

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOELLA JONES,
Appellant,
vs.
JAMES JONES,
Respondent.

No. 54909

FILED

JUN 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *A. Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a post-divorce-decree order denying appellant's request to relocate with the parties' minor child. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

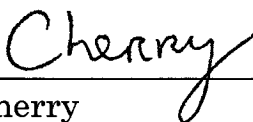
First, the district court properly evaluated the actual custody situation, rather than the language of the custody agreement, when determining the nature of the custody arrangement. See Rivero v. Rivero, 125 Nev. ___, ___, 216 P.3d 213, 227 (2009) (holding that, when modifying a child custody arrangement, the district court must apply Nevada's child custody law, using the terms and definitions provided by Nevada law, rather than the parents' definitions). The court cited hearing testimony in support of the conclusion that respondent had custody of the child at least 40 percent of the time, and thus, the parties shared joint physical custody. See id. (explaining that a parent must have custody at least 40 percent of the time to meet the definition of joint physical custody). The district court also noted a lack of testimony supporting appellant's claim that respondent had failed to exercise his time share in recent years. Although the hearing transcripts were not included in the record on appeal, it was appellant's responsibility to supply this court with the transcripts, and, in light of her failure to do so, we presume that the evidence in them

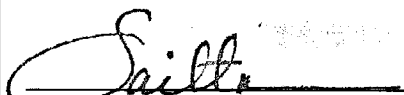
supports the district court's decision. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).


Next, the district court did not disregard Dr. John Pagliani's report but considered it as a factor when evaluating the best interest of the parties' child. The court considered all the relevant factors and cited extensively to hearing testimony in support of its conclusion that relocation was not in the child's best interest. See Potter v. Potter, 121 Nev. 613, 614-15, 119 P.3d 1246, 1247 (2005) (providing that, when parties share joint physical custody and one party seeks to relocate out of state, the court must evaluate whether it is in the best interest of the child to relocate with that parent). Again, we presume that the hearing testimony supports the district court's determination. See Cuzze, 123 Nev. at 603, 172 P.3d at 135.

Having considered the district court record, including Dr. Pagliani's report, we conclude that the district court did not abuse its discretion by denying appellant permission to relocate with the parties' child. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Joella Jones
Law Office of Daniel Marks
Eighth District Court Clerk