

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN L. CORCORAN,
Appellant,
vs.
SHERE A. ZAMORA,
Respondent.

No. 71111

FILED

DEC 27 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin L. Corcoran appeals from a district court order denying his motion to modify custody and to relocate out-of-state with the parties' minor child. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

Justin and Respondent Shere A. Zamora entered into a stipulated custody decree providing for joint legal and joint physical custody of their child, age 10 at the time the order on appeal was entered. Justin has married. His wife's employer required her to relocate to North Carolina. Consequently, Justin filed a motion to confirm that he had primary physical custody of the parties' child and for permission to relocate with the child. After an evidentiary hearing, the district court found: (1) Justin had not met the threshold test of NRS 125C.007(1); (2) Justin did not demonstrate that the relocation would be likely to improve the child's or Justin's quality of life under NRS 125C.007(2)(a); (3) Justin intended to relocate to North Carolina regardless of the court's decision; and (4) given the totality of the circumstances, it was in the child's best interest to award primary physical

custody to Shere. Therefore, the district court denied Justin's motion and awarded primary physical custody to Shere.¹

This court reviews a district court's decision regarding relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 444, 92 P.3d 1224, 1229 (2004). "Matters of custody . . . of minor children . . . rest in the sound discretion of the trial court Additionally, we will uphold the district court's determination if it is supported by substantial evidence." *Id.* at 440, 92 P.3d at 1227 (internal citation and quotation marks omitted). "Substantial evidence 'is evidence that a reasonable person may accept as adequate to sustain a judgment.'" *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007)).

Justin makes several arguments on appeal, but they are based almost entirely on a single premise: Justin exercised primary physical custody of the child at the time of the evidentiary hearing, and because the district court incorrectly determined that the parties had joint physical custody, its analysis of the relocation and custody motions was also incorrect. Specifically, Justin argues that by finding that the parties shared joint physical custody, the district court inappropriately placed undue burdens on him.

The district court did not abuse its discretion in denying Justin's motion to relocate

The language of NRS 125C.006(1)(b) and NRS 125C.0065(1)(b) only require a parent seeking to relocate with the child to "petition the court" if written consent cannot be obtained from the other parent. Once the petition is filed, the court must follow the methodology and factors

¹We do not recount the facts except as necessary to our disposition.

enumerated in NRS 125C.007. NRS 125C.007(1) states that the district court must analyze the motion pursuant to the procedure and factors in that statute regardless of the custodial designation prior to the motion. See NRS 125C.007(1) (“In *every instance* of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 or NRS 125C.0065, the relocating parent must demonstrate to the court [the factors in NRS 125C.007(1) and (2)]”) (emphasis added). Further, the moving party bears the burden of proving that “relocating with the child is in the best interest of the child.” NRS 125C.007(3). Therefore, even if the district court incorrectly designated Justin and Shere as joint physical custodians prior to its analysis of the factors under NRS 125C.007, this determination would not have affected the relocation decision as the analysis under NRS 125C.007 and the party bearing the burden of proof is the same regardless of the pre-motion custodial designation.

Next, Justin argues that the district court abused its discretion by finding that he failed to satisfy the third threshold element of NRS 125C.007(1) – “[t]he child and relocating parent will benefit from an actual advantage as a result of the relocation.” The district court found, and our review of the record reveals, that Justin provided scant evidence that the relocation would provide an actual advantage to himself or to the child. Therefore, we conclude that the district court did not abuse its discretion.²

Justin also contends that the district court abused its discretion by finding that he failed to demonstrate the factor set forth in NRS 125C.007(2)(a) – “[t]he extent to which the relocation is likely to improve

²Justin argues that maintaining the child’s family unit “stability” is sufficient to meet the actual advantage requirement. Under the evidence presented in this case, we disagree.

the quality of life for the child and the relocating parent.” He further argues that because this was the only factor that was found against him, the district court abused its discretion by concluding that he failed to establish the factors necessary to permit him to relocate with the child. We disagree.

