IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JON PEARSON,
Appellant,
vs.
MELISSA PEARSON,
Respondent.

No. 89033-COA

FILED

MAY 22 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Jon Pearson appeals from a district court order denying his motion to modify child custody for the purpose of relocation and awarding Melissa Pearson primary physical custody of their two minor children. Eighth Judicial District Court, Family Division, Clark County; Regina M. McConnell, Judge.

Jon and Melissa Pearson married in March 2012 in Las Vegas. Melissa gave birth to their twin boys, A.P. and N.P., in September 2012. Both boys have medical needs that require specialized care. N.P. has been diagnosed with epilepsy, requires speech therapy, and was prescribed ADHD medication after struggling with behavioral problems in school. A.P. sees a pediatric cardiologist for a congenital heart defect, and Jon claims A.P. might have ADHD as well.

In August 2019, Jon and Melissa divorced. Pursuant to their stipulated divorce decree, Jon and Melissa were to share joint physical and legal custody of the boys, and Jon would pay increasing child support over time. By agreement, the parties followed a one week on/one week off custody schedule. Shortly after divorcing Melissa, Jon married his current

wife, Yuliya. Jon and Yuliya have a son of their own, S.P., who was born in March 2021.

In January 2024, Tesla, Inc., offered Jon a job which, if accepted, required him to move to Austin, Texas. Jon perceived several benefits with this opportunity, such as a significant increase in pay, free health insurance, employee stock-purchasing plans, and continuing educational programs. Furthermore, based on his research, Jon believed that the quality of education and healthcare for the boys in Austin was superior to that in Las Vegas. Jon reached out to Melissa to discuss the Tesla offer and a potential modification of their custody arrangement. After detailing the possible benefits of the move, he proposed a new custody arrangement and stated he would not seek to modify his support obligation. Melissa rejected Jon's proposal.

In February, Jon filed an emergency motion for primary physical custody for the purpose of relocation. Because his relocation was imminent, Jon sought both a temporary and a permanent order permitting relocation. In addition to primary physical custody, Jon sought (1) sole legal custody of the children for purposes of making healthcare decisions, (2) child support from Melissa if granted primary physical custody, and (3) an award of attorney fees. Melissa opposed the emergency motion.

The district court held an initial hearing on Jon's temporary relocation request in late February. The court denied that request and set an evidentiary hearing on custody and relocation for May. In the meantime, Jon relocated to Texas with Yuliya and S.P., while the twin boys, A.P. and N.P., stayed with Melissa pending the court's final resolution of Jon's relocation motion.

Three witnesses testified at the evidentiary hearing in May: Jon, Melissa, and Melissa's daughter from a previous marriage, Jessica. Jon started by discussing his relationship with the boys before describing his career as a lawyer, leading up to the job offer from Tesla. Primarily, Jon focused on the quality of medical care in Austin, as well as the other perceived benefits of the city. Based on his research, Jon identified a highly regarded epilepsy center and research institute at the University of Texas in Austin where N.P. could be treated under Jon's improved insurance plan. Jon testified that the nearby neighborhood school the boys would attend in Austin demonstrated better student proficiency levels and lower class-size ratios than comparable Las Vegas schools. Additionally, Jon testified that both the neighborhood school and the city of Austin offered greater opportunities in music, robotics, esports, art, and outdoor activities than the boys' current situation in Las Vegas. Jon testified that his house in Austin provided a more comfortable living space for the boys than Melissa's smaller Las Vegas residence. Jon detailed the prior custody arrangement, Melissa's history of alcohol abuse, his ongoing conflicts with Melissa related to the boys' healthcare needs, the boys' relationship with their younger half-brother S.P., and the boys' extracurricular activities and interests.

Melissa testified about her close relationship with the boys and how it might be affected if they moved to Texas. She discussed her divorce from Jon and, in response to Jon's briefing and testimony, explained her struggles with alcohol in the past and her current sobriety. She discussed the boys' medical and dental issues, the specialists they saw, the medication they were prescribed, and how she and Jon navigated these issues. Melissa briefly spoke about her relationship with Yuliya and their cooperation. Melissa highlighted the benefits of Las Vegas for the boys, including places

to foster their interests in town, their nearby extended family, and outdoor activities around the valley. Melissa concluded by reiterating her opposition to the relocation.

