

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WESLEY B. BEHIMER,
Appellant,
vs.
JAMIE BALL,
Respondent.

No. 69520

FILED

OCT 06 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a fast track child custody appeal from a district court order modifying custody and denying a motion to relocate. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

For nine years, the parties in this matter shared joint legal and physical custody of their minor child. Appellant then filed a motion seeking relocation and primary physical custody because he was moving to a different town for his job. See NRS 125C.0065(1) (providing that if the parents have joint custody and one parent wishes to relocate at such a distance that it would substantially impair the ability of the other parent to maintain a relationship with the child, and the other parent does not consent to the relocation, the relocating parent must petition the court for primary physical custody for the purposes of relocating). Respondent opposed the motion, and both parties appeared pro se at the district court hearing on the matter. Following the hearing, the district court denied the relocation request and instead awarded respondent primary physical custody. The district court also denied appellant's later motion for reconsideration and this appeal followed.

In its order denying relocation, the district court determined that, because appellant was moving, the joint physical custody arrangement was no longer workable and was not in the child's best interest and, thus, it would modify that order. See NRS 125C.0045(2) (providing that a joint custody order may be modified "if it is shown that the best interest of the child requires the modification"). At the hearing, the district court found the parties presented minimal evidence regarding their ability to cooperate to meet the needs of the child and the relationship of each party with the child, and no evidence regarding parental abuse or neglect or domestic violence. In its written order granting primary physical custody to respondent, the district court found that the arrangement was in the best interest of the minor child because it would allow him to stay in the town that he grew up in and to maintain a relationship with his half-brother.¹ The district court also found that the parties had a high level of conflict, with appellant being unhappy with respondent even when she was following the custody order.

While some of these findings directly correspond with certain of NRS 125C.0035(4)'s best interest factors, and some of the other findings could arguably correspond to other of the factors, the district court nonetheless did not adequately set forth specific findings as to all of the best interest factors as required by the Nevada Supreme Court's recent decision in *Lewis v. Lewis*, 132 Nev. ___, 373 P.3d 878 (2016), such that it

¹At the hearing, the district court indicated that the child's ability to maintain a relationship with his half-brother was a significant factor.

is not clear whether all of the factors were considered.² While we recognize that the district court urged the parties to provide evidence on some of the unaddressed factors and that certain of the other factors may not be relevant to this case, *Lewis* requires that the district court make specific findings as to *all* of the best interest factors and we are bound to follow the requirements set forth in that decision. *Id.* at ___, 373 P.3d at 882 (holding that a district court abuses its discretion in modifying custody if it “fail[s] to set forth specific findings as to all of [the best interest] factors”).

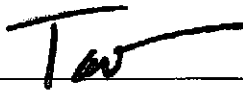
Under *Lewis*, resolving a motion to modify custody without setting forth the required findings as to each best interest factor constitutes an abuse of the district court’s discretion such that we must reverse and remand the order modifying custody so that the district court can make the required findings. *Id.*; see also NRS 125C.0035(1) (requiring the court to consider the best interest of the child when determining physical custody); NRS 125C.007(1) (requiring the district court to consider the best interests of the child, among other things, when ruling on a relocation request). Accordingly, we reverse and remand this matter

²Specifically, it appears the district court made no oral or written findings regarding the child’s custody preference; the parent more likely to allow continued associations with the noncustodial parent; the mental and physical health of the parents; and the physical, developmental, and emotional needs of the child. See NRS 125C.0035(4)(a), (c), (f), (g). The district court’s findings as to some of the other factors could also be set out more clearly to aide appellate review. See generally *Lewis v. Lewis*, 132 Nev. ___, ___, 373 P.3d 878, 882 (2016) (“Specific findings and an adequate explanation of the reasons for the custody determination are crucial . . . for appellate review.” (quoting *Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1143 (2015))).

to the district court to make the required findings as to all the of the best interest factors in modifying the parties' custody arrangement.³

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³Pending 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).

⁴Regarding appellant's contention that the district court demonstrated bias against him during the custody hearing, we conclude that appellant waived this argument by failing to make a specific objection in the district court. *See Foley v. Morse & Mowbray*, 109 Nev. 116, 120, 848 P.2d 519, 521 (1993) (explaining that a party who fails to make a specific objection to alleged judicial misconduct in the district court waives the argument on appeal). And, because we reverse and remand this case based on the reasons stated herein, we need not address appellant's remaining appellate arguments.

cc: Hon. Thomas L. Stockard, District Judge
Amens Law, LLC
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Churchill County Clerk