

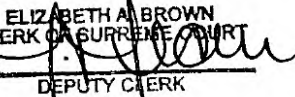
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CECIL ESTEIN, JR.,
Appellant,
vs.
MIA WARD,
Respondent.

No. 84817-COA

FILED

APR 27 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Cecil Estein, Jr., appeals from a district court order regarding child custody. Eighth Judicial District Court, Family Division, Clark County; Mathew Harter, Judge.

Estein and respondent Mia Ward were never married and have one minor child together, D.W., who was born in 2013. As relevant here, Ward was the primary caretaker for D.W. during the first nine years of his life, until Estein concluded his service in the United States military in 2018. Thereafter, Ward and Estein worked together to increase Estein's parenting time with D.W., which eventually resulted in the entry of a partial parenting agreement. In that document, the parties agreed that they would have joint legal custody of D.W. and established holiday and vacation plans. However, the parties could not agree on the issue of physical custody or New Years parenting time, and consequently, Estein commenced the instant action in district court, requesting joint physical custody and a 50/50 parenting time split.

Following motion practice and a bench trial on the matter, the district court entered its findings of fact and conclusions of law wherein, after consideration of the best interest of the child factors under NRS

125C.0035(4), the district court awarded primary physical custody to Ward, and allowed Estein to have parenting time with D.W. on the weekends. Estein now appeals.

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 factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. 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). However, this court is not at liberty to reweigh the evidence or the district court's credibility determinations 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), and this court presumes that the district court properly exercised its discretion in determining the best interest of the child, *see Culbertson v. Culbertson*, 91 Nev. 230, 233-34, 533 P.2d 768, 770 (1975) (presuming that the district court properly exercised its discretion in determining the best interest of the child where the court made substantial factual findings).

Having considered the arguments of the parties and the record on appeal, we conclude that the district court did not abuse its discretion in awarding primary physical custody to Ward. In its custody order, the district court expressly considered the required factors under NRS 125C.0035(4) and concluded that it would be in D.W.'s best interest to award Ward primary physical custody. In his fast track statement, Estein's central challenge to the district court's custody order is not that the district

court failed to make adequate findings or that its findings were unsupported by substantial evidence, but instead that the district court's ultimate decision regarding that evidence was incorrect. Because we do not reweigh the evidence on appeal, and because Estein has failed to otherwise demonstrate that the district court abused its discretion in this matter, we conclude that these assertions do not warrant reversal. *See Ellis*, 123 Nev. at 153, 161 P.3d at 244.

Moreover, although Estein generally alleges that the district court erred by failing to apply the joint physical custody presumption under NRS 125C.0025, he failed to challenge the district court's underlying reasoning for declining to apply that presumption—namely that the parties had entered into a verbal parenting arrangement prior to trial that provided primary physical custody to Ward. Accordingly, Estein has waived that argument on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

Because the district court appropriately considered the best interest of the child factors in its order, we cannot conclude that the district court abused its discretion in awarding Ward primary physical custody, *see Ellis*, 123 Nev. at 149, 161 P.3d at 241, and we therefore

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Presiding Judge, Eighth Judicial District Court, Family Division
Eighth Judicial District Court, Family Division, Dept. N
McFarling Law Group
Hofland & Tomsheck
Eighth District Court Clerk