IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LOGAN STUMBO,
Appellant,
vs.
MARGARET SYMMES STUMBO,
Respondent.

No. 89614-COA

ORDER OF AFFIRMANCE

Logan Stumbo appeals from a district court order regarding custody and relocation. Eighth Judicial District Court, Family Division, Clark County; Bill Henderson, Judge.

Logan and respondent Margaret Symmes Stumbo were married in 2015 and have two children together, L.S., born in April 2019, and O.S., born in October 2022. Margaret filed for divorce in July 2023 and moved for sole physical custody. Logan opposed Margaret's motion and counterclaimed for joint physical custody. The district court subsequently served a notice of appearance on the parties for an NRCP 16.2 case management conference. In its notice, the court specifically stated, "all discovery disputes ***must*** first be heard by the discovery hearing master."

The case management conference was held on November 9, 2023, at which point Logan advised the district court that Margaret was "very likely going to file a motion to relocate" to New Jersey. After Margaret acknowledged she was considering relocation, the district court determined that Margaret would not need to file a motion to relocate, but that she could instead file a "brief" in support of any request to relocate. Although no definitive briefing schedule was set, Logan did not raise any objections to

the court's determination or request that the court set a deadline for Margaret to file any potential relocation brief. The court directed the parties "to impose [their] own discovery deadlines" and proceeded to set the following dates for trial: April 22, 23, and 25, and May 2, 2024, and specifically designated April 23 to hear custody/relocation matters.

The court entered an amended written order from the case management conference on January 24, 2024, reiterating that Margaret could file a brief, rather than a motion, in support of relocation, and restating the aforementioned trial dates. The order further indicated that the district court did not want the master calendar to set "anything else," and that if a motion was set for hearing, the parties would "incur attorney fees" for time that was not needed. The order reminded the parties that they were "to impose their own discovery deadlines and determine their own parameters" and that "[t]here will not be any further scheduling orders from the Dept." The order also entered a temporary custody schedule detailing a parenting arrangement that would not prejudice either party.[1]

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[1]Following the case management conference, it appears that the parties failed to prepare a case management order as directed by the court, and there is no such order in the record on appeal. Although there is some dispute as to whether the parties agreed on a close of discovery deadline and expert disclosure deadlines, there is nothing in the record to confirm such an agreement. While we acknowledge and understand the dissent's concerns regarding the district court's deficiencies in managing the discovery in this case, the court was permitted to defer this task of preparing the case management order to the parties, who had the responsibility of ensuring that the order setting forth the discovery deadlines was prepared and adhered to. *See* NRCP 16.2 (j)(4)(B). The ability to delegate certain tasks to the parties is especially important in the family divisions of the Eighth and Second Judicial District Courts, where judges manage heavy caseloads. *See* Hon. Dixie Grossman and Hon.

On February 2, within 10 days after entry of the amended order from the November case management conference, and 50 days before the first scheduled trial date, Margaret filed a brief in support of her request to relocate with the children to New Jersey. She argued she had lost her job in Las Vegas and obtained a much higher-paying job with a flexible work schedule in New Jersey where her mother and other family members lived. According to Margaret, if permitted to move, she and the children could live rent-free with her mother and have access to better schools, built-in childcare, and strong family support from both paternal and maternal relatives living nearby.

Logan opposed the request and argued that a relocation expert would be necessary to resolve the issue. Thus, on March 6, a month after Margaret filed her relocation brief, Logan moved to continue the trial so his retained expert could complete her investigation, assessment, and report regarding relocation. Logan subsequently retained Nevada-licensed psychologist Stephanie Holland, Ph.D., to conduct a relocation assessment addressing the effects of relocation on the young children before filing the continuance motion. Dr. Holland represented to Logan's counsel that she needed at least 90 days to complete her assessment, which would include interviewing both parents.[2]

While Logan's continuance motion also asked the district court to compel Margaret to participate in Dr. Holland's relocation assessment as she had not agreed to do so, he cited no legal authority to support that

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Charles Hoskin, *Compromised Results? Requiring Nevada's Family Courts to Do More with Less*, Nevada Lawyer, Nov. 2024, at 12-13.

[2]The parties agreed that the children were too young to be interviewed.

request. Additionally, Logan raised his request to compel Margaret's participation in his expert's relocation assessment before the district court in the first instance, rather than raising it before the discovery hearing master as directed by the district court in its case management order regarding discovery disputes. Margaret opposed Logan's motion, arguing that a relocation expert was unnecessary.

On March 29, Logan filed a "MOTION FOR NRCP 16.2(e)(3)(B) RELIEF," arguing that he was entitled to an extension of the expert witness deadlines pursuant to NRCP 16.2(e)(3)(B) and that he had a due process right under *Mathews v. Eldridge*, 424 U.S. 319 (1976), to have his expert of choice provide a relocation assessment. As before, Logan's motion did not contain any legal authority indicating that Margaret could be compelled to participate in his retained expert's relocation assessment. Margaret opposed this motion as well, on the basis that Logan had not shown good cause to extend the expert witness deadlines.

At the April 15 hearing on Logan's motions, Margaret's counsel confirmed that Margaret would not participate in any evaluation conducted by Logan's retained expert and argued that Logan failed to move for an NRCP 35 examination of Margaret to require her participation in such an evaluation. Logan responded that not allowing Dr. Holland sufficient time to complete her relocation assessment and prepare a report violated his due process rights.

During this hearing, the district court explained that it did not "have a problem with giving the parties the flexibility or the additional time that's needed" so long as the parties were able to cooperate on obtaining an expert report that was not one-sided and that reflected input from both parties. However, the court took "a dim view . . . of custody/relocation

experts that are engaged purely by one side" and suggested the parties consider hiring a joint relocation expert who could provide more useful information to the court.[3] The court repeatedly expressed concern about the weight it should give an expert hired on behalf of one party to address relocation where the children were too young to participate in the assessment and without the other party's involvement. The court explained it would "put no weight" on such a custody or relocation expert without "heavy involvement of the other party." At one point, Logan indicated he would be willing to consider retaining a joint expert, but Margaret did not agree that a joint relocation expert was needed. Because the parties were at an impasse and unable to reach an agreement regarding Margaret's participation and Dr. Holland's involvement, the district court did not rule on Logan's motion for a continuance but delayed commencement of the trial until May 2—ordering the parties to attempt to resolve the expert issue on their own.

Following this hearing, Logan moved for declaratory relief, requesting a determination that Dr. Holland's expert testimony on relocation was grounded in reliable scientific principles and therefore admissible at trial and reasserted his due process argument. As with Logan's previous two motions, he failed to cite any authority supporting the proposition that Margaret could be compelled to cooperate with his retained expert's relocation assessment. Instead, he argued that an NRCP 35 motion was unnecessary, and that Margaret did not even need to cooperate with his expert in order for the expert to create a valuable report. Margaret opposed the motion.

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[3]The parties and the court agreed that Logan was not seeking a custody evaluation but rather a relocation evaluation.

On May 2, instead of beginning the trial, the court held a status check to address Logan's motion for declaratory relief and the parties stipulated that Dr. Holland could testify generally to the effects of relocation on young children without having interviewed Margaret.[4] The district court ultimately ruled that Dr. Holland could testify only about the general effects of parent-child separation due to relocation, and not about the specific effects of relocation on these children, nor could she offer a comparative assessment of the schools in Las Vegas and New Jersey.

The trial ultimately started on May 17 and was completed over the course of several days in May, June, and July. The parties and Dr. Holland provided testimony as the primary witnesses. Pursuant to the district court's order, Dr. Holland did not comment on the facts or offer opinions as applied to the specifics of the case. She instead opined that young children generally experience bonding issues with the nonrelocating parent and that the parent-child relationship suffers as a result. Both parties submitted written closing arguments.

