IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YOLANDA A. TREVINO,
Appellant,
vs.
MICHAEL THOMAS BROADWAY,
Respondent.

No. 67780

FILED

DEC 28 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order modifying child custody. Eighth Judicial District Court, Clark County; T. Arthur Ritchie, Jr., Judge.

On appeal, appellant argues the district court abused its discretion in modifying child custody because the court failed to apply the test for modification set forth in *Murphy v. Murphy*, 84 Nev. 710, 447 P.2d 664 (1968). This argument is unavailing, however, as the *Murphy* test was overruled by the Nevada Supreme Court in *Ellis v. Carucci*, 123 Nev. 145, 149-52, 161 P.3d 239, 242-43 (2007) (expressly overruling *Murphy* and holding that "a modification of primary physical custody is warranted only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification").

To the extent appellant's argument that the court improperly found that the parents' circumstances had been materially altered under *Murphy* may be construed as an argument that the court improperly found a substantial change in circumstances under *Ellis*, we conclude that the district court did not abuse its discretion in finding a substantial change in circumstances in this case. *See id.* at 149, 161 P.3d at 241 (explaining that a district court's custody determinations are reviewed for an abuse of

discretion). In particular, the court's findings that, among other things, appellant was undermining respondent's relationship with the child and was overindulging the child, resulting in stomach aches and missed school, were supported by substantial evidence in the record. *See id.* at 149, 161 P.3d at 242 (providing that a district court's factual findings will not be set aside "if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

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[1]Appellant also asserts that custody may not be changed without notice or to punish a parent, but she does not make any argument to demonstrate that the order in this case was entered without notice or for the purpose of punishing her. Thus, we do not address these assertions further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that claims not cogently argued or supported by authority need not be considered on appeal). Moreover, to the extent appellant argues the district court modified the parenting time schedule during the pendency of this appeal, resulting in joint physical custody, actions taken by the district court after the notice of appeal is filed are not properly part of the record on appeal, and thus, we do not consider them in the context of this appeal. *See Arnold v. Kip*, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007) (concluding that arguments presented in a motion for reconsideration could be considered on appeal because, as relevant here, they were properly part of the record on appeal, as they were filed before the notice of appeal from the final judgment).

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Ara H. Shirinian, Settlement Judge
The Law Office of Dan M. Winder, P.C.
Kelleher & Kelleher, LLC
Eighth District Court Clerk