At the conclusion of the hearing, the district court made no oral pronouncement or other indication as to how it would rule but invited the parties to submit draft proposed orders for the court's consideration. Thereafter, the court entered an order denying Jon's motion for primary physical custody for the purpose of relocating and awarding Melissa primary physical custody of the children. In doing so, the court adopted most of the findings and conclusions contained in Melissa's proposed order.

In its order, the district court initially addressed Jon's request for primary custody and found that Jon's new job and his move to Texas did not constitute a substantial change in circumstances that affected the welfare of the children. The court then considered the 12 custody best interest factors outlined in NRS 125C.0035(4). Many of the court's best interest findings were neutral. However, the court appeared to weigh a number of factors against Jon. For instance, in considering the wishes of the children, *see* NRS 125C.0035(4)(a), while the court "presumed they would like to see each parent as equally as possible,"[1] the court noted "that is not possible now that Jon has relocated to the State of Texas." When considering "[t]he level of conflict between the parents," NRS 125C.0035(4)(d), the court found Jon responsible for the elevated level of conflict, which the court attributed to Jon's decision to relocate and "to put Melissa's character, skills as a mother and caretaker on trial" in the course

[1]At the time, the boys were 11 years old, and the court determined they were not of a sufficient age to have a preference. The parties do not dispute this finding on appeal.

of litigation. Although the court found that both parents had the ability to cooperate to meet the children's needs, *see* NRS 125C.0035(4)(e), the court found "that Jon delegates many parenting responsibilities to his current wife, Yuliya." Further, although the district court had "no concern over either party's mental or physical health," *see* NRS 125C.0035(4)(f), the court took issue with Jon's assertion, in his moving papers and at the hearing, that Melissa battled alcohol in the past when he knew that she stopped drinking eight years earlier.

The district court found that two other custody factors favored Melissa. As to the children's physical, developmental, and emotional needs, *see* NRS 125C.0035(4)(g), the court found that both children had medical needs that required monitoring by health care professionals, and that their current specialists in Las Vegas were adequately caring for them. Additionally, the court found that the children's educational needs were being met in Las Vegas, with the teachers and school staff giving N.P. extra attention, including speech therapy, and both children making honor roll. Ultimately, the court determined "that Jon did not prove that there was a problem with the children's current medical care" or that their "educational needs were not being met in Las Vegas." Finally, as to the children's ability to maintain relationships with any sibling, *see* NRS 125C.0035(4)(i), the district court found that residing in Nevada would allow the boys to maintain a relationship with their adult half-sister Jessica, and that they could see "their toddler half-brother in Texas each time they visit."

After discussing the custody factors, the district court assessed the threshold requirements for relocation under NRS 125C.007(1). The court concluded that (1) Jon's reasons for relocating to Texas were reasonable, but that (2) it was not in the boys' best interests to relocate to

Texas, and (3) there was no actual benefit to the boys in relocating to Texas. In determining that relocation was not in the boys' best interests, the court noted that Jon's relocation request "did not consider the importance of the children being able to consistently spend time with both of their parents" and relied on its prior analysis of the custody factors. In determining that there was no actual benefit to relocation, the court found that Jon "did not provide sufficient evidence to prove that the children's current schooling and medical care are substandard or lacking and that the children require a new school and new doctors to thrive."

Next, the district court analyzed the six relocation factors outlined in NRS 125C.007(2). As to the first factor, the court found that relocation would not improve the children's quality of life because they would be apart from their mother and extended family, they would leave their friends, current school and extracurricular activities, and relocation would disrupt their continuity of medical care. As to the second factor, the court found that Jon's motives to relocate were "honorable and not intentionally designed to frustrate [Melissa's] ability to have equal time with the children," but that if it permitted relocation, Melissa could not participate in the children's day-to-day lives as she does currently. As to the third factor, the court found that Jon would comply with visitation orders if it granted relocation.[2] As to the fourth factor, the court found that