The district court subsequently granted Margaret's request—awarding her primary physical custody and permitting her to relocate to New Jersey with both children. At the outset, the court noted that "the most documentable factor regarding relocation" was Margaret's substantial salary increase—from $70,000 to $115,000 plus bonuses—that could not reasonably be duplicated in Las Vegas, whereas Logan currently earned only $62,000. The court observed that it "was a close custodial call" but that

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[4]Of note, the record does not show that Dr. Holland ever interviewed Logan, or had available to her the deposition testimony of the parties to review and support any of her opinions independent of interviewing the parties. Indeed, Logan apparently elected not to depose Margaret.

Logan's "problems and conflict inducing behaviors exceed[ed]" Margaret's, such that "[a] 50/50 custodial schedule is not in the best interest of the subject minors" in light of the relocation request. Because this was an initial custody determination involving relocation, the court considered the issues of custody and relocation simultaneously.

Prior to evaluating the custody and relocation factors, the district court observed that the tone of Logan's closing brief was "hyper aggressive" and vitriolic, which undermined his legal positions. The court found that Logan had withheld the children from Margaret in July 2023, during her birthday, to extort custodial concessions from her, and that he failed to address this issue in his closing brief.[5] The court also found that Margaret had been, and could continue to be, "the primary caregiver for the subject minors," as her ability to work from home in both Las Vegas and New Jersey gave her increased flexibility.

In terms of the best interest factors set forth in NRS 125C.0035(4), the district court determined that factors (d) ("[t]he level of conflict between the parents") and (g) ("[t]he physical, developmental and emotional needs of the child[ren]") favored Margaret, while the remaining factors were neutral. In evaluating the best interest factors, the court repeatedly referenced Logan's withholding of the children to coerce Margaret, and "his aggressive, demanding and demeaning language" towards her. The court also pointed to Margaret's work flexibility, which enabled her to better facilitate the young children's medical and educational

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[5]Margaret presented evidence that Logan sent her electronic communications during his parenting time stating that he would not return the children to her as previously agreed unless and until she signed a stipulation for an equal custody order and time share.

appointments than Logan, whose work schedule prevented him from participating in many such activities.

Addressing the threshold test for relocation, NRS 125C.007(1), the court found that Margaret had a sensible good faith reason to relocate—after losing her job in Las Vegas, she found a job in New Jersey that would "pay her nearly double" her prior income and allow her to work from home three days a week so she could care for the children, and they could all live rent-free with Margaret's mother in a comfortable home. The court determined that relocating to New Jersey was in the children's best interests based on its prior best interest analysis, emphasizing that Margaret had a more flexible work schedule that would allow her to spend more time with the children. By contrast, Logan's work schedule would require O.S. to be in day care five days a week. In terms of an actual advantage to relocation, the court reiterated the financial benefits of the move, the fact that Margaret would "be unemployed" if relocation were not granted, the "tremendous amount of family support" in New Jersey, and the ability for L.S. to attend private school.

Finally, the court considered the relocation factors, NRS 125C.007(2), and determined that these favored relocation as well. Specifically, the court concluded that relocation would improve the quality of life for both Margaret and the children for reasons already mentioned,[6] NRS 125C.007(2)(a), that Margaret's request for relocation was honorable, NRS 125C.007(2)(b), and that Margaret would "comply with any substitute

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[6]In addition, the court specifically noted that "the private school education the children will receive in New Jersey as a result of [Margaret's] new job and reduced living expenses is better than the education they would receive in Las Vegas."

visitation orders" if relocation was granted, NRS 125C.007(2)(c). Although the court found that Logan loved his children and that his motives in resisting relocation were likewise honorable, NRS 125C.007(2)(d), the court concluded that Logan would have a realistic opportunity "to maintain a visitation schedule that" would foster and preserve his parental relationship with the children, NRS 125C.007(2)(e). To that end, the court adopted a liberal long-distance parenting schedule for Logan, aligned with a standard school calendar. This appeal followed.

The district court did not violate Logan's due process rights in connection with his desired expert testimony

On appeal, Logan primarily argues that the district court violated his due process rights when it denied his motion to continue the trial to permit Dr. Holland to evaluate Margaret and complete her expert report regarding relocation. Logan also argues that, although the court recognized the strength of Dr. Holland's testimony regarding the adverse impact of relocation on the nonrelocating parent's relationship with his children, the court failed to fully consider Dr. Holland's opinions and erred in restricting her testimony. Margaret argues that the court did not err in denying Logan's continuance motion and his motion to compel Margaret's participation in Dr. Holland's relocation evaluation, or in placing limitations upon Dr. Holland's testimony, noting that constitutional due process protections do not guarantee the use of an expert.

"We review the district court's decision on a motion for continuance for an abuse of discretion." *Bongiovi v. Sullivan*, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006). A district court's decision to grant or deny a motion for a continuance will not be reversed "except for the most potent reasons." *Neven v. Neven*, 38 Nev. 541, 546, 148 P. 354, 356 (1915). We likewise review a district court's decision regarding expert testimony for an

abuse of discretion. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008).

We review de novo whether a party's due process rights were violated. *Eureka County v. Seventh Jud. Dist. Ct.*, 134 Nev. 275, 279, 417 P.3d 1121, 1124 (2018). The Nevada Constitution, like its federal counterpart, guarantees that no person shall be deprived of life, liberty, or property without due process of law. Nev. Const. art. 1, § 8. "Due process is satisfied by giving both parties a meaningful opportunity to present their case." *J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. 366, 376, 240 P.3d 1033, 1040 (2010) (internal quotation marks omitted). Consistent with due process, Nevada courts are not required to allow parties to present every witness or piece of evidence, as long as the procedures are fair and provide an adequate opportunity to present their case. *See Virgin Valley Water Dist. v. Paradise Canyon, LLC*, 141 Nev., Adv. Op. 19, 567 P.3d 962, 975 (2025).

As a preliminary matter, we emphasize that the district court permitted Logan's retained expert, Dr. Holland, to testify at trial and opine as to the general effects of relocation on the nonrelocating parent. Thus, to the extent that Logan suggests that his due process rights were violated because he did not have the opportunity to present an expert witness, we are not persuaded. The focus of his appeal appears to be that he did not have the opportunity to present Dr. Holland's testimony as he would have liked, and therefore, the district court erred. For the reasons set forth below, we disagree.

To evaluate whether the district court's procedures comported with due process, we consider (1) "the private interest" affected by the court's action; (2) "the risk of an erroneous deprivation of such interest

through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and" (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).

Here, both Logan and Margaret had the same fundamental liberty interest in the care and custody of their minor children. *See Roe v. Roe*, 139 Nev. 163, 172, 535 P.3d 274, 285 (Ct. App. 2023) (recognizing that parenting rights implicate "a fundamental liberty interest"). Because both parents had an equal interest in the outcome of the district court's relocation determination, they "stood on equal footing before the district court when asserting their right to custody of their children." *Rico v. Rodriguez*, 121 Nev. 695, 705, 120 P.3d 812, 818 (2005).

We do not believe that the court's denial of Logan's requested continuance and his motion to compel Margaret's cooperation with his retained expert, or the limitations subsequently placed on his expert's testimony, risked an erroneous deprivation of Logan's right to custody of the parties' minor children. As the Nevada Supreme Court recognized in *Rico*, when making a custody determination, the district court's focus should be on the best interest of the child factors. *Id.* In this case, because the district court was making an initial custody determination in connection with a relocation request,[7] the court had to evaluate the best interest factors set forth in NRS 125C.0035(4) and "decide whether it [was] in the best

[7]Even though NRS 125C.007 does not specifically apply to an initial custody order, the five factors identified in *Druckman v. Ruscitti* are substantially similar to those in NRS 125C.007(2) and can serve "as a guide in instances where no custodial order exists and the parents dispute out-of-state relocation." 130 Nev. 468, 473, 327 P.3d 511, 515 (2014)).

interest of the child[ren] to live with [Margaret] in a different state or [Logan] in Nevada," by assessing the following factors:

> (1) the extent to which the move is likely to improve the quality of life for both the child[ren] and the custodial parent; (2) whether the custodial parent's motives are honorable, and not designed to frustrate or defeat visitation rights accorded to the noncustodial parent; (3) whether, if permission to remove is granted, the custodial parent will comply with any substitute visitation orders issued by the court; (4) whether the noncustodian's motives are honorable in resisting the motion for permission to remove, or to what extent, if any, the opposition is intended to secure a financial advantage in the form of ongoing support obligations or otherwise; (5) whether, if removal is allowed, there will be a realistic opportunity for the noncustodial parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship with the noncustodial parent.

