IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS P. BAHR,
Appellant,
vs.
GESENIA ARTEAGA,
Respondent.

No. 84306-COA

FILED

SEP 29 2022

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Thomas P. Bahr appeals from a post-decree order modifying child custody and an order denying his motion to alter or amend. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

In the proceedings below, Thomas and respondent Gesenia Arteaga entered a stipulated custody decree in February 2017, whereby they agreed to share joint legal and joint physical custody of their minor child. In July 2017, after both parties filed competing motions for sole custody, the district court entered an order reaffirming the parties' joint legal and joint physical custody award, again based on the parties' stipulation. As relevant here, in 2021, Gesenia moved to modify custody, Thomas opposed, and the district court set the matter for an evidentiary hearing. After the hearing, the district court entered an order modifying custody, awarding Gesenia primary physical custody and awarding the

parties joint legal custody. Thomas filed a motion to alter or amend the custody order, which the district court denied. This appeal followed.

On appeal, Thomas challenges the district court's order modifying child custody and the order denying his motion to alter or amend. 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). And although we review the district court's decisions deferentially, the district court must apply the correct legal standard in reaching its conclusions, and no deference is owed to legal error or to findings so conclusory they mask legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450-51, 352 P.3d 1139, 1142-43 (2015); *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617-18 (1992). When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis*, 131 Nev. at 451, 352 P.3d at 1143.

First, Thomas argues the district court abused its discretion in concluding the best interest factors weighed in favor of granting Gesenia primary physical custody, primarily asserting that the district court's findings were not supported by the evidence or were based on hearsay. Although Thomas requested the transcripts in this case, he has failed to file them with this court, precluding appellate review of the evidence admitted and any objections to that evidence made at the evidentiary hearing. *See* NRAP 9(b)(1)(B) (requiring pro se litigants, who have not been granted in forma pauperis status and have requested transcripts, to file a copy of their completed transcript with the clerk of court); *Cuzze v. Univ. & Cmty. Coll.*

Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (holding that appellant is responsible for making an adequate record on appeal and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision").

Similarly, as to Thomas's assertion that the district court improperly excluded his evidence regarding domestic violence in Gesenia's household, improperly excluded testimony from the child's treating physician, and failed to consider evidence regarding the outcome of several Child Protective Services investigations, without the transcript from the proceedings, this court cannot properly review Thomas's arguments and must presume the missing portions of the record support the district court's conclusion. *Cuzze*, 123 Nev. at 603, 172 P.3d at 135. And to the extent Thomas challenges the district court's determinations as to witness credibility or the weight of the evidence, this court will not reweigh the same on appeal. *See 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).

Next, Thomas asserts that the district court abused its discretion in concluding that Thomas is not capable of adequately exercising custody for at least 146 days per year, as the district court failed to indicate what evidence upon which it relied in making this conclusion and Thomas previously exercised custody of the child. We agree. When considering the physical custody of a minor child, there is a preference that joint physical

custody is in the child's best interest if the parents have agreed to joint physical custody. NRS 125C.0025(1)(a). But there is likewise a presumption that joint physical custody is not in the child's best interest if the district "court determines by substantial evidence that a parent is unable to adequately care for a minor child for at least 146 days of the year." NRS 125C.003(1)(a).

Here, the district court summarily concluded that Thomas was unable to adequately exercise custody of the child for at least 146 days per year, implicitly applying the presumption that joint physical custody was not in the child's best interest pursuant to NRS 125C.003(1)(a). But there are no findings of fact explaining how the district court reached this conclusion or whether it was, in fact, applying the presumption. Because there are no findings as to the evidence either in support of or contrary to the application of the presumption, this court cannot say with assurance that the custody determination was made for appropriate reasons. *See Davis*, 131 Nev. at 451-52, 352 P.3d at 1143 (explaining that the district court must make specific, relevant findings as to the best interest factors, tying the child's best interest to the custody determination, without which the appellate courts "cannot say with assurance that the custody determination was made for appropriate legal reasons"). Accordingly, we necessarily reverse and remand this matter to the district court for further findings on this issue. *See id.*

We also agree with Thomas that, in considering the level of conflict between the parties as a best interest factor pursuant to NRS 125C.0035(4)(d), the district court abused its discretion in concluding that

Thomas appeared to cause most of the conflict without any findings supporting this conclusion. We note that the district court found that there was a high level of conflict between the parties, that both parties could not work with each other in a mature way, and that the child was suffering because of both parents' conflict with each other. But the district court then summarily concluded that Thomas was the primary cause of the conflict, such that the factor favored Gesenia, without any findings supporting the basis for this conclusion. *See Davis*, 131 Nev. at 451-52, 352 P.3d at 1143. While the district court has broad discretion in considering the best interest of the child, the district court's summary findings in this regard are insufficient for this court to determine whether the decision was made for appropriate reasons. *Id.* Thus, on remand, the district court must make specific findings relating to the child's best interest and tie those findings to its custody determination. *Id.*

Finally, Thomas asserts that the district court is biased against him and that the matter should be reassigned on remand. We presume judges are unbiased. *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022). And "rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification." *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). Because Thomas has only summarily asserted his belief that the district court is biased, presumably based upon the fact that the district court ruled against him, we see no basis for concluding that the district court was biased in this matter. *See id.*

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[1]

_______________________, C.J.
Gibbons

_______________________, J.
Tao

_______________________, J.
Bulla

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Thomas P. Bahr
Gesenia Arteaga
Eighth District Court Clerk

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[1]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.