

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

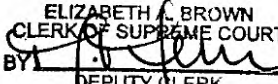
MARK A. MADARANG,
Appellant,
vs.
CELICE GERMER,
Respondent.

No. 84466-COA

FILED

DEC 22 2022

ORDER OF AFFIRMANCE

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

Mark A. Madarang appeals from a district court custody decree. Eighth Judicial District Court, Family Division, Clark County; Bryce C. Duckworth, Judge.

Madarang and respondent Celice Germer have one child together, born in 2013. Madarang and Germer never married and did not have a court-ordered custody arrangement prior to the instant petition. In 2017, Madarang moved to New Jersey for work. He visited Las Vegas regularly and exercised parenting time during his visits. Madarang moved back to Las Vegas in 2020 and was able to work remotely and thus facilitate more parenting time. By February 2021, the parties routinely split custodial parenting time where Madarang had physical custody approximately three days a week.

In mid-2021, Germer informed Madarang that she would be relocating with their child to Oregon to allow Germer more opportunities in her work. Thereafter, Madarang filed a petition to establish custody, requesting joint legal custody and primary physical custody if Germer relocated outside Nevada within the next six months. He also sought to enjoin Germer from relocating prior to a court decree. Germer filed a separate petition, seeking sole legal custody and primary physical custody. She also filed a motion for temporary sole legal custody and primary physical

custody to allow relocation to Oregon. The matters were consolidated into one case.

The district court held a virtual hearing on Germer's motion for temporary custody in October 2021. The district court entered an order later that month granting Germer's request to relocate, providing Madarang the Thanksgiving and winter break periods, and setting an evidentiary hearing in the matter overall for January 2022. At the evidentiary hearing, testimony was heard from both parties, Madarang's current girlfriend, and Germer's former manager at work.

The district court issued its findings of fact, conclusions of law, and decree of custody in March 2022, in which it ordered joint legal custody, primary physical custody with Germer including relocation to Oregon, and providing Madarang with custodial time on certain holidays and school recesses. The decree also provided that the receiving parent was responsible for the child's transportation for custodial time and travel costs would be borne by the parent exercising any additional parenting time allowed.

Madarang now appeals from the decree, arguing that the district court abused its discretion in allowing Germer to relocate with the minor child, both temporarily and in the final decree, noting that the temporary allowance prejudiced the final determination, and the district court simply incorporated the best interest factors from the custody analysis into the relocation analysis. Madarang also challenges the district court's decision to award primary physical custody to Germer, claiming that the district court did not make sufficient findings in support of Germer. Madarang specifically points out that Germer occasionally engaged in behavior in front of their child that was inappropriate and that the potential for promotion at Germer's workplace was not an actual advantage to their child. Madarang alleges that Germer frustrates his efforts to establish a relationship with their child by

occasionally preventing him from seeing the child or taking the child out of state. Madarang argues that the district court should not have required him to bear the cost of parenting time out-of-state when he was not the parent relocating.

In response, Germer argues that there was a good faith reason for her move and that the best interest factors were either neutral or in her favor for relocation and primary physical custody of their child. Germer focuses her argument on the findings by the district court that she held de facto primary physical custody up until early 2021, that Madarang's custody time was never equal, and that the district court rightly recognized that Germer (with Madarang) had facilitated the child's relationship with both parents while Madarang had previously lived in another state. Germer recounts the child's educational and developmental issues and how Germer meets them and Madarang historically has not. Germer also reiterates that the child has a half-brother with whom a relationship is more readily maintained in the same household with Germer. As for travel costs, Germer notes that Madarang received offsets in child support to allow for travel needs and she should not be solely responsible for travel expenses when she is due child support as primary custodian.

This court reviews a child custody decision, including parenting time, for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). This court reviews a district court's factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Substantial evidence "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

Madarang's appellate arguments are based on dissatisfaction with the district court's weighing of the evidence. The district court addressed each of the issues Madarang raises and provided reasoning based on the record for each determination. It is not within this court's purview to weigh conflicting evidence or assess witness credibility, *see id.* at 152, 161 P.3d at 244, and in review for an abuse of discretion, we see none. The district court considered each of the best interest factors in NRS 125C.0035(4) and the factors for relocation in NRS 125C.007(2) in making its determinations and found either explicitly or implicitly that the factors either favored Germer, were equal or neutral, or inapplicable. It overall found that the parties had previously worked together to facilitate parenting time from a distance and that Germer had de facto primary custody for most of the child's life. The district court found, based on substantial evidence, that the child's educational opportunities were roughly equal in both locales, that relocation would enhance the child's continued relationship with a half-brother in Oregon, and that Germer would have an advantage from the increased career opportunities in Oregon that would benefit her and the child. Overall, the district court found it would be in the best interest of the child to grant the relocation.

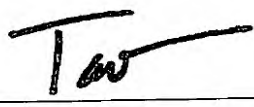
To the extent that Madarang raises *Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 982 (2022), which provides that modification of custody requires a substantial change in circumstances affecting the welfare of the child and that the child's best interest is served by the modification, we find this argument unpersuasive. The parties lacked an initial custody order, and it was Madarang that initiated the current matter, noting a change in circumstances. The district court rightly addressed the best interest of the child in determining custody and properly followed the statutory framework for considering the relocation request. *See Monahan v.*

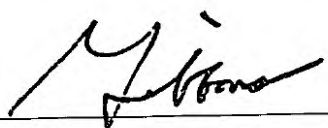
Hogan, 138 Nev., Adv. Op. 7, 507 P.3d 588, 596 (Ct. App. 2022) (noting that the district court need not restate the best interest factors under relocation analysis where a prior order with the best interest factors considered was incorporated).


As for Madarang's arguments regarding the district court equally dividing the cost of travel in exercising custodial parenting time, this court need not consider claims that are not cogently argued or supported by relevant authority. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). As Madarang indicated in his fast track statement, there is no law requiring payment of travel related to custodial time by one party or the other. This remains squarely in the discretion of the district court, and we will not reweigh the evidence considered by the district court. *See Ogawa*, 125 Nev. at 668, 221 P.3d at 704; *see also Ellis*, 123 Nev. at 152, 161 P.3d at 244.

Accordingly, as our review of the record shows no abuse of discretion in the district court's determinations on custody or relocation,¹ we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, C.J.
Gibbons


_____, J.
Bulla

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

cc: Hon. Bryce C. Duckworth, District Judge, Family Division
McFarling Law Group
Marathon Law Group
Eighth District Court Clerk