[2]Although Nevada's relocation statute uses the term "visitation" in several places, *see* NRS125C.007(2)(b),(c) and (e), and "parenting time" in one place, *see* NRS125C.007(1)(a), we note that "parenting time" is the preferred and more modern term, *see* Cynthia R. Mabry, *Indissoluble Nonresidential Parenthood: Making It More Than Semantics When Parents Share Parenting Responsibilities*, 26 BYU J. Pub. L. 229, 231 (2012) (discussing the shift in usage of certain family law terms and explaining

Melissa's motives in resisting relocation were honorable. As to the fifth factor, which addresses whether the nonrelocating parent might "maintain a visitation schedule that will adequately foster and preserve the parental relationship," NRS 125C.007(2)(e), the court found that "there will be no preservation of Melissa's current relationship with the children, as they would live thousands of miles away." Finally, as to the sixth catchall factor, the court noted "that Jon has shown a troubling disdain for Melissa in the way that he attacked her as a mother to the parties' children" and "that Jon may not foster Melissa's relationship with the boys but instead replace her with his new family."

Ultimately, the district court (1) denied Jon's request for primary physical custody for the purposes of relocation, (2) awarded Melissa primary physical custody, (3) set a parenting time schedule for Jon, and (4) ordered Jon to pay $2,465.00 per month in child support (reduced by $600 in months where Jon visits the children to account for transportation costs). The court also ordered that the parents abide by the 30/30 rule for reimbursement of healthcare costs and stated that Melissa was entitled to attorney fees and costs; however, the court did not award any such fees but rather ordered Melissa's counsel to file a memorandum of fees and costs.[3] This appeal followed.

---

that "[p]arenting time, formerly called visitation, is the time awarded the non-residential parent after a divorce when the other parent is awarded custody"). Unless quoting the statute directly, this order will use the term "parenting time" in place of "visitation" where appropriate.

[3]We note that the district court entered a separate order granting Melissa attorney fees on October 31, 2024, and that Jon separately appealed from that order. *See Pearson v. Pearson*, Docket No. 89504. Thus, to the extent Jon seeks to have the attorney fee award reviewed in this appeal, we

On appeal, Jon argues that the district court erred by adopting Melissa's proposed order with little changes, and by finding (1) there was no substantial change of circumstances affecting the welfare of the children, (2) that relocation was not in the boys' best interests, (3) there was no actual advantage for the boys to relocate to Texas, and (4) that the relocation factors of NRS 125C.007(2) disfavored relocation. Melissa disagrees on each point and contends that substantial evidence supported each of the district court's findings. In this case, although the district court was free to adopt Melissa's proposed order as its own, *see Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 484 (Ct. App. 2023), the district court made a number of interrelated errors in its order and we cannot conclude that those errors were harmless such that we must ultimately reverse and remand.

The district court enjoys "broad discretionary powers to determine child custody matters, and we will not disturb the district court's custody determinations absent a clear abuse of discretion." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). "An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). An abuse of discretion can also occur when the district court "disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016); *see also Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) (holding that a decision made "in

---

decline to do so. *See Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006) ("An order awarding attorney fees and costs is substantively appealable as a special order after final judgment."); NRAP 3A(b)(8).

clear disregard of the guiding legal principles [can be] an abuse of discretion").

When parents share joint physical custody of a child and one parent desires to relocate with the child to another state, the relocating parent must (1) obtain consent from the nonrelocating parent to relocate with the child or, if the nonrelocating parent refuses to grant such consent, (2) petition the court for primary physical custody for the purpose of relocating. *See* NRS 125C.0065(1). "In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child." NRS 125C.0035(1); *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 280 (Ct. App. 2023). In determining the best interest of the child, the court must consider the 12 custody factors. NRS 125C.0035(4). The district court must make "specific, relevant findings" as to these and any other relevant factors. *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). The court must also explain how its findings regarding the custody factors tie to its custody determination. *Id.* at 451-52, 352 P.3d at 1143.

