

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHELLY G. BUELL F/K/A SHELLY G.
LOZANO,
Appellant,
vs.
TIMOTHY LOZANO,
Respondent.

No. 64269

FILED

MAR 13 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

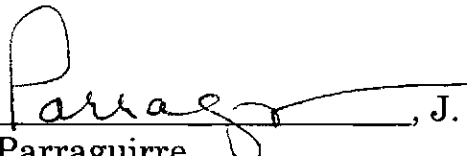
This is a fast track child custody appeal from a post-divorce decree district court order denying a motion to modify custody and relocate with the children outside of the state. Eighth Judicial District Court, Family Court Division, Clark County; William B. Gonzalez, Judge.

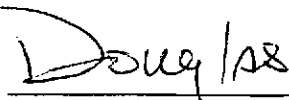
After the parties divorced, appellant moved outside of the state and respondent was given primary physical custody of the children. In April 2013, appellant filed the underlying motion for primary physical custody and to relocate the two minor children to Oklahoma to live with her. Respondent opposed the motion. After hearing argument, the district court entered an order denying the motion and this appeal followed.

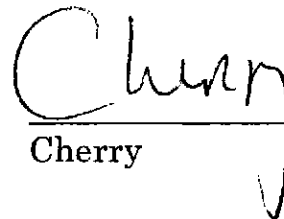
The district court found that appellant had not adequately demonstrated a substantial change in circumstances affecting the children's welfare that would warrant an evidentiary hearing. *See Ellis v. Carucci*, 123 Nev. 145, 150-51, 161 P.3d 239, 242-43 (2007) (setting forth the standard for modifying primary physical custody); *Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993) (explaining what is required to make a prima facie case for custody modification, and that absent such a showing, an evidentiary hearing is not required). The

district court recognized that the parties had entered an order and stipulation for respondent to maintain primary physical custody of the two children in 2011, and that some of appellant's allegations pertained to events preceding that order. *See McMonigle v. McMonigle*, 110 Nev. 1407, 1408, 887 P.2d 742, 743 (1994) (providing that the moving party must demonstrate a change of circumstances since the most recent custodial order). The district court considered the children's preferences but determined that the children were doing well in school and there had not been a substantial change in the living conditions. Further, the court addressed appellant's allegation regarding the withholding of food, and directed that respondent could not deny food as a form of punishment for the children's refusal to eat with the family and directed respondent to obtain counseling for the youngest child on that issue. Having reviewed the record and considered the parties' arguments, we conclude that the district court did not abuse its discretion in denying appellant's motion without an evidentiary hearing. *See Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993) (providing that this court will not disturb the district court's child custody decision absent a clear abuse of discretion). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Douglas, J.


Cherry, J.

cc: Hon. Denise L. Gentile, District Judge, Family Court Division
David L. Mann
James M. Davis Law Office
Eighth District Court Clerk