

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW HUDSON,
Appellant,
vs.
ANDREA MAY BARRETT, F/K/A
ANDREA MAY HUDSON,
Respondent.

No. 80695-COA

FILED

JUL 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Andrew Hudson appeals from a post-decree of divorce order modifying child custody. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

In the proceedings below, the parties were divorced by way of a decree of divorce filed in 2017. Pursuant to the terms of the decree, the parties shared joint legal and joint physical custody of their two minor children. In November 2019, respondent Andrea Barrett moved to modify custody, seeking sole legal and sole physical custody of the children, alleging that Hudson was unable to provide adequate childcare during his custodial time and that she had been exercising primary physical custody of the children since July 2019. In particular, Barrett alleged that she had the children six days per week and that Hudson was only capable of exercising his custodial time one to two days per week due to his work schedule. At the hearing on the motion, Hudson agreed that the parties had modified their timeshare due to his work schedule, and requested that they continue to maintain their modified schedule temporarily, until his work schedule permitted him to take the children more often. But Hudson indicated that he wished to maintain joint physical custody and only sought a temporary modification until he

could obtain a consistent work schedule. The district court entered an order modifying the parties' timeshare, concluding that the parties stipulated to the modification. This appeal followed.

On appeal, Hudson challenges the district court's order modifying custody, asserting that he did not stipulate to permanently modifying the custody arrangement, that the district court erred in finding there had been a de facto change of custody, and that the court erred in failing to make findings as to the children's best interest.

This court reviews a child custody decision for an abuse of discretion, but "the district court must have reached its conclusions for the appropriate reasons." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007). In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. "Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted). When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis*, 131 Nev. at 451, 352 P.3d at 1143.

Here, as noted above, Hudson contends that he did not stipulate to modify the parties' custodial arrangement; rather, he argues that he only agreed to a temporary modification of the parties' timeshare and indicated that he wished to maintain a joint physical custody status. Barrett asserts that while the parties did agree to temporarily modify the timeshare, the temporary change lasted over a seven month period, such that a de facto change in custody occurred. The district court's order modifies the parties'

timeshare arrangement, summarily concluding that the parties stipulated to the same.


Based on the timeshare the district court ordered, it appears that the court modified the parties' custodial arrangement from joint physical custody to primary physical custody. But the district court's order fails to state as such and fails to include any findings regarding the timeshare the parties were exercising or whether it was in the children's best interest to modify custody and/or the parties' timeshare. *See Rivero v. Rivero*, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009) (explaining that when deciding whether to modify a physical custody agreement, the district court must first determine what type of physical custody arrangement exists, and must make specific findings of fact demonstrating that modification is in the best interest of the children). And without any findings, this court is unable to determine whether the court properly modified custody or whether the court applied the proper standard in doing so. *See Davis*, 131 Nev. at 451-52, 352 P.3d at 1143 (explaining that without findings and an adequate explanation for the custody determination, an appellate court cannot say whether the custody determination was made for appropriate legal reasons). Thus, we necessarily reverse and remand this matter for additional findings.

Accordingly, we

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mathew Harter, District Judge
Law Offices of Louis C. Schneider, LLC
Andrea May Barrett
Eighth District Court Clerk