

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIMMIE BERTRAM ROMERO,  
Appellant,  
vs.  
BRANDI LEE BLETCHER, N/K/A  
BRANDI LEHMAN,  
Respondent.

No. 82585-COA

FILED

DEC 23 2021

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

*ORDER OF AFFIRMANCE*

Jimmie Bertram Romero appeals the district court's order denying his motion to modify child custody. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

This is a post-divorce decree child custody matter. Jimmie and Brandi Lehman were divorced via a stipulated decree.<sup>1</sup> The divorce decree conferred upon the parties joint legal and physical custody of their one minor child. The child was five years old at the time of the proceedings below. The controlling custody order in this case is a post-decree stipulation and order maintaining the parties' original joint custody arrangement.

Jimmie filed a motion to modify custody. He sought primary physical custody and sole legal custody on an emergency basis. In the motion, Jimmie alleged that Brandi was using illegal drugs, threatening to take their child into her custody by force, and contemplating suicide. Jimmie subsequently filed an amended motion wherein he provided more details related to his original allegations, and additionally accused Brandi of physically abusing their child. The district court conducted brief hearings and found adequate cause to hold an evidentiary hearing on Jimmie's

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<sup>1</sup>We recount the facts only as necessary for our disposition.

custody modification request. The court subsequently, by written order, set the evidentiary hearing for three hours, with the parties splitting that time evenly.

Less than a month after the court set a date for the evidentiary hearing, Jimmie filed a motion requesting that the court order Brandi's parenting time be supervised. Jimmie made a number of allegations including, among others, that at one child exchange Brandi tried to drag the child into her car and a physical scuffle ensued that resulted in Brandi being arrested for domestic battery.<sup>2</sup> He also alleged that the child's belongings would smell of marijuana when she returned from Brandi's home. Jimmie also alleged that Brandi would film the child dressing and undressing and have the child pose for pictures in inappropriate positions, allegations he claims to have reported to law enforcement.

At the hearing on Jimmie's request that Brandi's parenting time be supervised, the parties gave conflicting accounts related to Jimmie's allegations. The district court noted that neither party appeared to be complying with its previous order that directed the parties to facilitate the court's parenting time schedule and admonished the parties for taking actions that negatively impacted the child under the guise of protecting her. The court declined to order Brandi's parenting time be supervised. The court also granted Brandi's oral request that child exchanges take place at a surveilled location rather than at Jimmie's home. Finally, the court granted Jimmie's request that he be allowed to randomly order drug tests of Brandi at his own expense.

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<sup>2</sup>The domestic battery charge against Brandi was subsequently dismissed.

Approximately five weeks before the evidentiary hearing, Brandi filed an emergency motion requesting, among other things, that Jimmie be found in contempt of court for failing to facilitate parenting time between the child and Brandi. Brandi asserted that no in-person visits had occurred for approximately five months (since the domestic violence incident resulting in her arrest). Rather, Jimmie would show up to the child exchanges and roll down his car window or open the door. At that point, the child would yell that she did not want to go with Brandi, and Jimmie or his wife would drive away. Brandi also informed the court that the domestic battery charge against her had been dismissed.

Two weeks before the evidentiary hearing, the court held a calendar call and a hearing on Brandi's emergency motion. At the hearing, Jimmie expressed concern about being able to present his case in only 90 minutes. The court made no ruling and deferred any further action until the time of the evidentiary hearing. As to Brandi's emergency motion, the court found reason to issue an order to show cause for contempt regarding Jimmie withholding parenting time. The contempt issue was to be decided at the evidentiary hearing. However, for reasons not present in the record, an order to show cause was never filed and therefore that issue was not decided at the evidentiary hearing.

The district court held an evidentiary hearing on Jimmie's motion to modify custody. The court limited the parties to 70 minutes each to present their respective cases, not including closing arguments, without explanation as to why it was not according the parties 90 minutes each. The district court heard conflicting testimony on Jimmie's custody modification request. Jimmie presented five witnesses and Brandi presented six witnesses. As a result of the evidence presented at the hearing, the district

court denied Jimmie's request to modify custody and left the parties' joint custody arrangement in place.

