IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DOTY,
Appellant,
vs.
TONYA DUBIN,
Respondent.

No. 77340-COA

FILED
JUL 11 2019
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Doty appeals from a post-decree order in a child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Denise L. Gentile, Judge.

In the proceedings below, the parties shared joint legal custody and respondent Tonya Dubin maintained primary physical custody over the parties' minor child. Michael filed a motion to modify custody, asserting that the parties had been practicing a joint physical custody arrangement and he was, therefore, entitled to a custody modification. The district court denied the motion, concluding that Michael failed to demonstrate adequate cause to support setting an evidentiary hearing. This appeal followed.

On appeal, Michael contends that the district court abused its discretion in denying his motion to modify custody and in failing to set an evidentiary hearing. 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 child custody determinations if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. Substantial evidence is

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that which a reasonable person may accept as adequate to sustain a judgment. *Id.*

Modifying a joint physical custody arrangement is appropriate if it is in the best interest of the child. NRS 125C.0045(2); *Rivero v. Rivero*, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009). Modifying a primary physical custody arrangement is permitted only if "(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." *Ellis*, 123 Nev. at 150, 161 P.3d at 242. However, the district court has discretion to deny a motion to modify child custody without an evidentiary hearing, unless the moving party demonstrates adequate cause. *See Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993).

Here, the district court concluded that Michael failed to establish adequate cause to hold an evidentiary hearing. *See id.* at 543, 853 P.2d at 125 ("'Adequate cause' requires something more than allegations which, if proven, might permit inferences sufficient to establish grounds [to modify]."). Specifically, the district court concluded that although Michael asserted that he had custodial time with the child 42 percent of the time over the course of the past year, it reviewed Michael's exhibits and did not agree that Michael had the child for as many days as he asserted. Additionally, the district court noted that, regardless of the specific number of days Michael had custody of the child, the modifications the parties made to their schedule were sporadic, based on particular circumstances, and were insufficient to show that the parties were practicing a joint custody arrangement, such that Michael was not entitled to an evidentiary hearing on modification at this time. Based on our review of the record, substantial evidence supports the district court's conclusions. As a result, we cannot

say that the district court abused its discretion in denying Michael's motion. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241-42; *Rooney*, 109 Nev. at 542, 853 P.2d at 124.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Denise L. Gentile, District Judge, Family Court Division
Michael Doty
Robinson Law Group
Eighth District Court Clerk

[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.