IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARY D. JOHNSON, N/K/A MARY JOHNSON-ROSE,
Appellant,
vs.
TIMOTHY D. SCOTT,
Respondent.

No. 69165

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order modifying child custody. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Below, respondent filed a "Motion to Increase Visitation" with the district court seeking additional parenting time with the minor child. Appellant, who had primary physical custody of the child, opposed the motion. Following the hearing on the motion, the district court informed the parties that it was going to change the physical custody arrangement to joint physical custody based on the evidence presented at the hearing, which the court found showed a change of circumstances, as well as based on the best interest of the child. *See Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007) (providing custodial changes should only be made when it is in the child's best interest *and* "there has been a substantial change in circumstances affecting the welfare of the child"). An order awarding the parties joint physical custody was entered and this appeal followed.

While a district court order modifying child custody is reviewed for an abuse of discretion, *see id.* at 149, 161 P.3d at 241, the

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Nevada Supreme Court has held that a district court errs when it modifies custody "without prior specific notice" to the parties that custody may be modified. *Dagher v. Dagher*, 103 Nev. 26, 28, 731 P.2d 1329, 1330 (1987) ("[T]he court erred in changing custody without prior specific notice [to the parties] . . . ."); *see also Mosley v. Figliuzzi*, 113 Nev. 51, 57-58, 930 P.2d 1110, 1114 (1997) (citing *Dagher* with approval), *overruled in part on other grounds by Castle v. Simmons*, 120 Nev. 98, 105 n.20, 86 P.3d 1042, 1047 n.20 (2004). We agree with appellant's assertion that she had no prior specific notice that custody might be modified as respondent's motion specifically noted that, while he was seeking an increase in parenting time, he did not need to demonstrate a change in circumstances for the court to grant his motion because he was not seeking to change the custody arrangement under which appellant had primary physical custody of the child. Indeed, before announcing its decision at the conclusion of the hearing, the district court effectively recognized the absence of this required notice through its oral pronouncement that the parties may be "surprised" by its decision to modify custody.

Because appellant had no prior specific notice that the primary physical custody arrangement might be modified, we conclude that the district court erred in modifying custody. *See Dagher*, 103 Nev. at 28, 731 P.2d at 1330. And while respondent argues that appellant should have been on notice of a possible custody change because, if his request was granted, his time with the child would substantially increase and because the facts presented in his motion and at the hearing showed a

change in circumstances, we conclude that does not meet the specific notice requirement laid out in *Dagher*.[1] Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[2]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

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[1]Based on our decision herein, we need not address whether the district court abused its discretion in its conclusions regarding the best interest factors.

We also decline to address appellant's arguments regarding mandatory mediation, a tax exemption, and alleged cancellation of previous orders as these arguments were not cogently argued or supported by relevant authority. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider claims that are not cogently argued or supported by relevant authority).

[2]Pending further proceedings on remand consistent with this order, we leave in place the custody arrangement set forth in the district court's order, subject to modification by the district court to comport with the current circumstances. *See Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1146 (2015) (leaving certain provisions of a custody order in place pending further proceedings on remand).

cc: Hon. Nathan Tod Young, District Judge
Shawn B. Meador, Settlement Judge
Allison W. Joffee
Jamie C. Henry
Douglas County Clerk