The district court found in its written order that Jimmie had been court-ordered to do more than he had done to encourage parenting time between the child and Brandi. It further found that Jimmie's testimony that he had done "everything [he] possibl[y] could to encourage" parenting time lacked credibility. The court found that Jimmie had not established that Brandi was mentally unfit. The court explained that it was very concerned with the parents allowing the child to defiantly refuse to go with Brandi at every child exchange, and that that situation could have a long-term devastating effect on the child.

The district court made findings as to each of the best-interest factors recited in NRS 125C.0035(4). The court concluded that five of the best interest factors and the "other things" catchall favored Brandi and that seven of the best interest factors were either neutral or inapplicable. Based on the NRS 125C.0035(4) factors and the totality of the circumstances, the district court denied Jimmie's motion to modify custody. It ruled that it was in the child's best interest that the parties continue to share joint legal and physical custody. The court further ordered that Jimmie was not to interfere with Brandi's custodial time. However, Brandi was to decide how quickly to increase her time with the child, presumably because the child had not been in her physical custody for nearly five months. Jimmie now appeals.

Jimmie argues the district court's denial of his request to modify custody was not supported by substantial evidence.<sup>3</sup> Therefore, he argues

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<sup>3</sup>Jimmie largely frames his argument by asserting that substantial evidence supported a ruling granting his custody modification request. This misstates our inquiry on appeal. We review the district court's custody  
*continued on next page...*

the district court's order constituted an abuse of discretion. Brandi argues Jimmie's appeal is frivolous.<sup>4</sup>

We review a district court's decision on child custody for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009). The district court's decision must be supported by substantial evidence, which "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* (internal quotation marks omitted). A district court can modify or terminate any order for joint custody "if it is shown that the best interest of the child requires the modification or termination." NRS 125C.0045(2); *Truax v. Truax*, 110 Nev. 437, 439, 874 P.2d 10, 11 (1994) (holding that the best interest of the child standard governs whether a district court can modify a joint custody arrangement).

In determining best interest, NRS 125C.0035(4) provides that the district court must "consider and set forth its specific findings concerning, among other things," the factors provided in NRS 125C.0035(4)(a)-(l). However, that list of statutory best interest factors is nonexhaustive, and a district court may consider and set forth findings on factors not specifically enumerated in the statute. *See* NRS 125C.0035(4); *Nance v. Ferraro*, 134 Nev. 152, 158, 418 P.3d 679, 685 (Ct. App. 2018) ("In the course of determining whether a custody modification is in the child's

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determination for whether substantial evidence supported the ruling it made, *see Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), not whether substantial evidence could have supported a ruling the district court could have made, but did not make.

<sup>4</sup>Jimmie has requested that we sanction Brandi, who is proceeding pro se, under NRAP 3E(i) for her failure to cite to the record or for citing to facts not present in the record. We decline to do so. However, we consider Brandi's response only to the extent allowed by the law.

best interest, courts must consider and articulate specific findings regarding the nonexhaustive list of best interest factors set forth by statute.”). “Crucially, the decree or order must tie the child’s best interest, as informed by specific, relevant findings respecting the [best interest factors] and any other relevant factors, to the custody determination made.” *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

Here, the district court heard conflicting testimony on Jimmie’s custody modification request from eight witnesses, including two mental health professionals who had spent time with the child. Four witnesses testified that they had never seen Brandi hit the child and none testified that they had. Each also testified that they had not witnessed Brandi do drugs or drink alcohol excessively in the child’s presence. Each mental health professional had reported one of the parents to child protective services (CPS). None of Jimmie’s serious allegations regarding Brandi’s sexual impropriety with or physical abuse of the child were substantiated by either CPS or law enforcement. The district court heard conflicting evidence as to the domestic battery incident; however, the domestic battery charge against Brandi was ultimately dismissed, and the district court made no finding as to domestic violence. Additionally, Brandi passed a random drug test Jimmie requested, along with other drug tests.

