

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN LEE WHITTLE,
Appellant,
vs.
RAVEN MORRIS,
Respondent.

No. 82660-COA

FILED

FEB 11 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brian Lee Whittle appeals from a district court order establishing custody of a minor child. Eighth Judicial District Court, Family Court Division, Clark County; Soonhee Bailey, Judge.

Whittle and respondent Raven Morris are unmarried and have one minor child together. In 2019, Whittle filed a complaint for custody, asking to be named as the child's father on the birth certificate and requesting joint legal and physical custody of the child. As relevant here, the district court held an evidentiary hearing on February 18, 2021, where it considered the parties' custody arrangement and a prior order allowing Whittle to change the child's last name on the birth certificate. Following the hearing, the district court entered a 33-page order and directed Whittle to change the child's last name to Morris-Whittle, awarded joint legal custody to Whittle and Morris, and awarded primary physical custody to Morris. In so doing, the district court thoroughly examined each of the best

interest of the child factors listed in NRS 125C.0035 and extensively recounted witness testimony from the hearing.¹ Whittle now appeals.

We review a district court's custody determinations for an abuse of discretion. *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, ___ P.3d ___ (2022). When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1). Moreover, the district court's "order must tie the child's best interest, as informed by specific, relevant findings respecting the [best interest factors] and any other relevant factors, to the custody determination made." *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Without specific findings and an adequate explanation for the custody determination, this court cannot determine with assurance whether the custody determination was appropriate. *Id.* at 452, 352 P.3d at 1143.

¹Following the evidentiary hearing and entry of the order, Whittle filed a document entitled "supplemental exhibits" purporting to refute some of the findings made in the district court's order. But it appears that this document was not submitted to the district court prior to the evidentiary hearing, and Whittle did not request any sort of relief from the judgment of the district court. Because these documents were not properly presented to the district court in the first instance, we decline to consider them on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (noting that issues not raised in the trial court will not be considered on appeal); *see also Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (noting that "[a]n appellate court is not particularly well-suited to make factual determinations in the first instance").

On appeal, Whittle primarily argues that the district court made inaccurate statements of fact in its decree of custody and abused its discretion when it awarded Morris primary physical custody because the court's rulings were predicated on those inaccurate findings, which Whittle argues were based on inadmissible hearsay evidence. But we cannot fully analyze Whittle's claims that the evidentiary hearing was unfair or that the district court made improper evidentiary determinations because he has not provided this court with the transcript from the evidentiary hearing.² Appellants are responsible for making an adequate appellate record, and "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

Nonetheless, we note that the 33-page district court order contained specific findings of fact addressing the best interest of the child factors under NRS 125C.0035(4), and because the district court's order "tie[d] the child's best interest, as informed by specific, relevant findings


²While Whittle filed a transcript request form, he did not request transcripts for the evidentiary hearing held on February 18, 2021. Instead, he requested transcripts from a temporary custody hearing held on October 3, 2019. Moreover, he never provided this court with the transcripts he sought, requested that the court reporter be compelled to prepare them, or otherwise acted to ensure this court received a copy of the transcript of the earlier temporary custody hearing. 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).

respecting the [best interest factors] and any other relevant factors, to the custody determination made," we conclude that the record supports the district court's decision to award Morris primary physical custody following the evidentiary hearing. *See Davis*, 131 Nev. at 451-52, 352 P.3d at 1143.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Soonhee Bailey, District Judge, Family Court Division
Brian Lee Whittle
Patricia A. Marr, Ltd.
Eighth 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.