

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS ALBERT CASS,
Appellant,
vs.
CHRISTA ROSE CLASSON,
Respondent.

No. 83297-COA

FILED

FEB 11 2022

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

ORDER OF REVERSAL AND REMAND

Thomas Albert Cass appeals from a post-decree order regarding child custody. Eighth Judicial District Court, Family Court Division, Clark County; Mary D. Perry, Judge.

In the proceedings below, the parties were divorced by way of a decree of divorce filed in 2018. Pursuant to the terms of the decree, the parties were awarded joint legal and joint physical custody of their minor child. In July 2020, Thomas moved for an order permitting the child to attend a private school and respondent Christa Classon opposed. At the time set for an evidentiary hearing, in February 2021, the parties purportedly agreed that the child could attend McCaw, a magnet school, or Legacy at Cadence, a charter school. The district court subsequently entered an order indicating that the parties put the terms of their agreement on the record and that their stipulation shall be the order of the court. The court's order goes on to order that the parties are to agree on the school the child will attend, and if they cannot agree, the child will stay enrolled at his current, public school.

In June 2021, Thomas filed another motion for an order regarding the child's educational placement. In his motion, Thomas

indicated that the court previously ordered the child to attend the magnet school or charter school, and that the child was accepted into two locations for the charter school—Legacy at Cadence, near Christa’s residence, and Legacy at North Valley, near his residence. According to Thomas, Christa asserted she could not transport the child to Legacy at Cadence, such that Thomas would have to pay the child’s babysitter to transport the child to school during Christa’s custodial time. Thomas asserted that, in light of this, the child should be permitted to attend Legacy at North Valley so Thomas would not have as long of a commute during his custodial time, as he was incurring the cost for all transportation. Christa opposed the motion, asserting that the child needed stability, that he was excelling in his current school, and that the distance to Legacy at North Valley would make it impossible for her to transport the child due to her work schedule. Christa also argued that Thomas had moved residences multiple times, that he was only seeking to change the child’s school for his own convenience, and that he would continue to seek to change the child’s school in the future based on his current residence and his own convenience. The district court denied Thomas’s motion, noting that Thomas has filed multiple motions to move the child’s school and his “decision to make multiple moves away from the school was not in the best interest of the Minor Child to change schools.” This appeal followed.

On appeal, Thomas challenges the district court’s denial of his request to allow the child to attend Legacy at North Valley. In particular, Thomas asserts that the district court failed to make specific findings regarding the factors enumerated in *Arcella v. Arcella*, 133 Nev. 868, 407 P.3d 341 (2017). Christa contends that the district court properly considered the factors and concluded that Thomas failed to demonstrate an

evidentiary hearing was warranted as the only basis for his motion was that the new school location was more convenient for him. 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). 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. Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *Id.*

When parents sharing joint legal custody disagree as to a child's education, the district court may decide the matter based on what is in the child's best interest. NRS 125C.0045(1)(a); *Arcella*, 133 Nev. at 869-70, 407 P.3d at 344. To determine what school is in the child's best interest, the district court should consider a variety of factors, including the child's educational needs, the curriculum at each school, the length of the commute and other logistical concerns, as well as whether changing the school would alienate either parent, amongst other things. *Arcella*, 133 Nev. at 872-73, 407 P.3d at 346. Importantly, these factors are not exhaustive and the district court should consider any other factors based on the particular facts in each case. *Id.* at 873, 407 P.3d at 346-47. When determining the best interest of the child, the district court is required to make specific findings and provide an adequate explanation for the custody determination, without which this court cannot determine whether the district court made its determination for the appropriate reasons. *Davis v. Ewalefo*, 131 Nev. 445, 451-52, 352 P.3d 1139, 1143 (2015).

Here, the district court's first order regarding educational placement concluded that the parties reached an agreement, and that agreement would be the order of the court, but if the parties could not agree

on the child's school, the child would remain at the public school in which he was currently enrolled. After Thomas filed his second motion, asking for the child to attend a third school instead—still at Legacy, but at a different location—because the parties could not agree on a school, the district court summarily denied the motion, apparently based on Thomas filing multiple motions and the distance to Thomas's residence being an insufficient reason to change the child's school.

To the extent the district court denied Thomas's motion because the court believed Thomas filed numerous motions without merit, the record indicates that Thomas only filed two motions—his initial motion, resulting in an apparent stipulation, and his second motion filed after the parties no longer agreed. Thus, any conclusion that Thomas has repeatedly filed motions in an effort to change the child's school every time he changes his residence is not supported by the record. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242.


To the extent the district court denied Thomas's motion on the basis that the distance between his residence and the school was an insufficient reason to change the child's school, we disagree. Rather, the length of a parent's commute to a child's school and other logistical concerns are one of the specifically enumerated factors the district court should consider in making an educational placement decision. *Arcella*, 133 Nev. at 873, 407 P.3d at 346. Based on our review of the record, it appears that the parties agreed the child could attend Legacy, but then could not agree as to which location, purportedly in light of Christa's inability to transport the child. While the parents' commute is just one factor for the court's consideration, the parties both raised several arguments regarding the remaining *Arcella* factors, and the district court here failed to make any

findings regarding the remaining factors or otherwise clearly explain the basis for its determination. *See Davis*, 131 Nev. at 451-52, 352 P.3d at 1143. And because we are unable to discern from the record whether the district court's decision was made for appropriate reasons, we are compelled to reverse this matter for the district court to make appropriate findings. *See id.*

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

cc: Hon. Mary D. Perry, District Judge, Family Court Division
Thomas Albert Cass
Christa Rose Classon
Eighth District Court Clerk

¹Insofar as 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.