup>Ibanez contends the district court erroneously determined his gross monthly income was \$11,295. However, the record reflects the court used that amount as a temporary placeholder based on his financial disclosure forms and bank statements pending further briefing on his finances and child support obligation. After Ibanez submitted a brief regarding those issues, the district court determined his gross monthly income was \$9,116.67.

abused its discretion with respect to child support. *See Edgington*, 119 Nev. at 588, 80 P.3d at 1290.

Finally, Ibanez argues the district court improperly denied his request for attorney fees because Chaisawang abducted the child and therefore caused the litigation. This court generally reviews a district court's decision awarding or denying attorney fees for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). Here, the court did not specifically address Ibanez's request for attorney fees but rather indicated its intent to later award Chaisawang attorney fees and specifically rejected Ibanez's arguments regarding abduction. Given that we previously concluded the district court did not abuse its discretion in rendering its custody determination, Ibanez fails to demonstrate the district court abused its discretion in denying his request for attorney fees. *See Gunderson*, 130 Nev. at 80, 319 P.3d at 615. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Nadin Cutter, District Judge  
Jacobson Law Office, Ltd.  
McFarling Cohen Fic & Squires  
District Court Clerk