

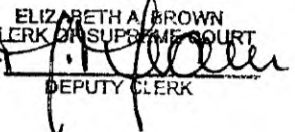
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELI VIRGIL PEDERSON,
Appellant,
vs.
KRYSTINA NICOLE JETER, A/K/A
KRYSTINA NICOLE HOYTE,
Respondent.

No. 86104-COA

FILED

NOV 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eli Virgil Pederson appeals from a district court order denying a motion to modify child custody. Second Judicial District Court, Family Division, Washoe County; Aimee Banales, Judge.

Eli and respondent Krystina Nicole Jeter have two minor children together: A.P. and E.P. In 2017, Krystina initiated custody proceedings wherein she alleged that Eli violently attacked and assaulted her in front of the children. Following briefing and hearings in the matter, the court entered its findings of fact and conclusions of law in September 2018, awarding Krystina sole physical and legal custody over the children, based on its analysis of the best interest factors and its findings that Eli had been convicted (pursuant to a guilty plea) of attempted sexual assault against Krystina and child abuse or neglect against the minor children.¹ Eli did not appeal from the entry of this custody order.

¹Eli is currently incarcerated in Lovelock Correctional Center.

Eli filed the underlying “Petition for an Order to Establish a Correspondence with Minor Children” in 2022. In that petition, he alleged that he had not been allowed to have contact with the minor children since his incarceration and the entry of the custody order in 2018. Eli stated in his petition that he would like to begin repairing his relationship with his children through phone calls, gifts, and letters. Although he did not mention this in the body of the petition, the petition also included an unsworn declaration indicating that Eli had completed various parenting classes while at the prison, and he averred in his petition that he had grown physically, spiritually, and mentally since being incarcerated, allowing him to form an appropriate relationship with the children.

Krystina filed an opposition, wherein she generally argued that Eli did not present sufficient changed circumstances to warrant a modification of the current custody order, and that the children’s therapist, as well as A.P.’s most recent psychological report (attached to the opposition), indicated that the children were still having problems with their father’s actions, and argued it was not in the best interest of the children for him to resume contact with them. Thereafter, Eli submitted his motion for decision without filing a reply. The district court subsequently denied the motion, finding that Eli’s motion did not set forth a sufficient basis to modify the prior custody order, and that Eli did not demonstrate that an evidentiary hearing was necessary.

Eli then filed a motion for reconsideration, arguing that the district court erred by believing Krystina when she claimed that he had committed acts of domestic violence, when she was actively poisoning the

children against him, and by ruling on his motion without providing him the opportunity to file a reply brief, which he alleged was a violation of his due process rights. Finally, Eli also requested that the district court force the children's therapist to produce any and all documents demonstrating that she has actually treated the children with a sufficient degree of medical care. Krystina opposed, arguing that Eli's arguments do not warrant reconsideration, and that his request for the therapist's records was inappropriate as it was made for the first time in his motion for reconsideration. The district court denied Eli's motion, and Eli now appeals.

This court reviews a child custody decision² for an abuse of discretion, and we will not disturb the district court's findings if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain the judgment. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1). 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). We review a district court's decision to deny a motion to modify physical custody without holding an evidentiary

²A child custody determination includes orders that provide "for the legal custody, physical custody or [parenting time] with respect to a child." NRS 125A.045(1).

hearing for an abuse of discretion. *Myers v. Haskins*, 138 Nev., Adv. Op. 51, 513 P.3d 527, 531 (Ct. App. 2022) (citing *Bautista v. Picone*, 134 Nev. 334, 338, 419 P.3d 157, 160 (2018)).

In his fast track statement, Eli argues that, although the court found that he had failed to demonstrate a prima facie case for modification under *Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993) (holding that district courts may deny a motion to modify child custody without holding an evidentiary hearing if the movant fails to demonstrate a prima facie case for modification), Krystina has also not demonstrated a prima facie case. However, under the standard for a motion to modify custody, the burden of presenting a prima facie case for modification falls on the movant, not the nonmoving party. *See, e.g., Myers*, 138 Nev., Adv. Op. 51, 513 P.3d at 531 (quoting *Rooney*, 109 Nev. at 542, 853 P.2d at 124). And because Eli does not otherwise address the district court's conclusion that he failed to demonstrate that an evidentiary hearing was warranted, we need not further consider this issue, as he has not presented any cogent argument on this point. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued).

With regard to the issue of custody modification, the moving party must demonstrate that "(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Romano*, 138 Nev., Adv. Op. 1, 501 P.3d at 983 (quoting *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007)). On this point, despite not meaningfully addressing the district

court's conclusion that he failed to demonstrate that an evidentiary hearing was warranted, Eli nonetheless argues that he demonstrated a sufficient change in circumstances that would warrant modifying the current custody order. Specifically, Eli argues that the district court abused its discretion in denying his request for correspondence with the children, arguing, among other things, that state and federal law encourages interactions between parents and children and that he has taken several parenting and behavioral courses while incarcerated that will improve his relationship with the children.

However, these arguments fail to address the district court's primary conclusion in its order denying Eli's motion to modify custody, that "[t]here is insufficient evidence demonstrating that such a modification would serve the children's best interest." And the only point that Eli makes relevant to the best interest issue is his argument that his convictions have nothing to do with his biological children and should not be taken into account. However, not only is Eli's contention in this regard belied by the record, but this argument conflicts with the district court's express findings regarding his conviction contained in the original 2018 custody decree, which Eli failed to appeal. *See Verner v. Joufflas*, 95 Nev. 69, 70-71, 589 P.2d 1025, 1026 (1979) (providing that a party waives any right to challenge an appealable order when they fail to appeal from it). Under these circumstances, we cannot conclude that the district court abused its discretion in denying the motion to modify without holding an evidentiary hearing. *See Myers*, 138 Nev., Adv. Op. 51, 513 P.3d at 531.

Eli also challenges the district court’s denial of his motion for reconsideration, arguing that the district court violated his due process rights by ruling on that motion without permitting him the chance to reply. However, the record in this matter reflects that Eli received Krystina’s opposition to that motion and, instead of filing a reply, he chose to submit the matter to the department for decision on January 18, 2023. Under WDCR 12(4), the filing of a reply brief is optional—a party may choose to file a reply, or, as Eli did here, may instead immediately submit the matter for decision. We therefore conclude that the district court did not abuse its discretion by considering Eli’s motion without a reply brief. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (recognizing that the denial of a timely motion for reconsideration of a final judgment may be reviewed, in the context of an appeal from that judgment, for an abuse of discretion).

And, to the extent Eli purports to challenge the merits of the district court’s denial of his motion for reconsideration and his request for documentation from the children’s therapist on other grounds, he does not challenge the district court’s rationale for denying such relief—namely, that he failed “to establish a legal basis for reconsideration of the Court’s Order under Nevada law” and “raise[d] additional claims for relief [not proper] within a motion for reconsideration.” Thus, Eli has waived any challenges to the same. *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).

Accordingly, for the reasons set forth above, we affirm the district court's denial of Eli's motion to modify custody and the denial of his motion for reconsideration of that decision.

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Aimee Banales, District Judge, Family Division
Eli Virgil James Pederson
Silverman, Kattelman, Springgate, Chtd.
Washoe District Court Clerk

³Insofar 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.