

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS ALBERTO CASTANEDA,  
Appellant,  
vs.  
ELAINNE ZHELEZNYAK,  
Respondent.

No. 73976

**FILED**

SEP 14 2018

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

*ORDER OF REVERSAL AND REMAND*

Jesus Castaneda appeals from a post-decree order modifying custody. Eighth Judicial District Court, Family Court Division, Clark County; Rebecca Burton, Judge.

The parties divorced in 2009 with respondent Elaine Zheleznyak being awarded joint legal custody and primary physical custody of the parties' two minor children. At that time, both parties resided in Nevada, but at some point in early 2010, Jesus moved to Bakersfield, California. In 2013, the district court granted Elaine's motion to relocate to Redondo Beach, California with the minor children. Numerous pleadings were subsequently filed, but as relevant to this appeal, in 2016, Elaine filed a motion seeking sole legal and sole physical custody of the parties' children. The district court granted Elaine's motion as unopposed, awarding Elaine sole legal and sole physical custody, and concluding that Jesus' visitation would be suspended without prejudice, until he approached the court. This appeal followed.

First, based on this court's review of the record, it appears that the district court may not have had jurisdiction to modify the custody order at issue in this matter. NRS 125A.315 dictates, as relevant here, that once

a Nevada court issues a custody determination it has exclusive, continuing jurisdiction over the custody matter until the child and the child's parents do not presently reside in Nevada. Here, Jesus moved to California at the beginning of the proceedings in early 2010, while Elaine and both children remained in Nevada. However, in 2013, the district court granted Elaine's request to relocate to California and it appears that all parties have been residing in California since that time. Accordingly, Nevada's exclusive, continuing jurisdiction ended upon Elaine's move to California with the children in 2013. See NRS 125A.315.

However, NRS 125A.315(2) provides that a Nevada court may still modify its custody determination, even after losing exclusive, continuing jurisdiction, if certain criteria are met, as outlined in NRS 125A.305. See *Friedman v. Eighth Judicial Dist. Ct.*, 127 Nev. 842, 847-49, 264 P.3d 1161, 1165-66 (2011). Because the district court failed to address this potential jurisdictional defect, we must reverse and remand this matter to the district court for it to determine whether it has jurisdiction pursuant to NRS 125A.315 and NRS 125A.305. See *Kar v. Kar*, 132 Nev. \_\_\_, \_\_\_, 378 P.3d 1204, 1208 (2016) (explaining NRS 125A.305 and concluding that the district court must determine whether it has jurisdiction and, if not, must stay the proceedings to allow the parties to file in the appropriate forum).<sup>1</sup>

Additionally, we note that, even if the district court did have jurisdiction to modify the custody order at issue, the district court abused


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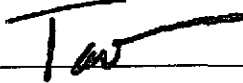
<sup>1</sup>Moreover, based on this court's review of the record and statutory factors provided by NRS 125A.305 and NRS 125A.315, it appears that, on remand, the district court will be required to stay this action while the parties file a custody action in California before the district court can determine whether it has jurisdiction over this matter. See *Kar*, 132 Nev. at \_\_\_, 378 P.3d at 1208.


its discretion in modifying custody without making any findings as to the children's best interest. See *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007) (explaining that 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"). Indeed, regardless of whether a motion to modify custody is opposed or unopposed, the district court is required to consider the best interest factors and make appropriate findings demonstrating that a custody change is in the child's best interest. See *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015) (explaining that in making a custody determination, 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"). This is so because, without specific findings and an adequate explanation for the custody determination, this court cannot determine with assurance whether the custody determination was appropriate. See *id.* at 452, 352 P.3d at 1143.

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.  
Silver

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

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

cc: Hon. Rebecca Burton, District Judge, Family Court Division  
Jesus Alberto Castaneda  
Prokopius & Beasley  
Eighth District Court Clerk