Druckman v. Ruscitti, 130 Nev. 468, 474, 327 P.3d 511, 515 (2014) (internal quotation marks omitted). We note that none of the above relocation factors *require* expert testimony, and it is common knowledge that in the context of relocation—regardless of who prevails—one parent will ultimately have less parenting time than the other, unless both parents ultimately choose to reside in the same location. Nevertheless, even without granting a trial continuance or compelling Margaret to cooperate with Dr. Holland, the district court *did* permit Dr. Holland to offer general testimony based on scientific data about the effects of relocation, a risk-assessment of a long-distance move, the effect of bonding on young children being removed from their father, and other psychological concerns.

While Logan contends that his requested continuance was necessitated by Margaret's allegedly untimely relocation brief,[8] he fails to show that a continuance was actually warranted in this case. The purpose of the requested continuance was so that Dr. Holland could interview Margaret and prepare a case-specific expert report prior to trial. However, in filing his motion to compel with the district court, Logan bypassed the district court's requirement that the parties present all discovery disputes to the discovery hearing master first. He also failed to provide the court with any legal authority that would require it to compel Margaret's participation in his retained expert's relocation evaluation, and he provides no such authority to this court on appeal.

Generally, the relevant court rules contemplate that a neutral expert would either be agreed upon or appointed by the court in a manner that would be fair to both parents, in light of their equal fundamental interest in the care and custody of their minor children. *See* EDCR 5.406(b) ("When it appears that an expert medical, psychiatric, or psychological evaluation is necessary for any party or minor child, the parties shall attempt to agree to retention of one expert. Upon request of either party, or on its own initiative, the court may appoint a neutral expert if the parties cannot agree on one expert . . . ."). EDCR 5.406(b) strikes the proper

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[8]Although Logan argues on appeal that his continuance motion was necessitated by Margaret's delay in filing her brief to relocate and therefore the discovery deadlines should have been extended, the district court did not address the facts related to any alleged violations of either the parties' discovery deadlines or its own orders in ruling on Logan's various motions. Therefore, we do not address these issues on appeal. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (noting that appellate courts are not well-suited for making factual determinations).

balance between the fundamental rights of both parents in the care and custody of their minor children. By ensuring the neutrality of such an expert, the rule reduces the risk that either parent will erroneously be deprived of their parenting rights, and in doing so it furthers the government's interest in fair court proceedings. *See Matthews*, 424 U.S. at 335.

Below, the district court recognized that a neutral shared expert could more meaningfully opine as to the effects of relocation on the minor children if both parties cooperated in a joint evaluation, and the court encouraged the parties to reach such an agreement. Consistent with EDCR 5.406(b), if the parties could not agree on a neutral evaluator, Logan could have asked the district court to appoint a neutral expert for this very purpose. Although Logan did orally indicate at the April 15 hearing that he would consider a joint expert, Margaret did not agree. Yet, Logan does not argue on appeal that he moved the court for the appointment of a neutral expert or that the district court erred in failing to sua sponte appoint a neutral expert; therefore, we need not address it. *Palmieri v. Clark Cnty.*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (declining to consider issues that the appellant failed to raise on appeal).

Instead, Logan contends that he was entitled to have Dr. Holland prepare a relocation assessment on his behalf with Margaret's compelled cooperation. But Logan never moved to compel Margaret's participation under NRCP 35 and, when Margaret raised this deficiency below, Logan eventually conceded that her participation was not necessary for Dr. Holland to prepare a valuable report. *Cf.* NRCP 35 (providing that a party may obtain an evaluation of another party by a retained expert if the requirements of the rule are satisfied and upon court order). Therefore,

we cannot say his due process rights were violated when Margaret refused to participate in the evaluation and the court would not order her to do so, and when it denied a continuance that was premised in large part on Logan's desire for Margaret's participation in the relocation assessment. *See, e.g., Burleigh v. State Bar of Nev.*, 98 Nev. 140, 145, 643 P.2d 1201, 1204 (1982) (recognizing that "due process is flexible and calls for such procedural protections as the particular situation demands" (internal quotation marks omitted)).

There is no specific rule providing for the retention of a relocation expert for the purpose of assisting the district court in determining relocation. We note that NRCP 16.22 allows custody evaluations in family court actions. In conjunction with EDCR 5.406(b), the district court had the authority to appoint a neutral examiner for this purpose. We emphasize, however, that assisting the court in making a custody determination was not the reason for which Logan was seeking expert testimony; instead it was for the purpose of assisting the court in resolving Margaret's request for relocation. Indeed, Logan never requested a custody evaluation under NRCP 16.22 below and, during oral argument before this court, both parties agreed that the evaluation was *not* for the purpose of determining custody, as they both agreed Logan and Margaret were fit custodial parents, and the evaluation was merely to determine whether relocating the children to New Jersey was in their best interests.

In addition, Logan retained Dr. Holland *before* obtaining an order from the discovery hearing master or district court that Margaret would have to participate in an expert's evaluation. Because the applicable rules require a court order for an evaluation by a retained expert, or the appointment of a neutral expert, we cannot say under the circumstances

presented here that the district court abused its discretion by not requiring Margaret to undergo an expert evaluation by his retained expert. And Logan does not explain how the court's adherence to the rules governing expert evaluations violated his due process rights. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued or lack the support of relevant authority).

As noted, Logan moved to continue the trial to allow Dr. Holland time to evaluate Margaret and complete her relocation assessment on his behalf. Here, the district court did not grant the motion to continue the trial because it did not believe that a relocation expert hired by one party, and who had not interviewed both parties, would be able to present it with useful information, and the district court determined it could make the proper evaluation as to whether relocation was in the children's best interest with general, as opposed to specific, expert testimony. These conclusions are entitled to deference, as the district court, in its capacity as trier of fact, would ultimately determine the weight to give to any expert testimony. *See Johnson v. Egtedar*, 112 Nev. 428, 436, 915 P.2d 271, 276 (1996) (providing that this court will review a district court's decision to permit a witness to testify as an expert for an abuse of discretion); *Leavitt v. Siems*, 130 Nev. 503, 510, 330 P.3d 1, 6 (2014) (noting that once expert testimony has been admitted, it is the factfinder's duty to determine what weight to assign such testimony).

Although Logan vaguely contends that Dr. Holland "would have provided helpful information relevant to how relocation would impact this family and these children, had [Margaret] been required to participate and" that her testimony "would help the court analyze the" relocation factors set

forth in NRS 125C.007(2), he fails to articulate how the court's procedures in this case, in fact, led to an erroneous deprivation of his right to care and custody of his minor children. He merely posits that "[t]here may have been a very different outcome if [Margaret] was ordered to participate in the relocation assessment, and if [Logan's] expert was able to provide testimony specific to this family." However, as discussed more fully below, Logan's vague assertions of prejudice cannot overcome the substantial evidence in support of the district court's finding that the best interest and relocation factors both favored relocation.

