IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIN CORNWALL N/K/A ERIN PANTER,
Appellant,
vs.
JOSEPH CORNWALL,
Respondent.

No. 90332-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Erin Panter appeals from a district court post-divorce decree order in a family law matter. Eighth Judicial District Court, Clark County; Gregory G. Gordon, Judge.

Erin and respondent Joseph Cornwall have four children together: E.C. and Sa.C., twins born 2007; Sh.C., born 2009; and F.C., born 2012. Erin and Joseph were granted a divorce in June 2022. Pursuant to the divorce decree, Erin and Joseph were awarded joint legal and joint physical custody of their four minor children.

In December 2024, Erin filed a motion seeking to conduct child interviews, modify legal and physical custody, reset child support, and for an award of attorney fees and costs. Erin requested a modification of physical custody as warranted by the factors set forth in NRS 125C.0035(4). She insisted that "the substantial change in circumstance is Joseph's behavior and comments, including physical violence against the children which place their mental health at risk; coupled with the desires of the

children regarding their timeshare given the circumstances in Father's household," and those issues warranted modification of the custody arrangement. Erin also requested that the district court order that the children be interviewed so that they could describe their experiences in Joseph's household and indicate their custody preference. Erin alleged the level of conflict is high based on Joseph's behavior toward the children and his fixation on her personal life.

With regard to the allegations concerning Joseph's behavior and physical violence against the children, Erin asserted that Joseph used abusive language and alleged that in 2023, Joseph berated Sa.C. when he failed to complete chores on time. Sa.C. slammed a wooden spoon on a countertop and broke it in response to the yelling. Joseph then pushed Sa.C. against the oven and held him there while berating and threatening him. In response to this incident, Sh.C. and E.C. began recording Joseph's outbursts. Erin supported the motion with a video recording depicting the incident to the extent it was recorded. According to the motion, additional videos, which were not included, showed Joseph berating the children and making inappropriate statements about Erin. In addition, Erin also alleged that their 15-year-old daughter Sh.C., has identified as LGBTQ following the initial custody determination and that Joseph's response had negatively impacted Sh.C.'s mental health; Joseph has placed surveillance equipment throughout the house to monitor the children's communication with her; 17-year-old E.C. indicated her desire to self-harm in order to avoid spending time with Joseph; Joseph refused to engage the parenting coordinator to resolve disputes; Joseph has frustrated the children's ability to access

mental health services through the school district; Joseph did not administer timely and adequate first aid to F.C. in an incident during the summer in 2024; and Joseph failed to comply with the summer schedule.

Joseph opposed the motion, insisting that Erin was aware they had different parenting styles before entry of the decree and asserted he had been working with a therapist to gain additional tools to support and parent their children. Joseph contended that Erin's allegations were taken out of context, and he denied acts of violence toward the children. He disagreed with Erin's contention that he spoke ill of her to the children, insisting that he encouraged them to express their love for her while she called him an abusive narcissist. He further insisted that he advocated for counseling for the children and provided adequate aid when F.C. was injured. Joseph asserted that, even if the allegations were true, they did not amount to a substantial change in circumstances affecting the children's welfare which could be remedied by modifying the custody order.

Joseph submitted exhibits in support of his opposition, including text messages from Joseph to the children expressing his love for them and encouraging them to express love for their mother. He also included emails about arranging counseling for the children and the text messages sent while he was treating F.C.'s toe injury.

The district court held a non-evidentiary hearing, at which both parties made arguments similar to those in their written filings.

On February 18, 2025, the district court denied Erin's motion. The court first observed that it would lose jurisdiction over custody and determinations regarding Sa.C. and E.C. in about 90 days when they turned

18. Thus, it determined there was no benefit to addressing the motion with regard to those two children.

The district court also found that Erin failed to demonstrate a prima facie case for modification with regard to Sh.C. and F.C. As to the assertion that Joseph had uncontrolled anger, the district court found that Erin only alleged one incident and provided video of that incident occurring two years before with Sa.C. Contrary to Erin's representations, the district court observed that the video depicts an intense conversation that, "[w]hile not indicative of exemplary parenting," did not depict Joseph grabbing Sa.C., throwing him against the oven, or threatening him. The district court was not persuaded that Joseph's handling of the toenail injury established cause for further proceedings, as Erin did not elaborate on how the care was improper or how it affected F.C.'s recovery. The district court also found that Erin's allegation that Joseph denigrates her to be too vague and overly broad to warrant reopening proceedings.