At the outset we note that the district court was not required to consider whether Justin had satisfied the factors in NRS 125C.007(2) as the court had already determined that Justin had not met the threshold factors in NRS 125C.007(1). Yet the court properly exercised its discretion and also considered the subsection (2) factors in the alternative. Therefore, even if the district court was incorrect in its application of the statutory threshold factors in subsection (1), if Justin failed to satisfy his burden with regard to the statutory factors in subsection (2), then the district court’s decision must be affirmed.

The district court found that minimal evidence was presented for the quality of life factor and therefore concluded that Justin failed to demonstrate that the child’s quality of life would improve by relocating to North Carolina. Our review of the record reveals that while Justin presented evidence regarding the child’s current family support, medical care, and current housing conditions, he provided little evidence of how the child’s quality of life would be improved by the relocation. The district court found the articles presented by Justin regarding a comparison of schools to be unpersuasive, and the record does not contain these articles. “When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Further, Shere’s testimony countered much of Justin’s evidence for this factor. “[W]e leave witness credibility determinations to

the district court and will not reweigh credibility on appeal.” *Ellis*, 123 Nev. at 152, 161 P.3d at 244. Therefore, the district court did not abuse its discretion in finding Justin failed to demonstrate that this factor weighed in his favor.

And given the foregoing analysis of the district court’s findings regarding the factors set forth in NRS 125C.007(1) and (2), we conclude that the district court did not abuse its discretion in denying the relocation.

The district court did not abuse its discretion by awarding primary physical custody to Shere

Justin argues that the district court abused its discretion by awarding primary physical custody to Shere. We are unpersuaded by his arguments.

First, Justin contends that the district court made incorrect findings regarding the child’s best interest. We disagree. The parties presented conflicting evidence regarding these factors. As stated above, it is not within the appellate court’s purview to reweigh conflicting evidence or witness credibility. *Id.* Since the district court’s findings came from weighing conflicting evidence and assessing the witnesses’ credibility, and there was substantial evidence to support its findings, we conclude that the district court did not abuse its discretion while making its findings regarding the child’s best interest.

Second, Justin contends that because he had primary physical custody prior to the motion, the district court should have required Shere to prove that a substantial change of circumstances had taken place in addition to proving that modification of custody was in the child’s best interest. *See id.*, 123 Nev. at 150, 161 P.3d at 242 (holding that a modification of primary physical custody is warranted only when there has been both a substantial change of circumstances affecting the child’s


welfare and the child's best interest is served by the modification). He further argues that, because the district court found that neither party had proven that custody modification was in the child's best interest under a joint physical custody test, Shere could not meet this higher standard that included both best interest and substantial change of circumstances.

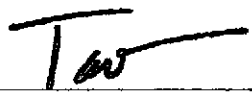
Justin's argument is unconvincing. Justin strongly implied in his pleadings and during the evidentiary hearing that he intended to relocate to North Carolina with or without the child.³ The district court found that was his intent. Therefore, even if Justin had primary physical custody at the time of the evidentiary hearing, his move to North Carolina, which is across the country, would constitute a substantial change of circumstances because it would significantly impair Shere's ability to exercise her responsibilities under the parties' existing custodial arrangement. *See Hayes v. Gallacher*, 115 Nev. 1, 7, 972 P.2d 1138, 1141 (1999) (stating that a relocation that "significantly impairs the other parent's ability to exercise the responsibilities he had been exercising" constitutes substantially changed circumstances). The district court found, given the totality of the circumstances, that awarding Shere primary physical custody was in the child's best interest. Substantial evidence supports the district court's decision. Therefore, we conclude that the

³In his amended motion to modify custody and relocate, Justin stated "[d]enying Justin's request for primary custody would leave [the child] in an unstable home Denying Justin's request for primary custody would leave [the child] primarily in a home with [Shere]." At the evidentiary hearing, Justin's counsel stated "Dad is moving to North Carolina with his family unit."

district court did not abuse its discretion in awarding primary physical custody of the child to Shere. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
McFarling Law Group
Thomas Michaelides
Eighth District Court Clerk

⁴We have considered Justin's other arguments and conclude they are unconvincing.