

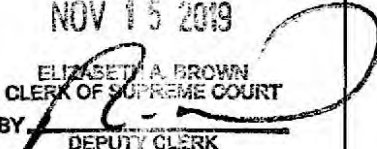
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KORI LOVETT CAGE,  
Appellant,  
vs.  
MALIKA COPPEDGE,  
Respondent.

No. 76006-COA

**FILED**

NOV 15 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING*

Kori Lovett Cage appeals from a district court order modifying child custody. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

Kori and respondent Malika Coppedge were never married, but have two minor children in common. The parties participated in extensive proceedings regarding child custody and support, which eventually resulted in an order awarding them joint legal and physical custody of the children and requiring Malika to pay \$600 per month in child support. Malika later moved to modify her support obligation, asserting that it should be eliminated because her employer was not paying her, she was recovering from injuries sustained in an automobile accident, and she was caring for her ill mother. Following a hearing, the district court ordered that Malika's support obligation be held in abeyance and directed the parties to file updated financial disclosure forms, directed Malika to file proof that she was disabled, and directed Kori to file an opposition to Malika's motion to modify support.

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While Malika submitted the required documentation, Kori failed to do so by the next scheduled hearing, which prompted the district court to direct him to file his updated financial disclosure form and an opposition to Malika's motion to modify support within 10 days. In the interim, Malika filed a separate motion to modify custody in which she argued that she had de facto primary physical custody and that the arrangement was in the children's best interest. Kori later filed an untimely opposition to Malika's motions to modify support and custody and a financial disclosure form.

Because Kori's filings were untimely, the district court concluded that he waived any support from Malika from the filing of her motion to May 2017 when the court heard Malika's motions. With respect to custody, the district court considered the merits, awarded Malika temporary primary physical custody based on its summary conclusion that the arrangement was in the children's best interest, and directed Kori to pay child support based on the modification to the parties' custodial arrangement. The district court also scheduled an evidentiary hearing to further address the custody issue. After the evidentiary hearing, the district court found that Malika had de facto primary physical custody and that the arrangement was in the children's best interest, and as a result, the court removed the temporary status from the newly entered custody arrangement and directed Kori to continue paying support. This appeal followed.

On appeal, Kori initially challenges the district court's interlocutory decisions with respect to Malika's motion to modify her

support obligation, arguing that they violated NRS 125B.080(4) and (8), which address minimum support obligations and willful underemployment.<sup>1</sup> Insofar as Kori directs his challenge at the district court's initial decision to hold Malika's support obligation in abeyance pending its evaluation of her motion, his challenge is moot, as the court subsequently concluded that he waived any support from Malika from the filing of her motion through May 2017 when the court heard the matter. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (providing that appellate courts generally will not consider moot issues). But to the extent that Kori's challenge is directed at the district court's waiver determination, he is correct that the district court abused its discretion. *See Rivero v. Rivero*, 125 Nev. 410, 438, 216 P.3d 213, 232 (2009) (reviewing the district court's child support decision for an abuse of discretion).

Indeed, rather than evaluating Malika's request to modify her support obligation based on the statutory formula and guidelines in NRS 125B.070 and .080 to ensure that "the children are being taken care of as well as possible under the financial circumstances in which the [parties] f[ound] themselves," *Barbagallo v. Barbagallo*, 105 Nev. 546, 551, 779 P.2d 532, 536 (1989), *overruled in part on other grounds by Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998), the district court eliminated Malika's support obligation without regard to the children based on waiver

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<sup>1</sup>While the district court directed Kori to pay child support based on its modifications to the parties' custodial arrangement, Kori does not challenge the court's decisions with respect to his support obligation.

principles, which is an approach that the supreme court has specifically rejected in the context of requests to modify support obligations. See *Fernandez v. Fernandez*, 126 Nev. 28, 35, 222 P.3d 1031, 1036 (2010) (“Because a child support order affects the child’s interests, as much or more than the parents’, we are disinclined to find that a parent can waive the modification statutes’ protections.”). Consequently, we reverse the district court’s order treating Malika’s support obligation as waived from the filing of her motion to modify support through May 2017 and remand the matter for the district court to evaluate Malika’s motion pursuant to the statutory formula and guidelines in NRS 125B.070 and .080.

