

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAVIER RAMIREZ RIVAS,  
Appellant,  
vs.  
MAYRA ARREGUIN,  
Respondent.

No. 69823

**FILED**

SEP 20 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a district court order modifying child custody. First Judicial District Court, Carson City; James Todd Russell, Judge.

In their divorce decree, the parties were awarded joint physical custody of their two children. The district court later temporarily modified the arrangement to one where respondent had primary physical custody. After some time, the court entered an order permanently modifying the custody arrangement, and this appeal followed.


In his child custody fast track statement, appellant asserts that the district court ignored relevant facts, made an error in a finding of fact, and otherwise abused its discretion by modifying custody in a way that is alienating the children from him. In modifying the parties' custody arrangement, the district court concluded, based primarily on the testimony and reports of the children's therapist and Court Appointed

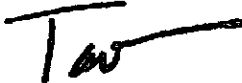
Special Advocate, that it was in the children's best interest for respondent to have primary physical custody, with appellant having only minimal parenting time with each child on one day every other week. The district court did not, however, make specific findings with regard to why this arrangement was in the children's best interest, nor did the court make any findings tying the circumstances of this case to the statutory factors that must be considered in making a child custody determination. See NRS 125C.0035(4) (providing that, "[i]n determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things[, 12 enumerated factors]").

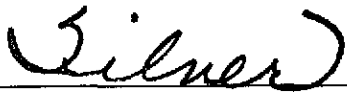
As a result, we conclude that the district court abused its discretion in modifying custody without entering the required statutory findings. See *Lewis v. Lewis*, 132 Nev. \_\_\_, \_\_\_, 373 P.3d 878, 882 (2016) (concluding that the district court abused its discretion by modifying child custody without explicitly entering "specific factual findings as to each of the statutory best-interest-of-the-child factors"); *Davis v. Ewalefo*, 131 Nev. \_\_\_, \_\_\_, 352 P.3d 1139, 1143 (2015) ("Specific findings and an adequate explanation of the reasons for the custody determination are crucial to enforce or modify a custody order and for appellate review." (internal quotation marks omitted)). Accordingly, we reverse the district

court's order modifying child custody and remand this matter to the district court for further proceedings consistent with this order.<sup>1</sup>

It is so ORDERED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

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<sup>1</sup>In reversing the district court's decision on this basis, we express no opinion on the merits of appellant's challenges to the district court's custody order. Pending further proceedings on remand consistent with this order, we leave in place the custody arrangement set forth in the district court's order, subject to modification by the district court to comport with the current circumstances. *See Davis*, 131 Nev. at \_\_\_, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand).

<sup>2</sup>Having considered appellant's August 24, 2016, motion to substitute the children's therapist and Court Appointed Special Advocate and to schedule a hearing, we deny the motion, as his request involves factual issues that should be presented to the district court in the first instance. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance."). While appellant moved for a change of therapists in the district court, the record demonstrates that he did so on different grounds than the ones presented in his motion before this court, and thus, we decline to consider the new grounds presented in his motion to this court. *See id.*

cc: Hon. James Todd Russell, District Judge  
Javier Ramirez Rivas  
Mayra Arreguin  
Carson City Clerk