Lastly, the district court noted that, even if Joseph expressed narrow mindedness regarding Sh.C.'s sexual orientation, it was not a basis upon which to reopen or modify custody. The district court found that Erin had "marshalled no evidence to support a claim that [Joseph's] approach, while different from hers, and less open-minded than others, which is undoubtedly influenced and shaped by his own moral and possibly religious beliefs, is inappropriate to such a degree that warrants this Court's intervention." Further, Erin had not alleged any specific facts to indicate that Sh.C. suffered emotional harm. The court noted that parents and children frequently disagree over a number of issues and deserve the right

to navigate those disagreements without the fear of reprisal from the other parent or court. While the district court stated it was aware that Sh.C. could experience emotional harm if unaffirmed or rejected by a parent, the single text message did not demonstrate rejection to a degree that was of concern.[1] This appeal followed.

Erin argues that the district court erred in denying the motion to modify custody without conducting an evidentiary hearing. "We review a district court's decision to deny a motion to modify physical custody without holding an evidentiary hearing for an abuse of discretion." *Myers v. Haskins*, 138 Nev. 553, 556, 513 P.3d 527, 531 (Ct. App. 2022). "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).

"[A] district court has the discretion to deny a motion to modify custody without holding a hearing unless the moving party demonstrates 'adequate cause' for holding a hearing." *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993). "Adequate cause" arises when the movant demonstrates a prima facie case for modification. *Id.* at 543, 853 P.2d at 125. When determining whether a movant has made a prima facie case for

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[1]The district court also found that the child support issue was not ripe as three years had not passed since the last order and the allegations concerning an increase to Joseph's monthly income do not meet the threshold to prompt a review. However, the district court indicated that the issue of support could be revisited when the two oldest children turn 18 years old. We note that the parties do not challenge the district court's child support decision on appeal.

modification, the district court may generally only consider "the properly alleged facts in the movant's verified pleadings, affidavits, or declarations" and must accept the movant's specific allegations as true. *Myers*, 138 Nev. at 553, 557, 513 P.3d at 529-30, 532. Although the district court typically must not consider the nonmovant's factual allegations or offers of proof, the district court "may look to the nonmovant's evidentiary support when it 'conclusively establishes' the falsity of the movant's allegations." *Id.* at 553, 513 P.3d at 530.

"To demonstrate a prima facie case, a movant must show that '(1) the facts alleged in the affidavits are relevant to the [relief requested]; and (2) the evidence is not merely cumulative or impeaching.'" *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017) (quoting *Rooney*, 109 Nev. at 543, 853 P.2d at 125). Additionally, to modify physical custody the movant must show that "(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Romano v. Romano*, 138 Nev. 1, 5, 501 P.3d 980, 983 (2022) (internal quotation marks omitted), *abrogated in part on other grounds by Killebrew v State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023). We note that "demonstrating a prima facie case for modification is a heavy burden." *Myers*, 138 Nev. at 560, 513 P.3d at 534 (quotation marks omitted).

Erin contends that the district court abused its discretion in denying an evidentiary hearing on a number of issues. Specifically, she alleged that (1) Sh.C. was struggling with Joseph's reaction to her sexual orientation, (2) Joseph refused to use the parenting coordinator, (3) Joseph

did not engage in the discretionary summer parenting timeshare, (4) Joseph disagreed with using mental health services for the children through the school district, and (5) Joseph installed security equipment in his home purportedly to monitor or otherwise stifle the children's communications with Erin.

We conclude that the district court did not abuse its discretion in finding that the allegations above did not rise to the level of warranting an evidentiary hearing. *See id.* at 556, 560, 513 P.3d at 532, 534 (describing the movant's "heavy burden" of demonstrating a "substantial change in circumstances affecting the welfare of the child"). The district court reasonably observed that, even assuming Joseph's reaction to Sh.C.'s sexual orientation was less receptive than Erin's response, it did not constitute a substantial change in circumstances. Instead, the district court saw this friction between them as typical of disagreements parents and children may have in their relationships. The divorce decree did not require the use of a parenting coordinator after a certain period and only recognized flexibility in the summer parenting timeshare. Given that it contemplated one party may decline to participate on these issues, Joseph's refusals did not violate the decree. Similarly, the mere allegation that Joseph refused a particular mental health provider for the children, without more, does not rise to a substantial change in circumstances affecting the children's welfare. Lastly, Erin's allegation that Joseph installed security equipment in his home, without more specific allegations concerning how it affected the children's ability to communicate with her, was insufficient to warrant an evidentiary hearing. *See id.* at 559, 513 P.3d at 534 ("[C]ourts are not

required to consider a movant's general, vague, broad, or conclusory allegations.").