Substantial evidence supports the district court's order to allow Margaret to relocate with the children

Logan argues that the district court abused its discretion when it granted Margaret primary physical custody and permission to relocate with the parties' young children for three reasons: (1) the court ignored Dr. Holland's testimony about the difficulties Logan would experience maintaining a bond with his young children, (2) the court incorrectly found that there was insufficient evidence that Margaret engaged in restrictive gatekeeping behavior, and (3) the court allegedly "punished" Logan for the arguments made in his closing brief.

Because district courts have "broad discretionary powers" to determine custody and relocation matters, this court will not disturb such "determinations absent a clear abuse of discretion." *Johnson v. Bennett*, 141 Nev., Adv. Op. 35, 575 P.3d 1023, 1027 (Ct. App. 2025) (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007)). Similarly, "we will not overturn the district court's findings of fact unless they are clearly erroneous or not supported by substantial evidence." *Yount v. Criswell Radovan, LLC*, 136 Nev. 409, 414, 469 P.3d 167, 171 (2020) (internal quotation marks omitted). "Substantial evidence is evidence that a

reasonable mind might accept as adequate to support a conclusion." *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). "[C]redibility determinations and the weighing of evidence are left to the trier of fact." *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009).

While the district court recognized that "both parties love their children very much," the court concluded that the best interest custody factors and the relocation factors favored allowing the parties' young children to relocate with their mother to New Jersey. *See, e.g.*, NRS 125C.0035(4); NRS 125C.007. The district court placed great weight on evidence that Logan had withheld the children from Margaret during her parenting time in an effort to coerce her agreement with his preferred custody arrangement. Logan does not dispute this finding on appeal. The court also emphasized that Margaret had been the children's primary caregiver in Las Vegas, and that this arrangement could continue upon her move to New Jersey, where she would be able to work from home and care for the children three days per week, whereas Logan's work schedule would not permit such flexibility. Logan does not dispute this finding either. The court also found that, in New Jersey, the children would have access to better schools, increased family support, and rent-free accommodations with Margaret's mother. The court found the children would benefit from Margaret's substantial salary increase, whereas if relocation were denied, Margaret would be unemployed. Again, Logan does not dispute these findings.

Instead, Logan takes issue with the district court's weighing of evidence—in particular, evidence that relocation would be detrimental to his relationship with the children and evidence that Margaret engaged in

restrictive gatekeeping. However, this court is not at liberty to reweigh the evidence or the district court's credibility determinations on appeal. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. Moreover, to the extent Logan contends the district court punished him for the tone of his closing brief, we are unpersuaded that a different outcome might have reasonably resulted but for that alleged error in light of the substantial evidence favoring relocation. *See Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) ("To be reversible, an error must be prejudicial and not harmless."); *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached."); NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.[9]

_____, C.J.
Bulla

_____, J.
Westbrook

[9]Insofar as the parties have raised 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. Bill Henderson, District Judge, Family Division
The Jimmerson Law Firm, P.C.
Roberts Stoffel Family Law Group
Eighth District Court Clerk

GIBBONS, J., dissenting:

This case confirms the wisdom and force of Benjamin Franklin's well-known aphorism: "If you fail to plan, you are planning to fail." Nowhere is that principle more important than in litigation involving the welfare of children. In such cases, district courts have a responsibility to take an active role in case management from the outset rather than engaging in deliberate inaction or choosing to rely on assumptions and good intentions. So too has the highest court in our land emphasized such "wisdom and necessity for early judicial intervention in the management of litigation." *Hoffmann-La Roche Inc. v. Sperling,* 493 U.S. 165, 171 (1989).

Here, the district court failed to prepare and timely enter the mandatory scheduling order following the case management conference (CMC). Although respondent Margaret Stumbo first raised the possibility of relocating with the children to another state before the conference, at the conference, her counsel represented that no decision had been made and that he and Margaret were "discussing" the issue. However, the court imposed no deadline for filing such a request or even for notifying the opposing party that a decision had been made. As a result, the 30-day deadline for entering the scheduling order passed without any order being issued, leaving the parties without discovery parameters, or deadlines for motions and Margaret's relocation request. When Margaret ultimately filed her relocation request and brief, nearly three months had passed since the

CMC, and trial was less than three months away. Appellant Logan Stumbo then timely moved for a continuance so he could retain an expert and obtain a report addressing the impact of relocation on the children. Rather than expressly rule on the motion to continue trial, the district court questioned the need for such expert testimony, delayed the start of trial for few days, but did not rule on the admissibility of expert testimony until the first day of trial. The district court's ultimate ruling severely restricted the scope of the testimony, thereby prejudicing Logan's ability to fully present his case for joint physical custody and opposing relocation.

Because required by rule, and because relocation of very young children is a monumental issue in a custody case,[1] the district court should have studiously followed the procedures outlined in NRCP 16(b)(1) (stating the court must enter a scheduling order) and NRCP 16.2(j)(4)(A)(v) (stating the court must enter an order within 30 days after the CMC that contains a discovery deadline). When the court recognized five months later that there was no CMC compliant scheduling order, it should have granted Logan's requested continuance so he could obtain an expert witness. The district court's failure to do so was an abuse of discretion, and under the facts of this case, denied Logan due process. The best course of action for this court is to reverse the district court's orders for the purpose of allowing the normal process regarding expert witnesses to proceed, as well as to hold a supplemental evidentiary hearing for additional expert testimony to be presented. Because the magnitude of the district court's error is revealed

[1]As this court has recognized, "[r]elocation of children following the dissolution of the parents' relationship is one of the most difficult issues a court must resolve." *Monahan v. Hogan*, 138 Nev. 58, 58, 507 P.3d 588, 589 (Ct. App. 2022).

through a fact-based analysis, the procedural history of this case is described in detail.

Procedural history

Margaret and Logan were married in 2015 and have two children together, L.S., born in April 2019, and O.S., born in October 2022. Margaret filed for divorce in 2023 and immediately moved for sole physical custody. Logan opposed Margaret's motion and counterclaimed for joint physical custody. The district court subsequently entered a temporary order detailing a partial parenting agreement and ordered the parties to go to mediation. Mediation failed, and the case was set for trial; however, the district court did not enter a formal scheduling order. It instead ordered the parties to create their own discovery deadlines. But it did not assign the obligation to one party to prepare the case management order within 14 days as allowed by NRCP 16.2(j)(4)(B).

The district court specifically stated that it would *not* provide any orders regarding discovery and the parties should impose their own parameters for discovery and deadlines. The court instructed the parties to negotiate to resolve all issues. No mention was made of how to resolve any disputes, nor did the court insist on or suggest the involvement of the discovery commissioner. Finally, no deadline was imposed upon Margaret to notify the court or Logan as to whether she would seek permission to relocate the children to New Jersey nor as to when she must file her relocation brief.

Less than three months before trial, Margaret filed her brief to support her request to relocate both children to New Jersey. She argued she had lost her job in Las Vegas and obtained better employment in New Jersey where her mother and other family members lived. Logan opposed

the request and retained a psychologist, Stephanie Holland, Ph.D., to conduct a relocation assessment addressing the impact of relocation on the children. But to complete the full assessment, Dr. Holland represented that 90 days were needed.

Logan moved to continue the trial so Dr. Holland could complete her investigation, evaluation, and risk assessment report. Dr. Holland wanted to gather as much information as possible about the relocation by examining court records and other documents, interviewing appropriate persons including the parties, and examining the parties' homes and the children's prospective schools. Further, Dr. Holland indicated that she needed this time to research the role of fathers in children's academic success and overall health and apparently to testify as to how it applied to this case. This assessment would provide the foundation for expert testimony about these children's developmental needs and bonding, the parents' motives and abilities, and the effect of relocation on the family. Ultimately, the expert could provide insight to assist the district court's best interest determination by testifying to the predictive impact of relocation in this special situation involving children ages 1 and 4.

