IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON TWAIT,
Appellant,
vs.
SEPTEMBER JACOBSEN,
Respondent.

No. 74295

ORDER OF REVERSAL AND REMAND

Brandon Twait appeals a district court order modifying child custody. Second Judicial District Court, Washoe County; Bridget E. Robb, Judge.

In the proceedings below, the parties appear to have had a contentious relationship, but just prior to the events leading to this appeal, they shared joint physical custody of their minor child. While the parties shared joint physical custody, the child attended the school zoned for Brandon's residence. Brandon then moved to Dayton, Nevada and sought to have the child change schools to, again, be near his residence. Respondent September Jacobsen disagreed and wanted the child to attend the school zoned for her residence in Sparks, Nevada. When the parties could not agree on what school the child would attend, Brandon moved the district court to order that the child would attend school in Dayton. Brandon indicated that he was not seeking a modification of custody and believed the parties could continue to share joint physical custody despite Dayton being approximately one hour away from Sparks, but asserted that if the district court did not believe a joint physical custody arrangement

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could be maintained, that his motion could alternatively be considered as seeking modification. The record does not include an opposition or countermotion from September.

Following a telephone conference on the matter, the district court denied Brandon's motion and concluded that the child would attend school at the elementary school zoned for September's residence in Sparks. Although not expressly set forth in the court's order, the record suggests that the court also intended to modify the custodial time-share in line with a proposal submitted by September that may result in a change of custody to her. This appeal followed.

This court reviews a child custody decision for an abuse of discretion, but "the district court must have reached its conclusions for the appropriate reasons." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007). In making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Modifying a joint physical custody arrangement is appropriate if it is in the best interest of the child. *Rivero v. Rivero*, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009). 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*, 131 Nev. at 451, 352 P.3d at 1143. Without specific findings and an adequate explanation for the custody determination, this court cannot determine whether the custody determination was appropriate. *Id.* at 452, 352 P.3d at 1143.

Although the district court's oral ruling suggests that custody was modified and the written order suggests that September's proposed time-share was being adopted, as noted above, the court's resulting written order does not clearly indicate that custody was modified and does not actually set forth the custody arrangement or time-share that the parties are to exercise. NRS 125C.010(1) requires custody orders to define the parties' parenting time "with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved," and to "include all specific times and other terms of the" parties' time-share and parenting time. Thus, the district court abused its discretion by failing to expressly define with particularity the custody arrangement being awarded and Brandon's time-share in its written, file-stamped order and we therefore must reverse and remand this matter with instructions that the district court specify the precise terms of the custody arrangement and the parties' time-share in the actual custody order. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241-42; NRS 125C.010.

Moreover, the district court's order fails to even address, much less make any findings relating to, the child's best interest. We note that the district court's order does make some factual findings that might be relevant to the child's best interest, namely, that Brandon has violated the district court's orders regarding September's parenting time in the past, but *Davis* requires the district court to tie the child's best interest, based on specific, relevant findings regarding the best interest factors and any other relevant factors, to the ultimate custody determination. 131 Nev. at 451, 352 P.3d at 1143. The order here fails to address any of the best interest factors enumerated in NRS 125C.0035 and it is not clear from the record

that the district court considered any of these factors in reaching its decision, nor if September moved for a change of custody. *See id.*; *Lewis v. Lewis*, 132 Nev. ___, ___, 373 P.3d 878, 882 (2016) (requiring the district court to consider all of the best interest factors). Thus, given the district court's failure to address the child's best interest, this matter must be remanded to the district court to make specific findings that are tied to the best interest factors. *See Davis*, 131 Nev. at 451, 352 P.3d at 1143; *Lewis*, 132 Nev. at ___, 373 P.3d at 882.

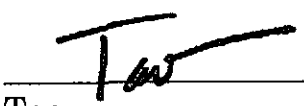
Finally, we agree with Brandon's argument that the district court should have held an evidentiary hearing before modifying custody. Here, there is no factual evidence in the record before us to support the district court's conclusions, ostensibly because the district court did not accept any evidence at the telephonic conference. As we have already determined that this matter must be reversed and remanded based on the court's failure to set forth the actual custody arrangement and time-share in its written order and its failure to make the required best interest findings, we further determine that, on remand, before resolving the parties' custody dispute, the district court shall hold an evidentiary hearing to allow the parties to present evidence for and against any change of custody. *See Moser v. Moser*, 108 Nev. 572, 576-77, 836 P.2d 63, 66 (1992) ("At a minimum, . . . before a parent loses custody of a child, the elements that serve as a precondition to a change of custody award must be supported by factual evidence."); *cf. Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993) (explaining that the district court may deny a motion to modify custody without an evidentiary hearing, but must hold an

evidentiary hearing if the moving party demonstrates a prima facie case for modification).

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[1]

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Bridget E. Robb, District Judge
Margaret M. Crowley, Settlement Judge
The Kidder Law Group, Ltd.
September Jacobsen
Washoe District Court Clerk

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[1]Pending further proceedings on remand consistent with this order, we leave in place the custody arrangement set forth in the underlying order, subject to modification by the district court to comport with the current circumstances. *See Davis*, 131 Nev. at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand).