IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AUSTIN LYDELL PATTERSON,
Appellant,
vs.
KALENA WAINWRIGHT,
Respondent.

No. 86926-COA

FILED
MAR 19 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Austin Lydell Patterson appeals from a district court decree of child custody. Eighth Judicial District Court, Family Division, Clark County; Regina M. McConnell, Judge.

Respondent Kalena Wainwright filed a complaint for custody in which she requested sole legal custody and primary physical custody of a minor child. Wainwright also requested child support, including costs for child care. Wainwright stated that she had $2,000 in monthly child care costs. Patterson filed an answer and counterclaim in which he requested joint legal and physical custody of the child. The parties also filed financial disclosure forms. Wainwright declared that she earned $5,934 per month, and Patterson declared that he earned $1,950 per month.

The court subsequently entered a temporary custody order awarding the parties joint legal and physical custody, entered a timeshare and parenting time schedule, and directed Wainwright to pay Patterson $328 per month in temporary child support.

Wainwright subsequently moved to modify the temporary custody order to reduce her monthly child support obligation. Wainwright

contended that she was the primary guardian of the child and paid for the ongoing child care and education costs. She accordingly requested an adjustment of her child support obligation in recognition of the aforementioned costs. She also alleged that Patterson verbally abused her, that he engaged in unsuitable behavior, and that he had not properly followed the parenting time order. Wainwright also filed an updated financial disclosure form declaring that she earned $5,857 per month and documentary evidence concerning her child care costs. Patterson opposed the motion, disputed Wainwright's factual allegations, and contended that Wainwright was hostile toward him.

The district court conducted an evidentiary hearing concerning the aforementioned custody matters. The record indicates that both parents testified at the evidentiary hearing concerning the custody of the child and child support.

The court subsequently entered a written order awarding the parties joint legal custody of the child but awarded Wainwright primary physical custody. In its order, the court expressly considered the required factors under NRS 125C.0035(4) concerning the best interests of the child and found that Patterson did not provide credible testimony concerning several issues, including his testimony concerning the child's medical issues and treatment. The court specifically found that several best-interest factors favored Wainwright. To that end, the court found: (1) Patterson caused conflict between the parents by failing to ensure that the child received proper medical care, failing to provide information to Wainwright concerning the child's medical care, and because he lied to Wainwright about his work and travel plans; (2) Patterson was unable to cooperate with Wainwright to meet the needs of the child as evidenced by his refusal to

take the child to necessary physical therapy appointments to help with the child's toe walking and his failure to ensure the child received appropriate medical care concerning other issues; and (3) Wainwright focused on providing for the physical, developmental, and emotional needs of the child. The court also found that Patterson does not work full-time, borrows money from family and friends, and previously sent a text message stating he was scared to take the child because he had so little money. Further, it noted the child has allergy-induced asthma and Patterson has two dogs in his home despite evidence showing that the child is allergic to dogs. Moreover, the court concluded that Patterson does not ensure the child receives appropriate physical therapy or medical care, and he does not appropriately communicate with Wainwright concerning the child's medical issues.

Based on its findings concerning the best-interest factors, the district court awarded Wainwright primary physical custody of the child. The court also awarded the parties joint legal custody, except that it concluded that Wainwright should make the final decisions concerning medical issues if the parties have disagreements concerning those issues.

In addition, the district court noted that the parties reached an agreement after the evidentiary hearing for the child to attend a child care program that had a monthly cost of $1,375, and the court then ordered the costs to be equally divided, with each parents' share of those costs amounting to $687.50 per month. The court also directed Wainwright to notify Patterson if the child care facility offers her a grant or an abatement of those costs so that he shares in any reduction of those costs. The court further ordered the parties to equally share the child's medical costs and awarded Wainwright $52.83 per month to account for Patterson's share of the monthly medical insurance premium payments.

The district court further found that Patterson earned $1,950 per month at his job but also noted that Patterson testified he is able to earn additional income from side gigs. The district court noted Patterson did not include information concerning any income earned from side gigs on his financial disclosure form. The court also rejected Wainwright's request to impute additional income to Patterson and rejected Patterson's request for a downward deviation from the standard child support amount due to his additional and ongoing child-support obligations for other children. The court therefore calculated Patterson's monthly child support from his income pursuant to NAC 425.140(1)(a) and awarded Wainwright $312 based on that calculation. And the district court ultimately awarded Wainwright a total of $1,052.33 in monthly child support, inclusive of payments for the medical insurance premium and child care costs. This appeal followed.

First, Patterson argues that the district court abused its discretion by awarding Wainwright primary physical custody of the child and by declining his request for joint physical custody. Patterson contends that the district court misconstrued his testimony, improperly focused on his low income, and erred by finding several best-interest factors favored Wainwright.

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). A court may award

one parent primary physical custody if it determines that joint physical custody is not in the best interest of the child. NRS 125C.003(1). 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 if it made substantial factual findings, *see Culbertson v. Culbertson*, 91 Nev. 230, 233-34, 533 P.2d 768, 770 (1975).

