

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS CHARLES MILLER,
Appellant,
vs.
JESSICA MARIE MILLER,
Respondent.

No. 81813-COA

FILED

JUN 04 2021

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

ORDER OF AFFIRMANCE

Nicholas Charles Miller appeals from a district court order regarding child custody entered after remand. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

In the proceedings below, the parties were divorced by way of a decree of divorce entered in 2018, after a trial. Pursuant to the terms of the decree, respondent Jessica Miller was awarded primary physical custody of the parties' minor child, subject to Nicholas's supervised parenting time each week. Nicholas appealed and—as relevant here—this court reversed and remanded the matter for further proceedings, concluding that the district court failed to make adequate findings regarding child custody, including the required findings regarding domestic violence pursuant to NRS 125C.0035(5)(b), and failed to provide the parties with the full right to be heard by improperly limiting the amount of time for trial without notice to the parties until trial began. *See Miller v. Miller*, Docket No. 75875-COA (Order Affirming in Part, Reversing in Part and Remanding, August 22, 2019). This court noted that the time limit imposed on the parties ultimately resulted in Nicholas being unable to cross-examine two witnesses and severely limited Jessica's ability to call her expert witness.

After remand, the district court set the matter for another trial, indicating that pursuant to this court's order the parties would be permitted to present evidence and cross-examine witnesses, but noted that this would not be a retrial of the case. Following the trial, the district court entered a written order concluding that it made sufficient findings in the decree of divorce to support its conclusion that Nicholas committed an act of domestic violence and that Nicholas is unable to care for the child for at least 146 days per year, such that it was in the child's best interest for Jessica to be awarded primary physical custody subject to Nicholas's supervised parenting time. The court went on to find that, based on Nicholas's inability to follow court orders and other detrimental conduct, Nicholas is incapable of adequately caring for the child for at least 146 days per year. The court also clarified that it found by clear and convincing evidence that an act of domestic violence had occurred, that it did apply the presumption regarding domestic violence pursuant to NRS 125C.230, that Nicholas failed to rebut that presumption, and that the custody order adequately protects the child and the victim of the domestic violence. Accordingly, the district court concluded that, having considered the additional evidence presented, there was no basis to change the custody determination made in the decree and that the additional findings made support that determination. Thus, the court confirmed the custody determination made in the decree, without modification. This appeal followed.

On appeal, Nicholas challenges the district court's order entered after remand asserting that the district court abused its discretion by limiting the testimony to only the cross-examination of two witnesses and denying him an opportunity to present relevant evidence, thereby denying him due process. Nicholas also challenges the district court's

conclusion that he is unable to adequately care for the child for at least 146 days per year and that the district court abused its discretion in concluding that it was in the child's best interest for Jessica to be awarded primary physical custody. In her response, Jessica contends that the district court did not abuse its discretion in making its custody determination and that Nicholas was provided due process during the court's second evidentiary hearing.

This court reviews a child custody decision for an abuse of discretion, but "the district court must have reached its conclusions for the appropriate reasons." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.* 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).

First, as to Nicholas's challenge to the district court's limitation of evidence, the district court has wide discretion in conducting a trial, including creating limitations on the presentation of evidence. *Young v. Nev. Title Co.*, 103 Nev. 436, 441, 744 P.2d 902, 904 (1987); *see also* NRCP 16(c)(2)(M) (providing that at any pretrial conference, the district court may establish a reasonable time limit on the time allowed to present evidence). And here, while Nicholas contends he was precluded from presenting relevant evidence, nothing in the record demonstrates the same. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. Indeed, while Nicholas references the transcript in his argument, no transcript was provided to this court on

appeal and the district court's order indicates that the parties were provided the opportunity to present evidence and cross-examine the witnesses. Thus, we cannot confirm whether this issue was raised below and we necessarily must assume the missing portions of the record support the district court's determination. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that the appellant is responsible for making an adequate appellate record, and when the "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision"). Thus, to the extent the district court purportedly limited the evidence, we cannot conclude that it abused its discretion in doing so. *See Young*, 103 Nev. at 441, 744 P.2d at 904.


Next, as to Nicholas's challenge to the district court's ultimate custody determination, we note that the district court incorrectly concluded the initial decree of divorce contained sufficient findings, as this court's prior order expressly determined that the decree did not contain sufficient findings to support the custody determination. *See Miller*, Docket No. 75875-COA (Order Affirming in Part, Reversing in Part and Remanding, August 22, 2019); *see also Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) ("Under the law of the case doctrine, when an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal." (alteration and internal quotation marks omitted)). Regardless, the district court's order after remand makes new findings regarding Nicholas's conduct and how those facts affected the district court's custody determination, sufficiently addressing this court's prior concerns. *See Ellis*, 123 Nev. at

149, 161 P.3d at 241-42; *see also Davis*, 131 Nev. at 451, 352 P.3d at 1143 (explaining that to discern whether a custody determination is appropriate on appeal, the appellate courts require specific findings and an adequate explanation for the custody determination). And as to Nicholas's challenges to the evidence relied upon by the district court, those arguments go to witness credibility and the weight of the evidence, which this court does not reweigh on appeal. *Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

Based on the foregoing, we cannot conclude that the district court abused its discretion in awarding Jessica primary physical custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Nicholas Charles Miller
Christopher M. Cannon
Eighth District Court Clerk