

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDGAR TAVARES,
Appellant,
vs.
JENNY TAVARES,
Respondent.

No. 88561-COA

FILED

JAN 20 2026

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Edgar Tavares appeals from a final district court order in a child custody matter. Eighth Judicial District Court, Clark County; Mari D. Parlade, Judge.

Edgar and respondent Jenny Tavares were married in 2016 and share a minor child, born in 2017. The parties divorced in April 2021, and their stipulated divorce decree awarded the parties joint legal custody and Jenny primary physical custody of the child. Under the decree, Edgar had parenting time from 8:00 a.m. to 8:00 p.m. on weekends with no overnight parenting time. The decree also provided for a holiday and vacation timeshare. The decree further provided that the parties “shall have the ability to adjust the [parenting time] schedule as agreed upon,” and Edgar would pay Jenny \$750 per month in child support.

In November 2022, Edgar filed, in relevant part, a motion to modify custody, arguing that the parties had not followed the timeshare set forth in the decree and maintained a de facto joint physical custody arrangement whereby Edgar saw the child nearly every day. However, Edgar argued that Jenny began enforcing the decree timeshare after

receiving a letter from Edgar's attorney in October 2022 seeking to "correct" the parties' divorce decree to reflect the "actual custodial schedule." Edgar alleged that the abrupt change from seeing the child every day to Jenny's strict enforcement of the decree timeshare constituted a substantial change in circumstances and that this change had a damaging impact on the child. Jenny opposed the motion.

The district court thereafter held a two-day evidentiary hearing, at which both parties testified. Following the hearing, the court entered an amended findings of fact and conclusions of law in December 2023 granting Edgar's motion to modify and ordering the parties to share joint physical custody. The court found that the enforcement of the decree following the October 2022 letter from Edgar's attorney constituted a substantial change in circumstances because the child was no longer seeing Edgar nearly every day. The court further found that the best interest factors favored modification. The district court also ordered Jenny to pay Edgar \$217.37 per month in child support.

Shortly thereafter, Jenny filed a motion to amend the December 2023 order pursuant to NRCP 52, 59, and 60. Jenny challenged the district court's finding of a substantial change in circumstances and its best interest analysis, arguing the court's findings were not supported by substantial evidence or were based on a misapprehension of the evidence. Edgar opposed the motion. The district court granted Jenny's motion to amend and, in April 2024, entered a second amended findings of fact and conclusions of law restoring Jenny with primary physical custody, and awarding Edgar parenting time. The court found Edgar failed to establish a substantial change in circumstances affecting the child's welfare because, although they historically had not followed the timeshare set forth in the

decree, the decree provided the parties would have the ability to adjust the timeshare and the evidence demonstrated that Jenny allowed him to see the child more than what was provided for in the decree, even after she received the October 2022 letter from his attorney. Based on the designation of Jenny as the primary physical custodian, the court ordered Edgar to pay \$1,209.30 per month in child support based on the statutory formula. Edgar filed a notice of appeal following entry of that order.

While that appeal was pending, the district court entered an order stating its inclination to modify and correct its second amended findings of fact and conclusions of law. Based on that order, Jenny obtained a remand pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), and the district court entered an NRCP 60(a) order in November 2024, in which it corrected various parts of the second amended order, including a correction to the parties' timeshare, which ultimately resulted in expanding Jenny's timeshare and reducing Edgar's timeshare by one day each week. In its order, the court explained that it previously gave undue weight to sibling relationships between the child and Edgar's unborn child with his then-girlfriend and that girlfriend's daughter under NRS 125C.0035(4)(i). Edgar filed an amended notice of appeal to include the district court's November 2024 order. This appeal followed.

On appeal, Edgar first challenges the district court's order granting Jenny's motion to alter or amend the judgment and denying his motion to modify custody. 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). In reviewing child custody determinations, this court will affirm the district court's

factual findings if they are supported by substantial evidence, “which is evidence that a reasonable person may accept as adequate to sustain a judgment.” *Id.* When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Further, we presume the district court properly exercised its discretion in determining the child’s best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004). We review purely legal questions de novo. *Rennels v. Rennels*, 127 Nev. 564, 569, 257 P.3d 396, 399 (2011). Further, we review orders disposing of NRCP 59(e) motions for an abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

To establish that a custodial modification is appropriate, the moving party 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). The party requesting modification bears the burden to satisfy both prongs. *Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43.