The district court’s findings are sufficiently thorough and specific. Additionally, the court supported its findings with a detailed description of the evidence in light of the best interest factors listed in NRS 125C.0035(4)(c), (d), (e), and (f), including finding that Jimmie was harming the child by failing to facilitate parenting time with Brandi. The district court also tied the child’s best interest, informed by its specific findings, to its ultimate custody determination. *See Davis*, 131 Nev. at 451, 352 P.3d at

1143. The district court concluded that no best interest factor favored Jimmie. Although Jimmie presented evidence that could have justified a decision in his favor by the district court, he has not argued on appeal which factor or factors, if found to be in his favor, would have altered the district court's ultimate custody determination. *Cf.* NRCP 61 (errors not affecting substantial rights shall be disregarded); *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010).

Furthermore, Jimmie never specified what parenting time Brandi should have if his motion were to be granted, or how he would ensure the child would actually spend that time with Brandi. This omission is noteworthy in light of the district court's finding that Jimmie lacked credibility in his testimony that he had done everything possible to encourage the child to visit Brandi. *See* NRS 125C.0035(4)(c). Such credibility determinations are left to the district court, and we do not reweigh credibility on appeal. *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007). Substantial evidence supports the court's denial of Jimmie's custody modification request. *See Rivero*, 125 Nev. at 428, 216 P.3d at 226. The district court, therefore, did not abuse its discretion in denying Jimmie's motion.

Jimmie next argues the district court violated his due process rights when it limited each party to 70 minutes to present their respective cases. He contends he believed each party would have an additional 20 minutes. This lack of time, Jimmie argues, "unreasonably limited the witnesses [he] intended to call."

"[D]ue process of law [is] guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1 Section 8(5) . . . of the Nevada constitution." *Rico v. Rodriguez*, 121 Nev. 695, 702-

03, 120 P.3d 812, 817 (2005). Due process protects the interest parents have in the custody of their children, *id.* at 704, 120 P.3d at 818, and demands notice before such a right is affected, *Wiese v. Granata*, 110 Nev. 1410, 1412, 887 P.2d 744, 745 (1994). District courts have 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* NRS 50.115(1) (“The [district court] judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence . . .”). However, “this discretion is not without limits,” and district courts should accord every party a “full right to be heard according to the law.” *Young*, 103 Nev. at 441, 744 P.2d at 904-05 (internal quotation marks omitted).

As a preliminary matter, although Jimmie expressed concern during the calendar call about his ability to present his case in 90 minutes, and then expressed his confusion when only accorded 70 minutes at the evidentiary hearing, he never formally objected to the court’s decision nor did he argue a violation of his due process rights below. Further, on appeal, Jimmie has failed to cite any relevant authority or cogently argue why the 20 minute difference between the amount of time he thought he would have and the amount of time he was ultimately afforded at the evidentiary hearing violated his due process rights. Therefore, we need not consider his due process argument. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant’s argument that is not cogently argued or lacks the support of relevant authority); *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued

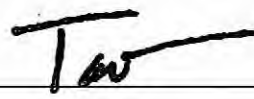


below are “deemed to have been waived and will not be considered on appeal”).

Nevertheless, the district court accorded Jimmie his “full right to be heard according to the law.” *See Young*, 103 Nev. at 441, 744 P.2d at 904-05 (internal quotation marks omitted). While it does appear that Jimmie was only afforded 70 minutes to present his case where he expected 90 minutes, district courts have wide discretion in creating limitations on the presentation of evidence. *Id.* at 441, 774 P.2d at 904. Here, the district court was already very familiar with the parties and the issues due to numerous hearings. Additionally, although Jimmie had no time remaining, the district court still allowed him to briefly cross-examine each of Brandi’s witnesses. He was also permitted to present a closing argument. Therefore, the district court did not violate Jimmie’s due process rights in limiting the parties to 70 minutes each to present their respective cases. Additionally, on appeal Jimmie has not identified a witness that he was unable to call or explained what he would have elicited from the witnesses he did call, should he have been afforded more time, which would have altered the district court’s ultimate determination. *Cf. NRCP 61; see also Wyeth*, 126 Nev. at 465, 244 P.3d at 778. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division  
Hon. Israel Kunin, Settlement Judge  
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Eighth District Court Clerk