At the hearing on Logan's motion to continue trial, Margaret's counsel informed the district court that Margaret would not participate in any assessment conducted by Logan's expert and asserted NRCP 35 on mental and physical examinations of a party was not followed by Logan. The district court seemingly agreed with Margaret and subsequently explained it would place little to no weight on an expert opinion if Margaret did not participate in the assessment. Logan responded that a continuance was needed and denying the expert sufficient time to complete her assessment violated his due process rights, but the court seemingly rejected

his argument. The court did not make a formal ruling and implicitly denied Logan's motion for a continuance, but delayed commencement of the trial for a few days, and ordered the parties to resolve the expert issue on their own. No discovery motion had been filed and neither the district court nor the parties mentioned involving the discovery commissioner during this hearing regarding the need for a continuance and setting a discovery schedule.

At a subsequent hearing on the first day of trial, the district court confirmed that it "didn't continue this [trial]." Prior to that time, Logan had filed a motion for declaratory relief, asking the court to find that his expert's testimony would be admissible scientific evidence even if the expert was not allowed to interview both parties. This motion was based upon the court's statements at the hearing on the motion to continue that it would put no weight in an expert's opinion if it was "unilateral," meaning based upon an interview of only one party. The motion for declaratory relief, while unusual, was intended to provide an alternative path to admission of expert testimony because the district court had stated views that appeared to absolve Margaret from participating in the relocation assessment. Therefore, the motion was a last-ditch attempt before trial to obtain authorization for limited expert testimony despite Margaret's lack of participation, and the motion was *not* intended to force Margaret's participation. Despite this effort, the district court still had not made a ruling on expert testimony before the start of trial.

Also noteworthy from the hearing on the first day of trial—which was primarily designed to resolve procedural matters—the district court attempted to force the parties to reach an agreement on the admissibility of Dr. Holland's testimony stating,

> If each side digs their heels in on (sic) a polarized fashion on that, you're forcing the Court probably, not just to make the matter more complex, elongated, expensive, but we're probably building error into the record.
>
> . . .
>
> So I think you guys need to think outside the box now and compromise.

The district court ultimately ruled that it would allow Dr. Holland only to testify generally to the effect of the separation of children from a parent and not the specifics about relocation or school issues in this case stating:

> [T]he court would grant the declaratory relief if it's limited to that and not seeking to . . . provide specific recommendations after interfacing with the children or Dad to the exclusion of Mom. But the declaratory relief would be denied if [Dr. Holland] is going to opine directly on this move after having interfaced directly with Dad and the children, but with Mom excluded.

At this point, Dr. Holland's report had not been prepared but counsel for Margaret responded to the court that no discovery was needed. Logan nevertheless offered to provide a report from Dr. Holland to him. The district court concluded the proceedings cementing its ruling:

> But [Dr. Holland] cannot, number one, make recommendations on this particular case. Two, she cannot interface or conduct interviews of any of the parties and the children. And number three, she's not to opine on the school issue.

Trial proceedings were spread over several months and the parties and Dr. Holland were the primary witnesses. Dr. Holland did not comment on the facts or offer opinions on the specifics of the case pursuant to the district court's order. She instead opined that, generally, young children experience bonding issues with the nonrelocating parent and harm

results therefrom. Following trial but before the court issued its order, Logan and Margaret filed written closing arguments, in turn accusing each other of unreasonable and improper gatekeeping[2] behaviors as to the children and arguing for and against relocation to New Jersey being in the best interest of L.S. and O.S.

The district court granted Margaret's request for primary physical custody and permitted her to relocate to New Jersey with the two children. The court noted at the outset that the case presented a close call, and that Dr. Holland's testimony was the strongest part of Logan's case. The court also emphasized the effect of Logan's closing brief, stating that his testimony was impressive in some ways but the vitriol in the brief "largely impacts the courts (sic) discretion to award joint physical custody, as well as the courts (sic) ability to deny [Margaret's] relocation request." Further, the district court stated that, based upon the tone of Logan's closing brief, it would be an abuse of discretion to deny Margaret's requests for primary custody and relocation.

The district court analyzed the best-interest factors under NRS 125C.0035(4) as to physical custody and the relocation factors under NRS 125C.007(1) and (2) and found several factors favored Margaret and

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[2]"Parental gatekeeping encompasses attitudes and behaviors by either parent that affect the quality of the other parent-child relationship and/or level of involvement with the child." William G. Austin et al., *Parental Gatekeeping and Child Custody/Child Access Evaluation: Part I: Conceptual Framework, Research, and Application*, 51 Fam. Ct. Rev. 485, 486 (2013). Logan argues Margaret engaged in maternal gatekeeping, which has been defined as "beliefs and behaviors that ultimately inhibit a collaborative effort between men and women in family work by limiting men's opportunities for learning and growing through caring for home and children." *Id.* at 486 (internal quotation marks omitted). Margaret disagrees with Logan's assertion.

allowed her to immediately move to New Jersey with the children. The court established a liberal long-distance parenting plan for Logan based on a standard school schedule. Logan appealed.

On appeal, Logan first argues that the district court abused its discretion and violated his due process rights when it denied his motion to continue the trial so his relocation expert could properly investigate, prepare a report, and present her case-specific opinions on the best interest of these very young children, and the effect on them of a relocation across the country. Margaret responds that there is no constitutional guarantee to the use and retention of an expert under the due process clauses of the state and federal constitutions and the district court did not err by denying Logan's motion to continue.

Standard of review

"We review the district court's decision on a motion for continuance for an abuse of discretion." *Bongiovi v. Sullivan*, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006). The Nevada Supreme Court has held that a denial of a motion to continue a trial can be an abuse of discretion if it leaves a party with inadequate time to prepare for trial. *See S. Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 241, 243, 577 P.2d 1234, 1235 (1978). In other instances, the supreme court has held that a denial of a motion to continue was an abuse of discretion if "a defendant's request for a modest continuance to procure witnesses . . . was not the defendant's fault." *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). But in cases where the defendant fails to demonstrate that he was prejudiced by the denial of the continuance, "then the court's decision to deny the continuance is not an abuse of discretion." *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010).

Each case ultimately turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made. *Zessman v. State*, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978). However, the district court generally should not "weigh the evidence or make credibility determinations before holding an evidentiary hearing." *Myers v. Haskins*, 138 Nev. 553, 557, 513 P.3d 527, 532 (Ct. App. 2022). When resolving a request to relocate and making an initial permanent custody determination, "the district court must base its decision on the child's best interest." *Druckman v. Ruscitti*, 130 Nev. 468, 473, 327 P.3d 511, 515 (2014). "A court cannot adequately evaluate a child's best interest in the custody determination without considering the circumstances of the relocation request." *Id.* at 474, 327 P.3d at 515.

A short continuance should have been granted and Logan was denied due process

In this case, a continuance was not just warranted by the district court's failure to issue a scheduling order that included discovery deadlines, it was essentially mandated by the Nevada Rules of Civil Procedure. *See* NRCP 16(b)(1) (stating the court must enter a scheduling order); NRCP 16.2(j)(4)(A)(iii), (v) (stating "the court *must* enter an order" following a case management conference that includes interim discovery orders and the date for the close of discovery (emphasis added)); *see also In re Parental Rights of T.M.R.*, 137 Nev. 262, 265-66, 487 P.3d 783, 787-88 (2021) (stating that family law actions must follow the mandatory disclosure requirements of NRCP 16.2). Rather than adhere to those rules, however, the court directed the parties to set their own discovery deadlines. *See* NRCP 16.2(j)(4)(A), (B) (the court must enter an order that contains a discovery deadline or order one party to prepare the order).

Although no scheduling order containing discovery deadlines was entered in this case, the district court did sign an order on January 23, 2024—as prepared by Margaret's counsel—following the November 9, 2023, hearing and CMC. But that nine-page order only contains three sentences that address CMC requirements from NRCP 16.2(j)(3) and (4). The court ordered "that the parties are to impose their own discovery deadlines and determine their own parameters. There will not be any further scheduling orders from [this department]." It also set trial for four half-days beginning April 22, 2024.

