

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NARISSA NARCISO,
Appellant,
vs.
CHARLES DAVIS CHEATHAM, II,
Respondent.

No. 77066-COA

FILED

SEP 11 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Narissa Narciso appeals from a district court order modifying child custody and support. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

Narciso and respondent Charles Davis Cheatham, II, have one minor child together. Pursuant to a 2013 order, the parties were to share joint legal and physical custody of the child, with Cheatham having her from Sunday evening through Thursday evening, and Narciso having her the remainder of the time. However, at some point after entry of the 2013 order, the parties informally agreed to modify their parenting schedule such that Narciso would only have the child from Friday evening until Sunday evening. Then, in mid-2017, Cheatham began withholding parenting time from Narciso upon learning that she had remarried and that her current husband had served 17 years in prison for murder. In response, Narciso moved for both enforcement and modification of the 2013 order, seeking sole physical custody of the child. Cheatham opposed the motions and filed a countermotion also requesting to modify the 2013 order, seeking primary physical custody.

Following a hearing on the pending motions, the district court declined to enforce the 2013 order on grounds that the parties had mutually

19-37966

decided not to follow it, awarded makeup parenting time to Narciso, ordered that the parties continue abiding by their informal custody arrangement on a temporary basis, and scheduled an evidentiary hearing to address the parties' requests for modification. In her pre-hearing memorandum, Narciso backed off her original request for sole physical custody and asked only that the court reinstate the joint custody arrangement reflected in the 2013 order. After the hearing, the district court awarded Cheatham primary physical custody in line with the informal timeshare the parties had been following and ordered Narciso to begin paying Cheatham child support. This appeal followed.

We review a district court's decisions on child custody for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009). The district court's decision must be supported by substantial evidence, which "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* (internal quotation marks omitted). The district court may modify an order establishing joint physical custody if it is in the child's best interest. NRS 125C.0045(2). In making a best interest determination, the district court must "consider and set forth its specific findings concerning, among other things," the factors provided in NRS 125C.0035(4)(a)-(l). "Crucially, the decree or 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 v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

We first consider Narciso's argument that the district court erred by disregarding the 2013 joint custody order as the "starting point" for a change of custody and instead treating the parties' informal timeshare

as if it were controlling.¹ Notably, this assertion is belied by the record as the district court's written findings of fact and conclusions of law acknowledged that the 2013 order was the last controlling custody order issued in the case, and the court then proceeded to determine whether modification of that order was warranted, in line with the parties' requests. *See Bluestein v. Bluestein*, 131 Nev. 106, 111, 345 P.3d 1044, 1048 (2015) (concluding that the district court was required to determine whether modification was in the best interest of the child where one parent moved to modify an existing joint custody order to reflect the parties' actual timeshare).²

We next consider Narciso's arguments that the district court's best interest findings were insufficient and that a remand for specific

¹The parties' informal arrangement was effectively one in which Cheatham had primary physical custody of the child. *See Rivero*, 125 Nev. at 425-26, 216 P.3d at 224 (setting forth the general timeshare differential between joint physical custody and primary physical custody).

²In addressing the modification requests, we note that the district court appears to have concluded that Narciso failed to demonstrate changed circumstances sufficient to warrant a ruling in her favor, which indicates that it was applying the standard relating to modification of primary physical custody, not joint physical custody. *See Rivero*, 125 Nev. at 422 n.4, 216 P.3d at 222 n.4 (“[T]o modify a primary physical custody arrangement, the court must find that it is in the best interest of the child and that there has been a substantial change in circumstances affecting the welfare of the child.”). Nevertheless, because the district court also went on to address whether modification was in the child's best interest, any error in applying the changed circumstances analysis was harmless. *See NRCP 61* (requiring the court, at every stage of a proceeding, to disregard errors that do not affect a party's substantial rights); *Abid v. Abid*, 133 Nev. 770, 776, 406 P.3d 476, 481 (2017) (concluding error was harmless and reversal was not warranted where the error did not affect the district court's custody decision).

findings is necessary. Below, the district court addressed all of the statutory best interest factors and determined that modifying the joint custody order to comport with the parties' informal arrangement was in the child's best interest and that returning to the joint custody arrangement was not. Narciso primarily challenges the weight the district court gave to each statutory best interest factor, and she argues that the district court abused its discretion in modifying custody because it found that every factor either favored Narciso, was neutral, or was inapplicable. However, Narciso ignores that the list of statutory best interest factors is nonexhaustive, meaning that the district court may consider and set forth findings on factors not specifically enumerated in the statute. *See* NRS 125C.0035(4); *Nance v. Ferraro*, 134 Nev. 152, 158, 418 P.3d 679, 685 (Ct. App. 2018). Moreover, this court will affirm the district court's decision so long as it ties its findings on the child's best interest to its ultimate custody determination and those findings are supported by substantial evidence.

Here, in addition to its specific discussion of the enumerated best interest factors, the district court also considered Narciso's multiple relationships and frequent moves—as well as her failure to inform Cheatham that she had married and was living with a man who had previously served time in prison for murder—in concluding that Cheatham provided their child with a more stable environment and that awarding him primary physical custody was therefore in the child's best interest.³ Because these findings, like the court's other findings, are

³Narciso challenges these findings on grounds that they in part concern events that occurred prior to the 2013 custody order and that they are "fault-based." *See Nance*, 134 Nev. at 156, 418 P.3d at 683 (noting the

supported by substantial evidence in the record, and because the court tied its best interest findings to its ultimate custody determination, we conclude that it did not abuse its discretion in awarding primary physical custody to Cheatham.⁴ See *Davis*, 131 Nev. at 451, 352 P.3d at 1143; *Rivero*, 125 Nev. at 428, 216 P.3d at 226; see also *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal);

general rule that evidence preexisting the last custody order is inadmissible to show a change in circumstances for purposes of modification); *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993) (noting that “a court may not use changes of custody as a sword to punish parental misconduct”). Because the district court was considering whether to modify a joint custody order, it was not necessarily precluded from considering events that occurred prior to that order, as no party was required to demonstrate a change in circumstances, and the district court was tasked only with determining the best interest of the child. See NRS 125C.0045(2); *Rivero*, 125 Nev. at 422 n.4, 216 P.3d at 222 n.4. Moreover, the vast majority of the district court’s findings pertained to events that occurred since entry of the 2013 order. Finally, nothing in the district court’s order demonstrates that it intended to punish Narciso; rather, the district court tied its findings to the child’s interest in spending more time in the stable environment Cheatham provides. Thus, we reject Narciso’s arguments on these points.


⁴We also reject Narciso’s argument that the district court never actually found that the parties’ informal arrangement was in the best interest of the child and that, instead, it concluded only that deviating from that arrangement and returning to joint physical custody would not be in the child’s best interest. The district court’s order expressly states that both modifying the prior joint custody order and not disrupting the parties’ informal arrangement was in the best interest of the child. Moreover, to the extent Narciso appears to challenge the validity of the district court’s temporary custody order pending the evidentiary hearing, that order was superseded by the challenged order, and any such challenge is therefore moot. See *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (explaining that appellate courts generally will not consider moot issues).

Quintero v. McDonald, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000)
(refusing to reweigh evidence on appeal).

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Rena G. Hughes, District Judge, Family Court Division
McFarling Law Group
Charles Davis Cheatham, II
Eighth District Court Clerk