Here, the district court ultimately rejected Edgar’s argument that Jenny’s enforcement of the decree timeshare following his attorney’s October 2022 letter to her constituted a substantial change in circumstances and found that the applicable best interest factors favored Jenny maintaining primary physical custody. While the court found many of the factors were neutral, it found that Jenny provided Edgar with

substantially more parenting time than what he was entitled to under the stipulated decree. *See* NRS 125C.0035(4)(c). The court also found that the conflict between the parties was not manageable and that Jenny credibly testified that “it was an emotional rollercoaster.” Despite this, the court found that Jenny demonstrated that, notwithstanding the conflict, she went “above and beyond” to focus on what was best for the child. *See* NRS 125C.0035(4)(d). Further, the court found that Jenny continued to cooperate with Edgar to meet the child’s needs even with the parties’ conflict. *See* NRS 125C.0035(4)(e). The parties’ testimony supported these findings. For example, both parties testified that Edgar saw the child more than what was provided for in the decree, and Edgar acknowledged he spent “quite a bit of time” with the child even after Jenny began enforcing the decree’s timeshare. Additionally, Jenny testified that she tried to put her feelings toward Edgar aside because she wanted to co-parent and for Edgar to have a good relationship with the child. She further explained that their relationship turned hostile after his attorney sent the October 2022 letter. Jenny also testified to a time when she left the child with Edgar after the child cried when she went to pick him up because she did not want to upset him. Thus, the aforementioned factual findings made in support of these determinations are supported by substantial evidence in the record, *see Ellis*, 123 Nev. at 149, 161 P.3d at 242, and this court is not at liberty to reweigh the evidence or the district court’s credibility determinations, *see Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009).

To the extent that Edgar disagrees with the district court’s decision to reconsider its prior order and findings, this does not present a basis for relief. *See* NRCP 59(a)(2) (permitting a district court to open the

judgment if one has been entered and, among other things, “amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment”); *see also AA Primo Builders, LLC*, 126 Nev. at 589, 245 P.3d at 1197. Moreover, to the extent that Edgar disagrees with the court’s changed findings, he essentially asks this court to reweigh the evidence considered by the district court to support its findings, which this court does not do. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080 (stating that “credibility determinations and the weighing of evidence are left to the trier of fact”); *Roggen v. Roggen*, 96 Nev. 687, 689, 615 P.2d 250, 251 (1980) (noting that it “is not the duty of a reviewing court to instruct the trier of facts as to which witnesses, and what portions of their testimony, are to be believed”). Accordingly, we discern no abuse of discretion by the district court in denying Edgar’s motion to modify custody and determining that remaining in Jenny’s primary physical custody was in the child’s best interest. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. Further, while Edgar contends the district court failed to enter a holiday and vacation schedule, his contention lacks merit because such a schedule was included in the original decree and the district court specifically stated that any portion of the decree that was not specifically addressed in its order denying Edgar’s motion to modify remained effective.¹

¹Edgar additionally argues that the district court was without jurisdiction to modify the parties’ timeshare in its September 5th order while the appeal was pending from the court’s April 2024 order and did so in violation of his due process rights. We conclude these contentions do not provide a basis for relief. The court’s November 2024 order following the *Huneycutt* remand, in which it clarified the parties’ timeshare arrangement, rendered Edgar’s challenge to the September 2024 order moot, as the district court had jurisdiction to enter custodial orders upon remand. *See Mack-Manley v. Manley*, 122 Nev. 849, 855-56, 138 P.3d 525, 530 (2006)

