

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HEATHER WALENT,
Appellant,
vs.
KYLE PETTERSON,
Respondent.

No. 84057-COA

FILED

NOV 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Heather Walent appeals from a post-decree order modifying child custody. First Judicial District Court, Carson City; James Todd Russell, Judge.

In June 2012, respondent Kyle Petterson initiated the proceedings below by filing a complaint to establish paternity and custody. Pursuant to the subsequent decree of paternity, the parties shared joint legal custody and Heather was awarded primary physical custody of their minor child. The district court later modified the parties' parenting plan, awarding them joint legal and joint physical custody.

As relevant here, in November 2021, Heather filed a motion seeking a court order requiring the parties to attend group therapy, as she was struggling with the child's behavior. Kyle did not file an opposition to Heather's motion, but filed a competing motion to modify custody. The district court set Heather's motion for a hearing, but summarily denied Kyle's motion on the basis that the matter was already set to be heard on

Heather's motion, noting that "all matters relating to custody and visitation" would be addressed at the hearing.

After a hearing on Heather's motion, the district court modified custody, awarding Kyle primary physical custody of the parties' child. In its order, the district court summarily concluded that there had been a substantial change in circumstances warranting a custody modification and that it was in the child's best interest to award Kyle primary physical custody. This appeal followed.

On appeal, Heather challenges the custody modification, asserting that the district court abused its discretion in modifying custody as the court failed to make sufficient findings as to the best interest of the child. 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). And although we review the district court's decisions deferentially, the district court must apply the correct legal standard in reaching its conclusions, and no deference is owed to legal error or to findings so conclusory they mask legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450-51, 352 P.3d 1139, 1142-43 (2015); *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617-18 (1992).

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. And in considering the best interest of the child, 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.” *Davis*, 131 Nev. at 451, 352 P.3d at 1143. Without specific findings and an adequate explanation for the custody determination, this court cannot determine whether the custody determination was appropriate. *Id.* at 452, 352 P.3d at 1143.

Here, the district court’s order fails to make specific, relevant findings as to the best interest factors. *See id.* at 451, 352 P.3d at 1143. Although the order notes that the child is unhappy, fails to get along with Heather, and has missed several days of school—all of which could be relevant to the best interest factors—the district court failed to make findings as to each of the best interest factors or tie these findings to the custody determination. *See id.*; *see also 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”). Based on the foregoing, we cannot say with assurance that the custody modification was made for appropriate legal reasons. *See Davis*, 131 Nev. at 452, 352 P.3d at 1143. Thus, on remand, the district court must make specific findings supporting its child custody order, should it determine modification is warranted.¹

¹In his fast track response, Kyle indicates that after the notice of appeal was filed, the district court reconsidered the order currently on appeal and again modified custody, returning the parties to a joint physical custody arrangement. Although the record on appeal contains an order indicating the same, that order is not properly before this court in the

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.
Bulla

instant appeal. *See Arnold v. Kip*, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007) (explaining that an order reconsidering a decision is only properly before the appellate court if entered prior to the notice of appeal being filed). Regardless, we note that the timely filing of a “notice of appeal divests the district court of jurisdiction to act and . . . the district court is divested of jurisdiction to revisit issues that are pending before this court” except as to collateral matters—which means the court does not have jurisdiction to modify the order and issues challenged on appeal, as the court has done here. *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (internal quotation marks omitted). And if the court intends to modify its order after the notice of appeal is filed, it must certify its intent to do so and either party must then “file a motion (to which the district court’s certification of its intent to grant relief is attached) with [the appellate] court seeking a remand to the district court for entry of an order” modifying the prior order. *Foster v. Dingwall*, 126 Nev. 49, 53, 228 P.3d 453, 455 (2010). Because neither party followed this procedure, we do not further address Kyle’s argument that the district court has since modified its custody order to again award the parties joint physical custody.

²Insofar 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.

cc: Hon. James Todd Russell, District Judge
Heather Walent
Kyle Petterson
Carson City Clerk