NRCP 1 provides the scope and purpose of the rules of civil procedure. It states that the rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

NRCP 16 provides for pretrial conferences for a number of purposes, including to "establish[ ] early and continuing control so that the case will not be protracted because of lack of management"; to discourage "wasteful pretrial activities"; and to improve "the quality of the trial through more thorough preparation." NRCP 16(a)(2), (3), & (4). The rule also empowers the court to take appropriate action on "identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and dates for further conferences and for trial." NRCP 16(c)(2)(F).

Notably, the 2019 amendments to NRCP 16 suggest that it is the district court's responsibility to take an active role in case management, including scheduling and planning. *See In re Creating a Comm. to Update and Revise the Nev. Rules of Civil Procedure,* ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018); *cf.*

Sawyer v. Nev. Prop. 1, LLC, No. 81987-COA, 2021 WL 4911989, *6 (Nev. Ct. App. Oct. 20, 2021) (Order of Affirmance) (Bulla, J., dissenting) ("Other than to impose the June and July deadlines on Sawyer . . . , the court does not appear to have actively engaged in case management pursuant to NRCP 16, as required."). Federal courts have likewise recognized the importance of meaningful case management in the early stages of litigation, empowering its trial courts to assume an active role in pretrial proceedings—particularly discovery.[3] Because those decisions interpret the federal counterparts to Nevada's procedural statutes, they are persuasive here. *See Willard v. Berry-Hinckley Indus.*, 139 Nev. 516, 523, 539 P.3d 250, 257 (2023) (citing *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 285 n.2, 357 P.3d 966, 970 n.2 (Ct. App. 2015) ("[W]here the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying the federal rules are persuasive authority for this court in applying the Nevada Rules."); *see also Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct.*, 136 Nev. 221, 225 n.7, 467 P.3d 1, 6 n.7 (Ct. App. 2020) (clarifying that "the current version of the NRCP is modeled after the federal rules" and federal case law "involving the Federal

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[3]*Cf. Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 171 (1989) (emphasizing "wisdom and necessity for early judicial intervention in the management of litigation"); William W. Schwarzer, *Managing Civil Litigation: The Trial Judge's Role*, 61 Judicature 400, 402, 404 (1978) (urging district judges to adopt more active role in pretrial proceedings, especially in managing discovery disputes), *cited in Hoffmann-La Roche*, 493 U.S. at 171; *see also Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1366-67 (11th Cir. 1997) ("District courts must take an active role in managing cases . . . . This discretion is not unfettered, however. When a litigant's rights are materially prejudiced by the district court's mismanagement of a case, we must redress the abuse of discretion.").

Rules of Civil Procedure provide persuasive authority for Nevada appellate courts considering the Nevada Rules of Civil Procedure").

NRCP 16.2 applies to divorce proceedings and is entitled **Mandatory Prejudgment Discovery Requirements in Family Law Actions**. NRCP 16.2 imposes additional requirements beyond NRCP 16 as to early conferences. NRCP 16.2(a) & (j). *At the case management conference,* the district court and the parties must confer and consider the basis for the claims, provide for disclosures under the rule, and develop a discovery plan. NRCP 16.2(j)(3)(A)(i) & (ii). The district court should also enter interim orders to allow the case to progress and, for contested matters, give direction as to which party will have the burden of proof. NRCP 16.2(j)(3)(B)(i) & (ii); *see also Johnson v. Bennett,* 141 Nev., Adv. Op. 35, 575 P.3d 1023, 1031 (Ct. App. 2025) (holding the district court erroneously assigned the burden of proof to the nonrelocating parent in a child custody and relocation matter). Following the case management conference, the district court *must* enter an order within 30 days that includes interim orders for discovery and burdens of proof, a discovery deadline, a deadline for dispositive motions, and any other necessary orders. NRCP 16.2(j)(4)(A)(iii), (v), (vii), & (viii). If the court orders a party to prepare a case management order, it must be submitted to the opposing party within 14 days and to the court within 21 days of the CMC. NRCP 16.2(j)(4)(B). All discovery disputes that are made by written motion must first be heard by the discovery commissioner. NRCP 16.2(k).

These rules are comprehensive and should be interpreted as directed by NRCP 1 (stating the rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding"). Further, the

purpose of a pretrial conference as described in NRCP 16 is instructive for the district court, to "establish[ ] early and continuing control so that the case will not be protracted because of lack of management"; to discourage "wasteful pretrial activities"; and to improve "the quality of trial through more thorough preparation." NRCP 16(a)(2), (3), & (4); *see also United States v. Osborne*, 807 F. App'x 511, 527 (6th Cir. 2020) (clarifying that, under the federal corollary of NRCP 16, the district court is "tasked with expediting [cases and] establishing early and continuing control so that the case will not be protracted because of lack of management" (internal quotation marks omitted)); *Wynn v. Alexander*, No. 84-5450, 1986 WL 17707, *2 (6th Cir. 1986) (clarifying that FRCP 16 "mandat[es] an active role by the federal judiciary in case management prior to trial").[4]

Here, the district court followed neither the letter nor the spirit of these rules. By failing to establish a discovery plan, it abdicated its

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[4]*See also Lassiter v. City of Philadelphia*, 716 F.3d 53, 55 (3d Cir. 2013) ("Rule 16 of the Federal Rules of Civil Procedure contemplates that a trial court should assume an 'active managerial role' in the litigation process to expedite the efficient disposition of a case."); *In re Timbers of Inwood Forest Assocs.*, 808 F.2d 363, 374 (5th Cir. 1987) ("District court judges function under [FRCP 16] with full power and responsibility to manage their cases and with the directive to move their cases in such a way as to promote fairness to the parties and judicial economy."); *G. Heileman Brewing Co. v. Joseph Oat Corp.*, 871 F.2d 648, 652 (7th Cir. 1989) ("[The] spirit, intent, and purpose [of Rule 16] is . . . broadly remedial, allowing courts to actively manage the preparation of cases for trial." (alterations in original) (quoting *In re Baker*, 744 F.2d 1438, 1440 (10th Cir. 1984))); *Lyles v. Dollar Rent a Car, Inc.*, 849 F. App'x 659, 661 (9th Cir. 2021) ("[T]he purpose of Rule 16 is to empower the district court to effectively manage a case."); *In re Baker*, 744 F.2d at 1440 ("While on the whole Rule 16 is concerned with the mechanics of pretrial scheduling and planning, its spirit, intent and purpose is clearly designed to be broadly remedial, allowing courts to actively manage the preparation of cases for trial.").

responsibility to play an active role in case management. Instead of using the rules to administer the proceedings, the court ceded control to the parties—producing the very problems NRCP 16 is designed to prevent: lack of management, wasteful pretrial activity, and diminished trial quality caused by inadequate preparation. *See* NRCP 16.2(j)(3)(A)(ii) (stating that *at* the case management conference, the district court and the parties must provide for disclosures under the rule and develop a discovery plan). The district court stated at the CMC that the parties needed to set the parameters of the scheduling order after the conference, including discovery, that the orders should be prepared by the parties, and no further scheduling orders would come from the court.

Immediately apparent is that the first error in this case was the failure of the district court to develop and establish the discovery plan during the CMC as mandated by the rule. *See* NRCP 16.2(j)(3)(A)(ii) (requiring the court, counsel, and parties to "make or arrange" for necessary disclosures and "develop a discovery plan" at the CMC); *see also* NRCP 16(b)(1) ("[T]he court *must*, after consulting with the attorneys for the parties . . . by a scheduling conference, case conference, telephone conference, or other suitable means, enter a scheduling order" (emphasis added)).