Turning to the award of primary physical custody to Malika, Kori initially argues that reversal is warranted under *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007), because she failed to establish that there had been a substantial change in circumstances.<sup>2</sup> But *Ellis* sets forth the standard for modifying primary physical custody arrangements. 123 Nev. at 150, 161 P.3d at 242. And although the district court found that Malika had de facto primary physical custody, Kori’s reliance on *Ellis* is misplaced because Malika sought to modify an existing joint physical custody order to reflect the parties’ de facto custody arrangement and was therefore only required to show that the modification would be in the children’s best interest. See *Rivero*, 125 Nev. at 430, 216 P.3d at 227 (distinguishing

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<sup>2</sup>Although Kori also challenges the district court’s prior decision to award Malika temporary primary physical custody, his challenge is moot in light of the court’s subsequent entry of its ultimate custody order. See *Bristol*, 126 Nev. at 602, 245 P.3d at 574.

between the tests for evaluating requests to modify joint and primary physical custody arrangements); *see also* *Bluestein v. Bluestein*, 131 Nev. 106, 113, 345 P.3d 1044, 1049 (2015) (concluding that the district court was required to consider whether modification was in the child's best interest where a party moved to modify an existing joint physical custody order to reflect her exercise of de facto primary physical custody).

In that respect, Kori further argues that the district court did not adequately tie the children's best interests to its decision to award Malika primary physical custody. *See Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015) ("[T]he decree or order must tie the child's best interest, as informed by specific, relevant findings respecting the [best interest] factors, to the custody determination made."). But a review of the challenged order reflects that the district court articulated detailed findings on a variety of issues pertinent to the children's best interests, including the nature of the parties' de facto custodial arrangement, and that the court evaluated each of the best interest factors based on those findings in a manner that clearly explained the basis for the its decision. *See Bluestein*, 131 Nev. at 109, 345 P.3d at 1046 (explaining that the parties' de facto custodial arrangement is a relevant consideration in evaluating what custodial arrangement is in a child's best interest, which is the primary issue in a modification analysis); *see also* NRS 125C.0035(4) (setting forth a nonexhaustive list of factors for the district court to consider in evaluating the best interest of a child).

Attempting to overcome the district court's assessment of the children's best interest, Kori dedicates the majority of his fast track

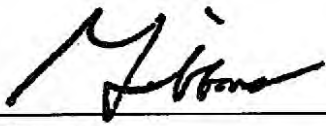
statement to arguing that the district court failed to consider certain matters or that evidence and testimony in the record supported a contrary interpretation of the children's best interest.<sup>3</sup> But the challenged order specifically indicates that, in reaching its decision, the district court considered all of the parties' filings and the testimony and exhibits that they provided at the evidentiary hearing. Moreover, Kori essentially directs his arguments at the weight of the evidence and witness credibility, which are matters outside of this court's purview. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244 (explaining that appellate courts will not reweigh witness credibility); *see also Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (providing that appellate courts will not reweigh evidence). And because a review of the record reveals that the district court's findings with respect to the best interest factors are supported by substantial evidence, we conclude that it did not abuse its discretion in awarding Malika primary physical custody of the children. *Ellis*, 123 Nev. at 149, 161 P.3d at 241-42 (reviewing a district court order modifying custody for an abuse of discretion and explaining that the court's factual findings in a custody matter will not be disturbed "if they are supported by substantial evidence, which is evidence that a reasonable person may accept as


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<sup>3</sup>Although Kori also seemingly disagrees with several of the district court's evidentiary decisions, he does not present any cogent argument with respect to those decisions, and we therefore need not consider them. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider issues that are not supported by cogent argument).

adequate to sustain a judgment.” (internal footnote omitted)). Thus, given the foregoing, we affirm the district court’s order modifying custody.<sup>4</sup>

It is so ORDERED.<sup>5</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Rena G. Hughes, District Judge, Family Court Division  
Kori Lovett Cage  
Ghandi Deeter Blackham  
Eighth District Court Clerk

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<sup>4</sup>To the extent that Cage raises arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief, are not properly before this court, or need not be reached given our disposition of this appeal.

<sup>5</sup>We have considered the proper person notice that appellant filed on November 13, 2019, and we conclude that no action is required.