A relocating parent must demonstrate three threshold requirements by a preponderance of the evidence:

> (a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time;
>
> (b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and
>
> (c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

NRS 125C.007(1), (3); *see Monahan v. Hogan*, 138 Nev. 58, 70, 507 P.3d 588, 597 (Ct. App. 2022). If the relocating parent meets the above threshold

requirements, then the district court must consider six additional factors in determining whether to grant the petition to relocate. NRS 125C.007(2). We examine the foregoing law alongside Jon's arguments in turn.

The district court abused its discretion in finding no substantial change in circumstances

Because the parties shared joint physical custody at the time of Jon's relocation motion, Jon had the initial burden of proving that he should be awarded primary physical custody for the purpose of relocation. *See* NRS 125C.0065(1). Pursuant to NRS 125C.0045(2), a district court may modify an order for joint custody when the best interest of the child requires such modification. To promote custodial stability and to discourage frequent litigation of custody disputes, the supreme court has required that a party demonstrate "a substantial change in circumstances" before a district court may grant such a request. *Ellis*, 123 Nev. at 150, 161 P.3d at 242. A parent's relocation constitutes a substantial change in circumstances if the relocation will "significantly impair[ ] the other parent's ability to exercise the responsibilities [they] had been exercising." *Hayes v. Gallacher*, 115 Nev. 1, 7, 972 P.2d 1138, 1141 (1999).

Jon argues the district court erred in finding that his relocation to Texas was not a substantial change in circumstances affecting the welfare of the children. We agree. While the court found that Jon's relocation constituted a substantial change of circumstances for *Jon*, the court erroneously concluded that Jon's absence from Nevada would not affect the children's welfare. Prior to Jon's relocation, both parents exercised parenting time pursuant to a one week on/one week off schedule that was no longer feasible after Jon moved to Texas. Thus, the children's welfare would necessarily be impacted by any decision the court made: denying Jon's motion would mean the children would no longer see their

father every other week, while granting Jon's motion would significantly impair Melissa's ability to exercise her parental responsibilities. *See id.* To this end, the court found "that if the children were to relocate, there will be no preservation of Melissa's current relationship with the children, as they would live thousands of miles away from Melissa." In light of this finding, we conclude the district court abused its discretion when it found that Jon's relocation was not a substantial change in circumstances affecting the children's welfare.[4]

The district court abused its discretion in applying the threshold relocation requirements

Jon argues the district court erred in its application of two of the three threshold relocation requirements. Specifically, Jon contends the court erred when it found that relocating to Texas was not in the children's best interests, *see* NRS 125C.007(1)(b), and that the children would experience no "actual advantage as a result of the relocation," *see* NRS 125C.007(1)(c). We agree that the district court abused its discretion when analyzing these two requirements.

The district court determined that relocation was not in the children's best interests based on its analysis of the 12 custody factors. Although the court's order did not expressly state which of the factors weighed against relocation, the court appears to have relied primarily on the following findings: (1) the children wanted to spend equal time with both parents, yet Jon's relocation to Texas made that impossible; (2) Jon "exacerbated" the level of conflict between him and Melissa by deciding to

---

[4]Jon briefly argues that, following the implementation of Nevada's relocation statute, it is no longer necessary for a court to separately consider whether a substantial change of circumstances exists in order to resolve a relocation motion. We need not reach this issue in light of our disposition.

relocate and by putting her "character, skills as a mother and caretaker on trial"; (3) Jon delegated many parenting duties to his new wife; (4) Jon raised the issue of Melissa's prior alcohol abuse as an issue despite knowing she stopped drinking eight years ago; (5) Jon did not prove the children's medical and educational needs were not being met in Nevada; and (6) denying relocation would preserve the children's relationship with their half-sister Jessica.