Second, the court should have entered its own scheduling order following the conference, especially when no scheduling order was submitted to the court within the 21-day deadline, or at least no later than the 30-day deadline. *See* NRCP 16.2(j)(4)(A) (requiring the court to enter a case management order "[w]ithin 30 days after" the CMC); *see also* NRCP 16.2(j)(4)(B) (requiring the designated party to prepare, circulate, and

submit the case management order to the court for entry "within 21 days after" the CMC).

Third, even if the court did not prepare its own order, it should have contacted the parties to resolve the issues when the order that was ultimately submitted by Margaret, did not comply with the NRCP 16.2(j)(4) mandatory CMC requirements, including deadlines (it did, however, set a trial date). *See* NRCP 16.2(j)(4)(A)(iii), (v), (vi), (vii) & (viii) (providing that the district court *must* enter an order within 30 days after the CMC that includes interim orders for discovery and burdens of proof, a discovery deadline, a deadline for amending pleadings, a deadline for dispositive motions, and any other necessary orders). Here, a deadline to file the relocation brief, if relocation was sought, would have been the other type of order contemplated by the rule as a "necessary" order; *see also* NRCP 16(c)(2)(F) (stating the court at a pretrial conference may schedule the filing of pretrial briefs). The failure to enter a proper scheduling order led to all of the ensuing "wasteful" events starting with the motion to continue trial.

A continuance would not have been necessary had Margaret timely disclosed her intent to relocate the children to New Jersey, more than 2,500 miles away. Yet the district court imposed no deadline at the CMC for her to make that disclosure, and she did not file her relocation request until less than three months before trial. This delay is difficult to reconcile with her indication at the CMC that she might relocate but expected to reach a decision within 30 days. Nevertheless, Margaret did not inform Logan or his counsel of any decision during the ensuing months, but instead waited until February to file a formal relocation brief, leaving Logan little time to respond.

The colloquy between counsel and the district court at the CMC reflects that relocation was already under consideration but undecided. Despite this exchange, the district court imposed no deadline for filing a relocation request or otherwise addressing the issue.

> [Logan's counsel]: . . . . I've been informed by counsel this morning that Mother is very likely going to file a motion to relocate . . . .
>
> The Court: All right instead of debating what he's going to do or not do, just ask John directly. John do you intend to –
>
> [Margaret's counsel]: Well, no. I said there's a possibility, Your Honor, that we'll be filing a motion to relocate.
>
> The Court: You will.
>
> [Margaret's counsel]: Unless and until we do file a motion to relocate, you've already issued the temporary orders.
>
> The Court: Right. Right. Okay. So you are – you're –
>
> [Margaret's counsel]: So, Your Honor, at that hearing she can make her argument.
>
> The Court: So you are planning in the relatively near future to file such a motion. I would suggest –
>
> [Margaret's counsel]: We are discussing it.

Instead of setting a deadline on the most important issue in the case, or at least a discovery schedule, the district court merely directed the filing of a relocation brief instead of a motion, with no advance notice to Logan. Logan was left guessing what Margaret might do. Despite the court's comment about filing in the relatively near future, 85 days elapsed after the hearing without an email or a phone call from Margaret that the relocation decision had been made, and then the brief was suddenly filed.

As previously explained, although NRCP 16.2 requires the district court to prepare the scheduling order within 30 days of the CMC, it may direct a party to prepare it instead. *See* NRCP 16.2(j)(4)(A) & (B).

Here, Margaret faults Logan and argues that Logan was directed to prepare the order from the CMC, but the transcript from the hearing suggests otherwise:

> [Margaret's counsel]: [I]f you want to go ahead and give us –
>
> The Court: The attorneys will see to it that those items are returned to you.
>
> . . . .
>
> [Margaret's counsel]: Otherwise, Your Honor, if you could just give us the [trial] dates, we'll then – I'll ask [Logan's counsel] to send me a proposed order for the extra stuff we did today –
>
> The Court: Okay.

The "extra stuff" concerned different matters, including exchanging a key, holiday parenting time, and temporary custody. It did not address the core CMC matters, such as a discovery deadline and motion practice. Indeed, the nine-page order after hearing devoted only three sentences to CMC requirements.

At the CMC, Margaret's counsel continued to press the court to set trial dates:

> [Margaret's counsel]: . . . . If there's a way to resolve custody, Judge, we'll be able to resolve it. It's still very early in the stages of the case, but if we just get the trial dates –
>
> The Court: Okay.
>
> [Margaret's counsel]: – and let us get our discovery done –
>
> The Court: Okay.
>
> [Margaret's counsel]: – I think we will have a conclusion about where the case is going probably in the next 30 days.
>
> The Court: Okay. The other –

The district court eventually set trial dates and ordered the parties' attorneys to prepare the orders from the hearing. The record makes clear that the district court declined to establish discovery parameters itself.

Instead, it left the matter to counsel to negotiate and agree upon a discovery schedule.

> The Court: . . . . And the attorneys will prepare the orders from today's hearing.
>
> . . . .
>
> [Margaret's counsel]: – [to Logan's counsel] you're okay preparing that order?
>
> The Court: – and there won't be any further orders coming from this court as to that. So you guys anticipate discovery, include all those deadlines and cutoffs within the order from this hearing. Negotiate that through email, back and forth, whatever, before you prepare the order and get all that handled.
>
> [Margaret's counsel]: That sounds good.
>
> [Logan's counsel]: [to Margaret's counsel] We'll agree to a default holiday schedule, John. I'll draft and you sign off.
>
> The Court: Oh, yes. Thank you. And also for today –
>
> [Margaret's counsel]: Yeah, go ahead and send it over.

Not only did the district court fail to set the mandatory discovery and motion deadlines at the CMC, it neglected to adopt any fallback plan if the parties failed to reach agreement after the CMC. Although Margaret's counsel suggested that Logan's counsel prepare the order from the hearing, particularly regarding the "extra stuff," Logan agreed only to draft the default holiday parenting schedule. The court merely stated that both parties would prepare orders but never specified who was responsible for preparing the required CMC order.

Painfully apparent from the record is that the district court would not itself establish any discovery parameters during or even after the CMC. Compounding the problem, the court had already discouraged any hearings by advising Margaret to file a brief and not a motion if she decided to seek court permission to relocate, but with no requirement to provide

advance notice to Logan. *See, e.g., Jones v. Beale*, No. 90243-COA, 2026 WL 710253, *5 (Nev. Ct. App. Mar. 12, 2026) (Order Dismissing in Part, Affirming in Part, Vacating in Part and Remanding) (affirming modified legal custody where one parent could make the legal custody decisions as long as she provided written notice to the other parent of her intention to do so). Further, absent agreement between the parties, any proposed order would necessarily have been incomplete, particularly with respect to discovery deadlines, dispositive motions, and the deadline for filing a relocation brief. *See* NRCP 16.2(j)(4)(A)(iii), (v), (vii), & (viii). Unsurprisingly, the order Margaret's counsel ultimately prepared more than two months after the CMC included only three sentences addressing CMC requirements but did set the trial date. Although patently deficient under NRCP 16.2(j)(4)(A), the district court nevertheless signed and entered it.

After Margaret filed her relocation brief in February, no discovery deadline for expert witnesses had been established, or the time had elapsed, *see generally* NRCP 16.2(e)(3)(B), leaving Logan little choice but to move for a continuance so he could retain an expert. He filed his motion to continue and extend discovery deadlines in early March asserting that after a diligent search only Dr. Holland was available to conduct and complete a relocation assessment and she needed 90 days. The motion outlined twelve areas that Dr. Holland wished to explore as part of her investigation, assessment, and testimony. Shortly after that, Logan filed a designation of expert witness that contained the same information plus Dr. Holland's curriculum vitae and a list of her prior testimony during the preceding four years.

