

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRICIA A. WAGNER,
Appellant,
vs.
DAVID N. WAGNER,
Respondent.

No. 77368-COA

FILED

NOV 05 2019

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

ORDER OF AFFIRMANCE

Tricia A. Wagner appeals from a district court order denying a motion for custody modification and to relocate the child to Utah. Eighth Judicial District Court, Clark County; Gerald W. Hardcastle, Senior Judge.¹

Tricia and respondent David N. Wagner were married and had one minor child. When they divorced they entered into a stipulated parenting agreement in which they shared legal and physical custody. Per the agreement, they each had the child 50 percent of the time and exchanged custody every Sunday. Subsequently, David requested that Tricia keep custody of the child for 100 days so that he could move out of his parents' home. Tricia agreed. Shortly thereafter, David notified Tricia he would like to resume the normal custody arrangement, exchanging every week, because he had found an apartment, but Tricia refused.

¹While Senior Judge Gerald W. Hardcastle signed the order at issue in this appeal, the hearing was held before and the decision was made by Judge Rebecca L. Burton.


David subsequently moved to enforce the stipulated parenting agreement and Tricia filed a motion for primary physical custody and to relocate the child to Utah. At the hearing on the matter, the district court stated that it had read all of the paperwork that had been filed and then advised the parties that it intended to deny the motion to modify custody and that the stipulated agreement would remain in place. Despite having requested an evidentiary hearing in her reply, Tricia failed to object to the district court reaching its decision without holding an evidentiary hearing or otherwise raise the issue of an evidentiary hearing at that time. Thereafter, the district court entered an order denying the motion to modify custody and to relocate the child and ordered the parties to resume the custody arrangement as set forth in the stipulated parenting agreement and resulting order. This appeal followed.

On appeal, Tricia argues that the district court should have held an evidentiary hearing on her request for primary physical custody and to relocate the child. This court reviews a district court's decision regarding child custody for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). A district court is not required to hold an evidentiary hearing on a request to modify child custody unless the moving party demonstrates adequate cause. *See Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017). "Adequate cause arises where the moving party presents a prima facie case that the requested relief is in the child's best interest." *Id.* (internal quotation marks omitted). To establish a prima facie case the movant must show that facts alleged in the affidavits are relevant and the evidence is not merely cumulative or impeaching. *Id.*

Based on our review of the record and the parties' arguments, we cannot say that the district court abused its discretion by deciding the matter without an evidentiary hearing. *See id.* Accordingly we,

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. Gerald W. Hardcastle, Senior Judge
Hon. Rebecca Burton, District Judge, Family Court Division
Leavitt Law Firm
Law Offices of F. Peter James, Esq.
Eighth District Court Clerk