Erin also contends that the district court abused its discretion by not conducting an evidentiary hearing on the allegation of domestic violence regarding Sa.C. She contends that the district court failed to consider that Joseph essentially admitted to the behavior by not denying it in his responsive pleading below. Additionally, because she did not allege that the entire incident was captured on video, she contends that the district court's reliance on the video to conclude that the allegation was unsupported was an error.

"As our Legislature has recognized, domestic violence poses a very real threat to a child's safety and well-being." *Castle v. Simmons*, 120 Nev. 98, 105, 86 P.3d 1042, 1047 (2004). As relevant here, "domestic violence" includes the commission of any act of assault or battery against or upon a person's minor child. *See* NRS 125C.0035(10)(b) ("'Domestic violence' means the commission of any act described in NRS 33.018."); *see also* NRS 33.018(1) (identifying the acts that may be committed against or upon a person that constitute domestic violence to include battery, assault, coercion, sexual assault, harassment, false imprisonment, and pandering). A district court "must hear *all* information regarding domestic violence in order to determine the child's best interests." *Castle*, 120 Nev. at 105, 86 P.3d at 1047.

Here, Erin alleged, among other allegations, the occurrence of an incident of domestic violence in which Joseph pinned Sa.C. against the oven, berated, and threatened him. "In determining whether a movant has

demonstrated a prima facie case for modification of physical custody, the court must accept the movant's specific allegations as true," *Myers*, 138 Nev. at 556-57, 513 P.3d at 532, and thus, the district court should have accepted Erin's allegations as true for the purposes of determining whether Erin demonstrated a prima facie case for modification such that the court should conduct an evidentiary hearing concerning her request to modify custody. *See* NRS 33.018(1); NRS 125C.0035(10)(b).

Because Erin alleged that this incident occurred after entry of the divorce decree, if true, an act of domestic violence could constitute a changed circumstance sufficient to warrant modification of the physical custody arrangement. *Cf. Castle,* 120 Nev. at 105, 86 P.3d at 1047 (holding that pre-decision evidence of domestic violence may constitute changed circumstances "if the moving party or the court was unaware of the existence or extent of the conduct when the court rendered its prior custody decision"); *Nance v. Ferraro*, 134 Nev. 152, 153, 418 P.3d 679, 681 (Ct. App. 2018) (holding that a party seeking to modify custody may not use evidence of domestic violence known to the parties or the court when the prior custody was entered to show substantial change in circumstances); *see also* NRS 125C.0035(4)(k) (stating the best interest factor concerning acts of domestic violence); NRS 125C.0035(5) (stating the rebuttable presumption that it is not in the best interest of a child to award sole or joint physical custody to the perpetrator of domestic violence).

Moreover, the district court's denial was based on its observation that the video submitted with the motion did not show the violence alleged in the motion. Although the court is correct that the video

did not depict the actual alleged violence, Erin acknowledged that the entire incident was not captured on video. Rather, the children began recording after the alleged act of violence occurred to document what happened afterwards. Erin further alleged that Joseph committed additional actions which caused her and the children to be concerned and impacted the children's mental health. Taken as true, and because of the heightened concerns associated with domestic violence allegations, Erin's allegations were sufficient to state a prima facie case for modification of physical custody, warranting an evidentiary hearing. *See Myers*, 138 Nev. at 556-57, 513 P.3d at 532. Additionally, the mere fact that Sa.C. was turning 18 in the near future did not make the evidence of the alleged domestic violence irrelevant because Sh.C and F.C. would still be living in the home. *Cf.* NRS 125C.0035(5) (stating the rebuttable presumption against custody applies whenever domestic violence is committed against the parent, the child or anyone residing with the child); NRS 125C.0035(4)(k) (same as to the best interest factor). Accordingly, we reverse and remand to the district court to conduct an evidentiary hearing related to the allegations of domestic violence.

Upon remand, the district court may exercise its discretion to determine whether it is appropriate to interview the minor children regarding the alleged incidents. *See* NRS 125C.0035(4)(a) (directing courts to "consider" the wishes of the child, if the child is of sufficient age and capacity, but not requiring an interview); NRCP 16.215(a) (setting forth the procedures and considerations for child interviews); *see also Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993) ("The trial court enjoys broad

discretionary powers in determining questions of child custody."). Although we conclude the district court did not abuse its discretion in denying Erin's request for an evidentiary hearing on other grounds, the district court may still consider all relevant facts in determining whether modification of the child custody arrangement is in the children's best interest. *See Romano*, 138 Nev. at 5, 501 P.3d at 983; *see also* NRS 125C.0035(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."). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[2]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.

cc: Hon. Gregory G. Gordon, District Judge
Roberts Stoffel Family Law Group
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Eighth District Court Clerk