Edgar next challenges the district court's decision to reject his changed circumstances arguments. However, even assuming the district court erroneously rejected those contentions, any error was harmless as the district court did not abuse its discretion by determining it was not in the child's best interest to modify custody and the failure to demonstrate the best interest prong of the modification test is fatal to his request to modify the custody arrangement. *See Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43 (providing that a party seeking to modify custody must satisfy both prongs of the test); *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that an error is harmless if it does not affect a party's substantial rights); *cf.* NRCP 61 (providing that a court must disregard all errors and defects that do not affect a party's substantial rights).²

Next, Edgar argues the district court erred in its child support calculation and by awarding Jenny child support. "We review a district court's child support determination for abuse of discretion and will uphold the district court's determination if it is supported by substantial evidence." *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018) (internal

(explaining the district court may make custodial orders following a limited remand entered pursuant to *Huneycutt*); *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (noting that a case may be dismissed as moot when this court is not able to afford appellants any relief, even if successful on appeal). Moreover, Edgar's due process rights were satisfied as he had notice, as these proceedings occurred based upon his request for modification of the custody arrangement, and an opportunity to be heard at the two-day evidentiary hearing. *See Gordon v. Geiger*, 133 Nev. 542, 546, 402 P.3d 671, 674 (2017).

²Because Jenny did not appeal the district court's order, we need not address whether altering the parties' timeshare without a finding of changed circumstances was permissible.

quotation marks omitted). While we affirm the district court's decision as to child custody, we nevertheless reverse its determination with regard to child support.

NRS 125B.145(4) provides that "an order for the support of a child may be reviewed at any time on the basis of changed circumstances." By contrast, if three years have passed since the entry of the support order, upon the filing of a request for review, the district court must review the order and then consider the best interests of the child before determining whether it is appropriate to modify the order. NRS 125B.145(1), (2)(b). "Modification is appropriate if there has been a factual or legal change in circumstances since the district court entered the support order." *Rivero v. Rivero*, 125 Nev. 410, 433, 216 P.3d 213, 229 (2009), *overruled in part on other grounds by Romano*, 138 Nev. at 6, 501 P.3d at 984. Upon a finding of such a change, the court has discretion to modify the order in accordance with "the guidelines created by the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services." *Backman v. Gelbman*, 141 Nev., Adv. Op. 8, 565 P.3d 330, 336 (Ct. App. 2025); *see also* NRS 125B.145(2)(b).

Here, the court found that the child support obligation was ripe for review because more than three years had passed since entry of the decree and modified the child support based on the statutory formula and Jenny's designation as primary custodian. However, Jenny did not make a request for a three-year review, and three years had not yet passed from entry of the parties' divorce decree at the time the court entered its April 2024 order, so the court was required to find changed circumstances existed prior to reviewing the existing support order. *See* NRS 125B.145(4). The court made no such finding, and therefore its child support order cannot

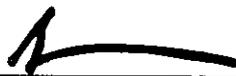
stand. *See id.* (requiring changed circumstances to modify a support order within three years from the last order); *see also Davis*, 131 Nev. at 450, 352 P.3d at 1142 (deference is not owed to legal error). Moreover, we note that the district court's failure to make a finding of changed circumstances would warrant reversal even if three years had passed. *See Rivero*, 125 Nev. at 433, 216 P.3d at 229 (explaining that "although a party need not show changed circumstances for the district court to review a support order after three years, changed circumstances are still required for the district court to modify the order"). Consequently, we reverse the district court's child support award and remand for the court to conduct the requisite analysis before determining whether modification is appropriate.

Lastly, Edgar argues that the district court exhibited extreme bias against him and favored Jenny, which he claims is evidenced by its inconsistent rulings and failure to admonish Jenny's counsel, and is shown both in the transcripts and the JAVS recordings of the underlying proceedings. We conclude that relief is unwarranted on this point because Edgar has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions did not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988)

(providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); *see also Rivero*, 125 Nev. at 439, 216 P.3d at 233 (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification). Therefore, we conclude that Edgar is not entitled to relief based on this argument.

In light of the foregoing, 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.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Mari D. Parlade, District Judge
James J. Jimmerson, Settlement Judge
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