

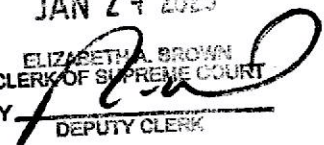
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARGARETTE L. COOPER, A/K/A
MAGGIE COOPER, F/K/A MAGGIE L.
WHEELER,
Appellant,
vs.
DEREK M. JONES,
Respondent.

No. 78347-COA

FILED

JAN 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Margarette L. Cooper appeals from a district court order modifying custody and granting relocation. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

Margarette (Maggie) and respondent Derek Jones entered into a stipulated decree of custody whereby the parties shared joint legal and joint physical custody of their minor child. The district court later modified the custody arrangement, awarding Maggie primary physical custody and granting her request to relocate with the child to Kansas. Approximately two years later, Derek moved to modify custody, seeking primary physical custody and to relocate the child back to Nevada. Following an evidentiary hearing, the district court granted the motion, permitting the child to move back to Nevada. This appeal followed.

On appeal, Maggie challenges the district court's order granting Derek primary physical custody and allowing the child to relocate to Nevada, while Derek asserts the challenged order is proper. This court reviews a child custody decision for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). Similarly, we review a district

court's decision to grant a motion for relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Ellis*, 123 Nev. at 149, 161 P.3d at 242. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.*

When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Moreover, 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." *Id.* Without specific findings and an adequate explanation for the custody determination, this court cannot determine with assurance whether the custody determination was legally appropriate. *Id.* at 452, 352 P.3d at 1143.

Additionally, when a parent seeks to modify a primary physical custody arrangement, the parent must demonstrate that there has been a substantial change in circumstances affecting the welfare of the child and that the child's best interest is served by the modification. *Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43. And any time a parent seeks permission to relocate a child, the district court must consider the factors enumerated in NRS 125C.007, including whether the best interest of the child is served by allowing the relocation.

Here, the district court correctly set forth the modification standard established by *Ellis*. As to the first prong, the district court found that there had been a substantial change in circumstances, and that conclusion is supported by findings in the district court's order. But, as to

the second prong, the district court then summarily concluded that it was in the child's best interest to modify custody and allow relocation, without including any findings relating to the best interest of the child in its written order. Indeed, the district court's order does not cite to NRS 125C.0035 or provide express written findings as to all of the statutory factors. *See Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016) (holding that a district court abuses its discretion in modifying custody if it "fail[s] to set forth specific findings as to all of [the best interest] factors").

While the court's order includes some factual findings, the findings are largely a recitation of the testimony presented, without setting forth the conclusion reached based on this testimony. Moreover, the court's order fails to tie the child's best interest to the ultimate custody determination. *See Davis*, 131 Nev. at 451, 352 P.3d at 1143 (stating that "the decree or order must tie the child's best interest, as informed by specific, relevant findings respecting the [statutory best interest factors] and any other relevant factors, to the custody determination made"). Based on the foregoing, we cannot say with assurance that the custody modification was made for appropriate legal reasons and, thus, we necessarily reverse and remand this matter for specific, written findings as to the child's best interest. *Id.* at 452, 352 P.3d at 1143.


Similarly, the district court's order correctly set forth the relocation standard and addressed each of the factors pursuant to NRS 125C.007. However, NRS 125C.007 requires the district court to consider the best interest of the child when determining whether relocation is appropriate. And because, as discussed above, the district court failed to make any factual findings relating to the child's best interest, we cannot

conclude the district court properly exercised its discretion in allowing the child to relocate. *See Flynn*, 120 Nev. at 440, 92 P.3d at 1227.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹To the extent the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

Moreover, in reversing the district court's decision on this basis, we express no opinion on the ultimate custody decision, which remains within the district court's discretion. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. 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*, 131 Nev. at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand).

cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Margarette Cooper
Derek M. Jones
Eighth District Court Clerk