

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACKIE SALSAA N/K/A JACKIE DE
LEON,
Appellant,
vs.
TONY SALSAA,
Respondent.

No. 62731

FILED

JAN 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a fast track child custody appeal from a district court post-divorce decree order denying a motion to modify child custody. Eighth Judicial District Court, Family Court Division, Clark County; Jennifer Elliott, Judge.

In 2009, the district court awarded respondent primary physical custody of the parties' minor child subject to appellant's right of visitation. In April 2010, appellant filed a motion to modify custody because she had recently relocated closer to the child. The district court entered a written order denying the motion without prejudice on June 8, 2010, when it found that appellant had a history of residential instability. The court ordered that

prior to filing any future motions for modification of custody Defendant shall prove residential and financial stability for two (2) years in Las Vegas. Prior to re-filing [] any motion based upon relocation as a change in circumstances for the custodial change Defendant shall go on a work search or, if Defendant has found full time employment, she shall file an updated financial disclosure form with proof of income attached.

Two years after the initial order was entered, appellant again filed a motion to modify custody. In her motion, appellant asserted that

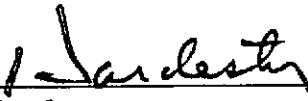
she had earned her college degree, engaged in a long job search, and ultimately found employment. The district court ordered the parties to mediate the dispute and set the matter for an evidentiary hearing. The parties failed to settle.

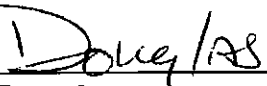
At a subsequent hearing, the court stated that the original June 8, 2010, order required appellant to demonstrate two years of employment with the same employer. The court stated that it was simply following its original order and that the two-year employment requirement was supported by the factual determinations in the June 8 order and minutes from prior proceedings, without identifying the specific factual findings. The district court issued its written order on February 1, 2013, denying appellant's motion and vacating the evidentiary hearing. The written order did not identify the specific factual findings relied on by the court. This appeal followed.

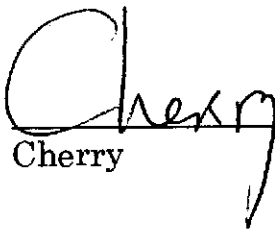
On appeal, appellant contends that the district court abused its discretion by failing to support its decision with substantial evidence and by changing the conditions of the original order. "The district court has broad discretion in making child custody determinations," which will not be disturbed absent an abuse of discretion. *Rico v. Rodriguez*, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005). But the district court's determinations must be made for appropriate reasons and supported by substantial evidence. *Id.* Modifying primary physical custody is only warranted 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 v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007). The change in circumstances must have occurred since the last custody determination. *Id.* at 151, 161 P.3d at 243.

Here, it appears that the judge misinterpreted her June 8, 2010, order's requirements by now requiring two years of employment with the same employer. Additionally, the change of circumstances noted by appellant, including living in the same city as the child for two years, finishing her degree, and finding employment, demonstrated, at a minimum, adequate cause for an evidentiary hearing. *See Rooney v. Rooney*, 109 Nev. 540, 543, 853 P.2d 123, 125 (1993) (requiring an evidentiary hearing on a motion to modify custody when the moving party demonstrates adequate cause). Under these circumstances, we conclude that the district court abused its discretion in denying appellant's motion to modify custody without conducting an evidentiary hearing. Accordingly, we

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


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Alan J. Buttell & Associates
Sterling Law, LLC
Eighth District Court Clerk