Although the parties' briefing primarily focuses on the sufficiency of the evidence to support the district court's findings, we note that several of the court's findings appear to penalize Jon for his decision to relocate and for the arguments made by his attorneys in connection with his relocation motion. *See Hayes*, 115 Nev. at 7-8, 972 P.2d at 1142 (recognizing the impropriety of a court order that punishes a primary custodian for relocating); *see also Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) ("The ability of this court to consider relevant issues *sua sponte* in order to prevent plain error is well established."). Even if the court disagreed with Jon's decision to relocate or believed that Jon made improper arguments in support of relocation, those beliefs should not have affected the court's custody determination as "a court may not use changes of custody as a sword to punish parental misconduct." *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993); *see also Melinkoff v. Sanchez-Losada*, No. 71380-COA, 2018 WL 1417836, at *8 (Nev. Ct. App. Feb. 26, 2018) (Order of Affirmance) (Gibbons, J., dissenting) (stating that, regardless of who was at fault for a communication dispute, "district courts should not take actions that punish the child for conduct of the parent").

Further, we agree with Jon that, to the extent the district court found he failed to prove the children's medical and educational needs were

not being met in Las Vegas, the court imposed an incorrect legal standard. Jon did not have to demonstrate that the children's needs were not being met in Las Vegas; rather, Jon had to demonstrate that the children's physical, developmental, and emotional needs would be *better met* if they relocated with him to Texas. *See* NRS 125C.0035(4)(g); NRS 125C.007(1)(b); *see also Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991) (recognizing that, in the context of relocation, the court may appropriately consider "whether educational *advantages* for the children will result" and "whether special needs of a child, medical or otherwise, will be *better served*" (emphases added)). Although Jon testified that N.P. could be treated at a premier epilepsy center and that both boys would attend a higher performing school in Texas, the district court did not make any findings as to whether the children's medical and educational needs would be better met if they relocated with him to Texas.[5] By focusing on whether there were problems with the children's current schooling or education, the district court failed to meaningfully address whether their best interests might be served by relocating to Texas. *See* NRS 125C.007(1)(b).

---

[5]Melissa contends that the district court could not properly rely on Jon's testimony about the medical and educational benefits of relocation to Texas because his testimony was mere "opinion" testimony based on "internet research" and "speaking to people." However, the supreme court has indicated that opinion testimony based on a parent's research can support a relocation request. *See Gandee v. Gandee*, 111 Nev. 754, 757-59, 895 P.2d 1285, 1287-89 (1995) (ordering the district court to grant a parent's relocation motion after relying, in part, on that parent's uncontroverted testimony "that he had inquired into the quality of education available to his children in Medford, [Oregon,] and in particular the quality of special education programs" and "found that the quality of education was comparable to that available in Reno").

For a similar reason, the district court abused its discretion in analyzing whether the children would receive an actual benefit upon relocation to Texas. Although the court acknowledged that Jon could benefit from an actual advantage in relocating, it found that Jon failed to demonstrate that relocation would offer an actual advantage to the children because "he did not provide sufficient evidence to prove that the children's current schooling and medical care are substandard or lacking and that the children require a new school and new doctors to thrive." But once again, Jon was not required to prove that the children's education and medical care in Las Vegas were substandard or lacking. Rather, Jon simply needed to establish that his enhanced employment opportunity, improved living conditions, and other positive aspects of Texas presented actual advantages for the boys to relocate. *See, e.g.*, *Jones v. Jones*, 110 Nev. 1253, 1260-61, 885 P.2d 563, 568-69 (1994) (concluding that a "parent need not prove a tangible economic or career advantage" and that a parent's desire to move "to enhance her employment opportunities, provide better living and growing conditions for her children, and pursue [a romantic] relationship . . . meets the actual advantage requirement" (internal quotation marks omitted)).

To this end, Jon testified regarding his significant compensation increase, his new house's greater space for the boys, the proximity and quality of the neighborhood school, and the well-regarded medical care in the city. Melissa never contradicted Jon's testimony about the well-regarded education and medical care available to the boys in Texas; instead, she submitted that they were receiving quality education and medical care in Las Vegas. Thus, we conclude the district court abused its discretion in failing to properly consider whether relocation to Texas might

offer the children an actual advantage over Las Vegas in connection with the above testimony. *See* NRS 125C.007(1)(c).

