

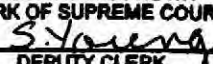
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADALBERTO TOBIAS,  
Appellant,  
vs.  
MICHELLE TOBIAS; AND JOSEPH  
CICALA,  
Respondents.

No. 82553-COA

**FILED**

DEC 29 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Adalberto Tobias appeals from a district court order denying a petition for visitation in a family matter. Eighth Judicial District Court, Family Court Division, Clark County; Soonhee Bailey, Judge.

Appellant Adalberto Tobias is the biological grandfather of respondents Michelle Tobias and Joseph Cicala's minor child. In the proceedings below, Adalberto initiated the underlying action seeking a visitation order, alleging that Michelle and the child lived with him for a significant period of time, that he was the child's primary caregiver during this time, that he financially provided for the child, and that he and the child developed a strong relationship. At some point, the parties' relationship deteriorated, Michelle and the child moved out of Adalberto's home, and respondents then denied Adalberto time with the child. After an evidentiary hearing, the district court denied Adalberto's petition for visitation and this appeal followed.

This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court's determinations 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). Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

Grandparents or other persons who have resided with a child and established a meaningful relationship may petition the court for reasonable visitation if the parents of the child have denied visitation. NRS 125C.050(1)-(3). However, if a parent has denied visitation with the child, there is a rebuttable presumption that granting visitation to the petitioner is not in the child's best interest. NRS 125C.050(4). And to rebut this presumption, the petitioner must demonstrate by clear and convincing evidence that it is in the best interests of the child to grant visitation. *Id.* When determining whether the petitioner has rebutted the presumption, the district court shall consider the factors enumerated in NRS 125C.050(6).

Here, in its order entered after the evidentiary hearing, the district court concluded that Adalberto failed to meet his burden pursuant to NRS 125C.050 and specifically found that there was high conflict between the parties, there was a lack of cooperation, and that Adalberto criticized

respondents. On appeal, Adalberto challenges the denial of his petition for visitation asserting that the district court abused its discretion in concluding that he failed to overcome the rebuttable presumption that visitation is not in the child's best interest pursuant to NRS 125C.050. But based on our review of the record, the district court properly considered NRS 125C.050 in considering Adalberto's petition and made findings relevant to NRS 125C.050(6). And as to Adalberto's argument that the weight of the evidence did not support the district court's conclusion and instead supported granting his petition, he has failed to point to anything in the record supporting this argument or provide this court with the transcript of the proceedings.<sup>1</sup> Thus, we necessarily presume 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"). In light of the foregoing, we cannot conclude that the district court abused its discretion in denying

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<sup>1</sup>While Adalberto filed a transcript request form, and the court reporter notified the appellate courts that the requested transcript had been prepared and filed with the district court, Adalberto did not provide this court with copies of the requested transcript or otherwise take any steps to ensure that this court received the transcript. *See* NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not been granted in forma pauperis status to file a copy of their completed transcripts with the court clerk).

Adalberto's petition for visitation. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Soonhee Bailey, District Judge, Family Court Division  
Adalberto Tobias  
Joseph Cicala  
Michelle Tobias  
Eighth District Court Clerk

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<sup>2</sup>Insofar 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.