

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYLER JAMES FOCHT,
Appellant,
vs.
ANALIESA CAMPBELL,
Respondent.

No. 86167-COA

FILED

DEC 20 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tyler James Focht appeals from an order of the district court denying a motion to modify custody. Eighth Judicial District Court, Family Division, Clark County; Nadin Cutter, Judge.

Focht filed a complaint to establish paternity of the minor child on April 13, 2021. The district court subsequently issued a decree establishing that Focht was the father of the minor child. The court also ordered that Focht share joint legal and physical custody of the child with respondent Analiesa Campbell and entered a timeshare and parenting time schedule.

Focht subsequently moved to modify the custody order and requested primary physical custody of the child. Focht contended that it was in the best interests of the child to modify the custodial order because Campbell suffered from untreated mental health issues. Focht asserted that Campbell's mental health issues have caused her to interfere with Focht's parenting time with the child and may cause her to harm the child. Campbell filed a written opposition to Focht's motion, in which she disputed his factual assertions, and contended that Focht was a danger to the child. Based on this last assertion, she argued that Focht should have only

supervised parenting time with the child.¹ Campbell subsequently alleged that Focht was the subject of a criminal investigation based on allegations that he sexually assaulted her.

The district court conducted an evidentiary hearing concerning Focht's request for a change in custody. The record indicates that both parents testified at the evidentiary hearing concerning the issues raised by Focht's motion. The court subsequently entered a written order denying Focht's request to modify custody. In its order, the court expressly considered the required factors under NRS 125C.0035(4) concerning the best interests of the child. The court found that Campbell had interfered with Focht's parenting time with the child. The court also found that both parties raised allegations concerning the mental-health status of the other parent, that the evidence indicated that both parties suffered from various mental health issues, and that there was an open investigation concerning allegations that Focht had sexually assaulted Campbell, but that there was insufficient evidence to find that Focht had committed domestic violence. The court ultimately concluded that Focht had not demonstrated that child custody should be modified and it determined that the existing joint legal and physical custody order would stand. This appeal followed.

On appeal, Focht argues that the district court abused its discretion by denying his request for primary physical custody. Focht reiterates that Campbell suffers from mental health problems, contends that her allegations concerning the alleged sexual assault lack merit, and challenges the court's findings concerning the best interests of the child. Campbell did not file a response to Focht's fast track statement.

¹The record does not indicate that Campbell filed a written motion to modify custody on that basis.

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). This court will affirm the district court's child custody determinations if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment. *Id.* at 149, 161 P.3d at 242. The party requesting to modify the child custody order "must show 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 v. Romano*, 138 Nev. 1, 3, 501 P.3d 980, 982 (2022) (internal quotation marks omitted), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). 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).

In resolving Focht's motion to modify, the district court did not find that there was a substantial change in circumstances affecting the welfare of the child that would warrant modification. Indeed, it did not address that portion of the *Romano* test, and moved directly to examine the best interest factors. In so doing, the court made specific findings concerning the best interest of the child factors set forth in NRS

125C.0035(4), and after addressing the pertinent factors, it concluded that modifying the custody arrangement was unwarranted.

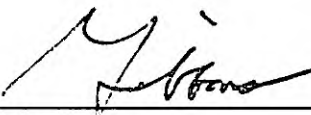
Here, while Focht asserts the court should have found that the best-interest factors favored modifying the child custody order, this court will not second guess a district court's resolution of factual issues involving conflicting evidence or reconsider its credibility findings. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244; *Quintero*, 116 Nev. at 1183, 14 P.3d at 523. Moreover, Focht's arguments concern evidence presented at the evidentiary hearing and the district court's findings based on that evidence. However, while Focht filed a transcript request form, and the court reporter filed a notice indicating that the transcripts were delivered, Focht did not provide this court with a copy of the evidentiary hearing transcript or otherwise act to ensure this court received a copy of the transcript. *See* NRAP 9(b)(1)(B) (requiring pro se litigants who request transcripts and have not been granted in forma pauperis status to file a copy of their completed transcript with the clerk of court).²

Based on the lack of the transcript, we necessarily presume that it supports the district court's determination and therefore we must conclude substantial evidence supports the district court's findings with regard to the best interest factors. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing


²We note the supreme court issued a notice to Focht in which it instructed him that appellants who have not been granted in forma pauperis status and have requested a transcript "must file a copy of the transcript in this court" and cited specifically to NRAP 9(b)(1)(B).

[documents] support[] the district court's decision"). Indeed, without a copy of the evidentiary hearing transcript, we are unable to meaningfully review Focht's challenges to the district court's findings and conclusions that were based upon the evidence presented at the evidentiary hearing. Therefore, we conclude Focht failed to demonstrate that the district court abused its discretion by denying his motion to modify the custody order. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Nadin Cutter, District Judge, Family Division
Tyler James Focht
Analiesa Campbell
Eighth District Court Clerk

³Insofar as Focht raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.