The district court abused its discretion in evaluating several relocation factors

Finally, Jon argues that the district court erred in evaluating several of the relocation factors. *See* NRS 125C.007(2). We agree. In particular, the district court abused its discretion in evaluating the first, fifth, and sixth relocation factors.[6]

The first relocation factor requires the district court to examine "[t]he extent to which the relocation is likely to improve the quality of life for the child and the relocating parent." NRS 125C.007(2)(a). The district court centered its analysis on the manner in which the move to Texas would disrupt the boys' current routine. Specifically, the court noted that the boys would live apart from their mother, extended family, and friends. The court further found that the move would frustrate the continuity of their specialized medical care and education. While these findings are supported by substantial evidence, the district court failed to weigh these considerations against the potential improvements offered in Texas. The court neither addressed the likelihood that the boys' schooling, medical care, or housing situation might improve if they moved to Texas, nor how Jon's improved financial situation might affect the boys' quality of life. *Cf. Schwartz*, 107 Nev. at 383, 812 P.2d at 1271. We conclude that the district court abused its discretion by focusing solely on the extent to which

[6]The second and third relocation factors were not challenged on appeal. Although Jon did challenge the fourth relocation factor on appeal, substantial evidence supports the district court's findings on that factor.

relocation would disrupt the status quo and by failing to weigh that disruption against the potential for improvement upon relocation to Texas.

The district court also misapplied the fifth relocation factor, which requires the court to determine "[w]hether there will be a realistic opportunity for the non-relocating parent to maintain *a visitation schedule* that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted." NRS 125C.007(2)(e) (emphasis added). Rather than address whether a visitation or parenting time schedule might adequately preserve Melissa's relationship with the boys, the district court found that if the children relocated, there would "be no preservation of Melissa's *current relationship* with [them], as they would live thousands of miles away." (Emphasis added.) The court based this finding on Melissa's inability to attend the boys' school events, extracurricular activities, or doctor appointments should they relocate to Texas. Here, again, the district court's exclusive focus on maintaining the status quo versus properly analyzing the relocation factors was an abuse of discretion.

"Physical separation does not preclude each parent from maintaining significant and substantial involvement in a child's life, which is clearly desirable." *McGuinness v. McGuinness*, 114 Nev. 1431, 1436, 970 P.2d 1074, 1077-78 (1998). Rather, "[t]here are alternate methods of maintaining a meaningful relationship, including telephone calls, e-mail messages, letters, and frequent [parenting time]." *Id.* at 1436, 970 P.2d at 1078. The district court must "seriously consider the possibility of reasonable, alternative [parenting time]" rather than "focus[ ] on the fact that a move would render the current joint custody arrangement impossible." *Id.* at 1437, 970 P.2d at 1078. The supreme court "has

explicitly cautioned district courts against placing improper emphasis on the fact that a move might prevent weekly [parenting time] for one parent." *Id.* at 1437-38, 970 P.2d at 1078.

With its focus on maintaining the status quo for Melissa, the district court failed to consider whether a reasonable, alternative parenting time schedule could be implemented to adequately foster and preserve Melissa's relationship with the children. In his relocation motion, Jon proposed a parenting time schedule wherein Melissa would have the boys for all but two weeks of every summer break, every spring break, one week of winter break, Thanksgiving break, and any three- or four-day weekends during the school year. In addition, Jon offered to contribute to travel expenses for the boys and to purchase iPads so they could more easily communicate with their mother. By failing to address whether Jon's proposed parenting time schedule would adequately foster and preserve Melissa's relationship with the children, the district court abused its discretion.[7]

Finally, the district court abused its discretion in its consideration of the catchall relocation factor which requires consideration of "[a]ny other factor necessary to assist the court in determining whether to grant permission to relocate." NRS 125C.007(2)(f). When evaluating this catchall factor, the district court noted that Jon exhibited "a troubling

---

[7]Although the district court found that if the children relocated to Austin, Texas, they "would live thousands of miles away from Melissa," it failed to consider the availability of direct flights to facilitate parenting time. *See Rowberry v. Rowberry*, No. 85076-COA, 2023 WL 5541649, at *7 n.15 (Nev. Ct. App. Aug. 28, 2023) (Order of Reversal and Remand) (concluding that the district court erred when it found "an alternative visitation schedule between Las Vegas and Texas could not be fashioned when direct flights exist between San Antonio and Las Vegas").

disdain for Melissa in the way that he attacked her as a mother to the parties' children." The court further found "that Jon may not foster Melissa's relationship with the boys but instead replace her with his new family."