Here, while Patterson asserts the court should have found that the best-interest factors favored an award of joint custody and challenges the district court's findings concerning the best-interest factors, 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, Patterson's arguments concern evidence and testimony presented at the evidentiary hearing and information presented at a subsequent hearing, and the district court's findings as a result of those hearings. However, while Patterson filed a transcript request form, Patterson did not provide this court with a copy of the transcripts of those hearings or otherwise act to ensure this court received a copy of the transcripts. *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).[1]

Given the absence of any transcripts of the hearings where the relevant evidence was presented, we necessarily presume that the missing documents support the district court's determination, and therefore we must conclude substantial evidence supports the district court's findings regarding 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 [documents] support[ ] the district court's decision"). Indeed, without a copy of the transcripts, we are unable to meaningfully review Patterson's challenges to the district court's findings and conclusions that were based upon the evidence and information presented at the relevant hearings. Therefore, we conclude Patterson failed to demonstrate that the district court abused its discretion by awarding Wainwright primary physical custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Next, Patterson challenges the district court determination regarding child support and child care costs. Patterson argues that the district court abused its discretion by denying his request for a downward deviation based on his support obligations for other children. Patterson also contends that the court should not have awarded Wainwright child care costs in the amount $687.50 per month because he asserts that they should

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[1]We note the supreme court issued a notice to Patterson 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).

have found a less expensive alternative. Patterson further asserts the child attends a preschool and he does not believe the child's attendance at a preschool should constitute child care costs.

This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). A district court abuses its discretion when its findings are not supported by substantial evidence, *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018), which is evidence that a reasonable person may accept as adequate to sustain a judgment, *Ellis*, 123 Nev. at 149, 161 P.3d at 242. While our review is deferential, we do not defer "to legal error or to findings so conclusory that they may mask legal error." *Davis*, 131 Nev. at 450, 352 P.3d at 1142.

A child support order "must be based on the obligor's earnings, income and other evidence of ability to pay" and there is a rebuttable presumption that the basic needs of the child are met by the support guidelines established by NAC Chapter 425. NAC 425.100(1), (2). If the district court decides to deviate from the guidelines, it must set forth findings to support the deviation. NAC 425.100(3). Nevada's child support regulations provide that a parent of a single child pays 16 percent of his or her first $6,000 in monthly gross income to the custodial parent. NAC 425.140(1)(a). A district court may order a downward adjustment from the set amount at its discretion, and one of the factors a court may consider when weighing a downward adjustment is whether a party has the legal responsibility for the support of others. NAC 425.150(1)(b). In addition, "[t]he court must consider the reasonable costs of child care paid by either or both parties and make an equitable division thereof." NAC 425.130.

As to the monthly child support payment of $312, Patterson's appellate arguments concern evidence and arguments presented at the evidentiary hearing, information and arguments presented at a subsequent hearing, and the district court's findings as a result of those hearings. However, as explained previously, Patterson did not provide this court with a copy of the transcripts of those hearings or otherwise act to ensure this court received a copy of the transcripts.

Based on the lack of the transcripts, we cannot meaningfully review Patterson's challenges to the district court's child support determination, and we necessarily presume that the transcripts support the district court's decision, such that we must conclude substantial evidence supports the district court's findings concerning child support.[2] *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

However, with regard to the child care costs, the district court was required to consider both whether the child care costs were reasonable and whether the division of those costs was equitable pursuant to NAC 125.130. But the court's order does not address either of these points—particularly whether the division of the cost was equitable in light of the court's findings that Patterson only earns $1,950 per month and its rejection of Wainright's willful underemployment argument. Moreover, while the court noted that the parties agreed for the child to attend the child care program, it made no findings as to whether they agreed to equally divide the costs for that program. While we generally presume that missing record documents support the underlying decision, *Cuzze*, 123 Nev. at 603, 172

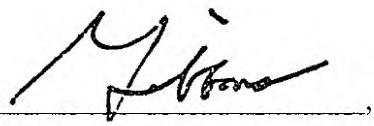
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[2]We note Patterson does not challenge the district court's decision to award Wainwright $52.83 per month for his share of the monthly medical insurance premium payments.

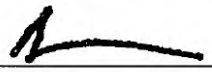
P.3d at 135, given the court's failure to make written findings on these points, and the fact that including half of the child care costs brings Patterson's monthly support payment to $1,052.33 on a monthly income of just $1,950, without more, we cannot presume that the missing transcripts support the court's determination regarding the monthly child care payments, *see Davis*, 131 Nev. at 450, 352 P.3d at 1142 (stating that the appellate courts will not defer "to findings so conclusory that they may mask legal error"). Therefore, we reverse the portion of the court's child support determination concerning the child care costs and remand this issue for the district court to reevaluate this issue in line with this order.

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

cc: Hon. Regina M. McConnell, District Judge, Family Division
Austin Lydell Patterson
Roberts Stoffel Family Law Group
Eighth District Court Clerk