

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATRINA FLORES,
Appellant,
vs.
JOSEPH VOGT,
Respondent.

No. 69555

FILED

OCT 18 2016

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to modify custody and for related relief. Eighth Judicial District Court, Family Court Division, Clark County; Sandra L. Pomrenze, Judge.

Appellant Katrina Flores and respondent Joseph Vogt share joint custody over their minor child. Following a series of incidents at custody exchanges, Flores filed a motion to modify custody and obtain primary legal and physical custody. In that motion, Flores also requested that the district court order Vogt undergo a psychological/psychiatric evaluation. The district court denied the motion.¹

On appeal, Flores contends the district court abused its discretion by failing to order Vogt undergo a psychological/psychiatric evaluation. She further argues the district court abused its discretion by failing to modify custody. Because the district court failed to set forth specific findings regarding the best interest of the child, reversal is necessary.

¹We do not recount the facts except as necessary to our disposition.

We review a court's factual findings for abuse of discretion, and will not reverse unless those findings are clearly erroneous or unsupported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Likewise, we defer to the district court's decisions regarding discovery and will not disturb a decision absent a clear abuse of discretion. *In re Adoption of a Minor Child*, 118 Nev. 962, 968, 60 P.3d 485, 489 (2002). In reviewing the record on appeal, it is not within our purview to weigh conflicting evidence or assess witness credibility. *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007).

Flores primarily argues the district court erred by failing to order a psychological evaluation despite acknowledging Vogt's anger management issues. Flores cites no Nevada law requiring the district court to order a psychological/psychiatric evaluation, and generally we do not consider arguments that are unsupported by relevant authority.² See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). However, we note that neither NRS 125C.0035(4)(f) nor NRCP 35(a), both of which address a party's mental health, require the district court to order a psychological evaluation. To the contrary, under NRCP 35(a) the district court "may" order a psychological evaluation upon a showing of "good cause." Here, however, the record supports the district court's findings that both parties appear to be uncooperative and engage in misconduct. Therefore, based on the record before this court, the district court did not abuse its discretion when it denied Flores' request.

²We have reviewed the extrajurisdictional authorities provided by Flores, and we conclude they are factually distinguishable and unpersuasive.

Flores next argues the district court abused its discretion by failing to modify custody, and that the results of a psychological evaluation would have justified modification. While we have already determined the district court properly denied Flores' request for a psychological evaluation, we must nonetheless conclude that the district court abused its discretion by denying the motion to modify custody as it did not make the requisite findings regarding the child's best interest.

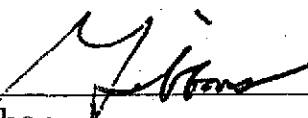
In recent years, our supreme court has repeatedly held that in considering whether to modify custody, the district court *must* consider whether the modification is in the best interest of the child and make express findings on the best-interest factors set forth in NRS 125C.0035(4).³ See *Lewis v. Lewis*, 132 Nev. ___, ___, 373 P.3d 878, 881 (2016); *Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1143 (2015); *Bluestein v. Bluestein*, 131 Nev. ___, ___, 345 P.3d 1044, 1048 (2015); see also NRS 125C.0035(4) (emphasis added) (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]").


The district court, however, abused its discretion when it failed to set forth specific findings as to all of the best interest factors in NRS 125C.0035(4) as required by the Nevada Supreme Court's recent decision in *Lewis v. Lewis*, 132 Nev. ___, ___, 373 P.3d 878, 882 (2016). *Lewis*, read together with *Davis*, requires district courts to make express written findings as to *all* of the statutory best interest factors, as well as

³Previously the best-interest factors were set forth in NRS 125.480(4). That statute was repealed in October 2015 and replaced by NRS 125C.0035(4) without any substantive changes.

any other pertinent factors, in child custody orders, and we are bound to follow the requirements set forth in those decisions. *Id.*; see also *Davis*, 131 Nev. at ___, 352 P.3d at 1143 (“Nevada law . . . requires express findings as to the best interest of the child in custody and visitation matters,” and the “order must tie the child’s best interest; as informed by specific, relevant findings respecting the [NRS 125C.0035(4)] and any other relevant factors, to the custody determination made.”).⁴ Accordingly, we

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

⁴We disagree with Flores’ argument that this case should be reassigned to a different judge. Judges have a general duty to hear the cases assigned them, and although “NRS 1.230 prohibits a judge from presiding over any matter when actual or implied bias exists on the part of the judge,” *Ivey v. Dist. Court*, 129 Nev. ___, ___, 299 P.3d 354, 358 (2013), the record here does not support Flores’ contention that the judge assigned to this case is biased or unable to act fairly.

cc: Hon. Sandra L. Pomrenze, District Judge, Family Court Division
Lansford W. Levitt, Settlement Judge
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Eighth District Court Clerk