The district court did not specify how Jon "attacked" Melissa "as a mother to the parties' children." However, based on the court's earlier finding about "Jon's decision to put Melissa's character, skills as a mother and caretaker on trial," it appears the court believed Jon improperly attacked Melissa in the course of the litigation. As noted above, district courts may not punish parents for their litigation tactics with the "sword" of changed custody. *Sims*, 109 Nev. at 1149, 865 P.2d at 330. Therefore, to the extent the court relied on this finding as an additional basis to deny Jon's relocation motion, the court plainly erred.

Furthermore, the district court's finding "that Jon may not foster Melissa's relationship with the boys but instead replace her with" Yuliya and S.P. is speculative and not supported by substantial evidence. The record contains no evidence to suggest that Jon would try to "replace" Melissa as the children's mother. To the contrary, the finding is undermined by the court's earlier conclusions, when evaluating the custody factors, that "neither party has historically denied the other any contact or custodial time"; that, going forward, the court believed both parties "would comply with any visitation orders"; "that historically, both parents have been able to cooperate to the benefit of their children"; and that text messages demonstrate Melissa's ability to work cooperatively with Yuliya. Therefore, we conclude that the district court abused its discretion in weighing this factor against Jon.

The district court's errors were not harmless

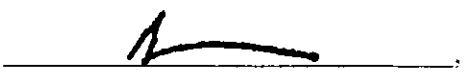
"An error is harmless when it does not affect a party's substantial rights." *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010); *cf.* NRCP 61. However, when it is not clear that, absent legal error, the district court would have reached the same conclusion, this court will reverse and remand for further proceedings. *See Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 850 (Ct. App. 2025); *see also In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) ("[B]ecause it is not clear that the district court would have reached the same conclusion . . . had it applied the correct standard of proof, we must reverse the district court's decision and remand for further proceedings.").

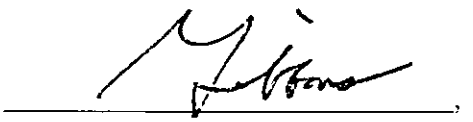
In this case, it is unclear whether the district court would have denied Jon's relocation motion had it not erred or abused its discretion throughout the relocation analysis. First, the court erroneously found that Jon's relocation to Texas did not constitute a substantial change of circumstances. Then, although the court proceeded to evaluate the 12 custody factors, the court abused its discretion in analyzing several of those factors. The court plainly erred when it appeared to penalize Jon for his decision to relocate and for his litigation tactics in support of his relocation motion. But more importantly, the court erroneously required Jon to prove that the children's current schooling and medical care were substandard when it should have determined whether their schooling and medical care might *improve* upon relocation to Texas. The court, then, incorporated these errors into its analysis of both the threshold requirements and the relocation factors. Ultimately, by focusing on preserving the status quo for Melissa, the court failed to consider whether relocation was likely to improve the children's quality of life or whether Jon's proposed parenting

time schedule would adequately foster Melissa's relationship with the children.[8]

Because it is unclear that the district court would have denied Jon's motion for relocation absent these errors and its abuse of discretion, we

ORDER the district court's order denying Jon's motion to modify child custody for the purpose of relocation and awarding Melissa primary physical custody of their two minor children REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

---

[8]Insofar as the parties have raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief or need not be reached given the disposition of this appeal. We note that more than a year has passed since Jon relocated to Texas and the children will be 13 years old in September. Nothing in this order precludes the district court from holding a new hearing on remand to consider the parties' current circumstances and the wishes of the children, if appropriate. *See, e.g.*, NRCP 16.215 (establishing procedures for child interviews and testimony); NRS 50.015 (stating that "[e]very person is competent to be a witness" unless provided otherwise); NRS 50.530 (defining a "[c]hild witness" as a child under 14 that has been or will be called as a witness).

cc: Hon. Regina M. McConnell, District Judge, Family Division
Jones & LoBello
Pecos Law Group
Eighth District Court Clerk