Near the end of March, Logan also filed a motion for expert testimony under NRCP 16.2(e)(3)(B) and argued his due process rights would be violated if expert testimony as proposed for Dr. Holland was not allowed. Margaret argued in response that the discovery deadline closed on March 22, and therefore under NRCP 16.2(e)(3)(B), the disclosure of an expert report was untimely as it was due January 22. Margaret further argued that she had provided notice to Logan of her intent to relocate to New Jersey in October, and again at the CMC in November, so he should have hired an expert earlier. Thus, in her view, no due process violation could result.

The motions hearing occurred on April 15—barely five weeks before trial. At the outset of the hearing, the district court stated that it generally granted continuances when additional time was needed to develop the case, prepare the merits, or secure an expert. Yet the court asserted that the relocation issue had already been addressed at a prior hearing—apparently referring to the CMC. The court repeatedly criticized last-minute continuance requests and remarked figuratively that "43,000 questions" would have to be answered before granting the motion.

Logan's counsel responded by explaining that no clear answer had ever been given as to whether Margaret would pursue relocation and that opposing counsel had instead been gathering evidence for a custody or relocation brief. Before Logan could complete that explanation, the district court interjected, "you have to understand that the Court is going to put no weight in custody or relocation experts." The district court effectively denied the continuance and reiterated that it would give no weight to expert testimony—including Dr. Holland's—without Margaret's participation. At that point, however, the court had not reviewed any report or heard any

testimony. Instead, it apparently relied on Margaret's statement that she would not participate in Dr. Holland's assessment and her argument that Logan had not filed a motion under NRCP 35.

But Dr. Holland's proposed relocation assessment was not a physical or mental examination governed by NRCP 35. Rather, it strongly resembled—although in a more limited form—a custody evaluation permitted under NRCP 16.22. That rule allows the court to specify the individuals "to be examined *or permit the examiner*" to determine whom to interview. NRCP 16.22(a)(3) (emphasis added). There is no requirement that all persons be interviewed, but the court is free to designate the persons to be interviewed. The rule Margaret cites on appeal, EDCR 5.406(b), which is similar to NRCP 35, is inapposite, as it applies to medical or psychological examinations of a party or child—not custody evaluations or relocation assessments.

Even if EDCR 5.406(b) applied, it does not prohibit interviewing the parties, and the district court could have appointed a neutral expert had genuine disagreement arisen. Margaret offered no consequential justification for refusing to participate, just a general assertion that an assessment would not be helpful. The district court nevertheless framed the issue as Logan excluding Margaret by stating that specific recommendations from Dr. Holland would not be allowed if Margaret was excluded from the assessment, even though it was Margaret that declined to participate when Dr. Holland would have included her. Nor did the court explore alternatives, such as allowing Margaret to respond to written questions or submit her own statement. Instead, the district court ultimately barred Dr. Holland from investigating the facts and presenting a case-specific opinion, thereby restricting information critical to

determining child custody and relocation. *Cf. Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 850 (Ct. App. 2025) (emphasizing that child custody decisions should be based on the facts of the case rather than procedural technicalities especially when domestic violence is alleged); *see also Blanco v. Blanco*, 129 Nev. 723, 730, 311 P.3d 1170, 1174 (2013) (stating that child custody issues "must be decided on their merits" when addressing a custody case involving case-concluding sanctions).

During the hearing on the first day of trial, referring to the admission of expert testimony, the district court remarked that if "you guys had opened up a dialogue, I don't think I would have this mess in my lap right now." And then later, similarly, the court noted that the parties "needed to set the ground rules beforehand instead of dumping this mess on [the court]." Logan's counsel responded, "[h]ow could I set the [ground rules]," and later explained that they did not hire an expert earlier because they did not think relocation would be pursued as the months went passing by following the CMC and there was no relocation brief. The district court then appeared dumbfounded to learn that no deadline for filing a relocation brief had ever been set, prompting the following exchange:

> The Court: But didn't they get it in by the – the deadline was – they got it in –
>
> [Margaret's counsel]: Judge –
>
> [Logan's counsel]: They said on November 9th that they would do so within—
>
> The Court: What was the deadline again on the brief that they had to file?
>
> [Logan's counsel]: You never gave a deadline they said on November 9th that they would do – they would know whether or not they're pursuing joint or primary – [or relocation].
>
> The Court: *There has to be a deadline.*

(emphasis added).

The district court ultimately offered no justification for denying the continuance other than its concern that Dr. Holland's testimony might be biased if she did not interview Margaret. But Dr. Holland, a professional who testifies regularly in the family courts in Clark County, had intended to investigate all the circumstances and interview both parents to provide the most thorough testimony on the attendant issues. There was no claim advanced by Margaret that Dr. Holland was biased or unqualified. Nor did Margaret request her own expert or seek appointment of a neutral evaluator; instead, she advanced an arbitrary and unsupported statement that she would not participate in a relocation assessment because it would not be helpful.

The district court could have addressed any concern about impartiality by imposing a discovery schedule regarding expert testimony on an accelerated basis and resolving any disputes after that, or by requiring Margaret's participation in a limited manner such as by permitting written responses from her, or by allowing the assessment to proceed as it was designed, subject to vigorous cross-examination at trial without Margaret's pretrial participation. *See* 5 J. Wigmore, Evidence § 1367, p. 32 (J. Chadbourn rev. 1974) (stating that cross-examination "is beyond any doubt the greatest legal engine ever invented for the discovery of truth"). If Margaret chose not to participate, the court could have weighed that decision accordingly. This was not a binary choice or zero-sum game as the district court implied.

By excluding the information that a relocation assessment would have generated, the district court imposed an unwarranted limitation on relevant evidence. The resulting procedural "mess" the court

bemoaned was largely self-created, stemming from the court's failure to follow the mandatory CMC processes and scheduling duties. Additionally, Margaret's delay in seeking relocation, or in providing timely notice, is an important factor. Her statement in opposition to the motion for NRCP 16.2(e)(3)(B) relief before the April motions hearing is instructive. Therein, Margaret claimed she provided notice of intent to relocate in October, and again at the CMC in November, but that assertion is disingenuous at best when reviewing the transcript from the CMC as previously recited ("I said [in October] there is a possibility . . . that we'll be filing a motion to relocate . . . . We are [now] discussing it.").

This was not a discovery dispute requiring referral to the discovery commissioner. *See* NRCP 16.2(k) (stating that all discovery disputes that are made by written motion must first be heard by the discovery commissioner).[5] Rather, it was the denial of a reasonable request for a continuance filed one-and-a-half months before trial and decided five weeks before trial. Had the district court granted the continuance, discovery could have proceeded and expert testimony could have been properly developed under established parameters. The court then would have been "within its lane" to evaluate the admission of expert testimony, whether on a proper motion or at trial. Ironically, the final day of trial proceedings was July 26, 2024, and the court issued a decision from the

[5]Any assertion of an obligation to pursue a discovery dispute with the discovery commissioner rests on Margaret, not Logan, because Margaret is the one that claimed discovery closed on March 22, 2024, and therefore Logan's expert report was due on January 22, and should be precluded as untimely under NRCP 16.2(e)(3(B). But she did not seek any intervention by the discovery commissioner nor disclose her intention to relocate the children until after January 22.

bench on July 30, both dates being more than 90 days later than the initial trial date of April 22, and almost five months after the motion to continue trial was filed. That timing demonstrates that a continuance was feasible and would have ensured a fair trial.

Under these circumstances, denying a short continuance was an abuse of discretion that risked the very due process violation the district court purported to avoid. *Cf. S. Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 241, 243, 577 P.2d 1234, 1235 (1978) (perceiving no abuse of discretion where it appeared the district court "could fairly decide appellant had adequate opportunity to depose the expert in the time left before trial"). The ruling materially impaired Logan's ability to argue for joint physical custody and oppose relocation, as well as his ability to protect his fundamental parenting interests.

Substantive due process guarantees that no person shall be deprived of life, liberty or property for arbitrary reasons. *See* Nev. Const. art. 1, § 8(5); *Arnesano v. State, Dep't Transp.*, 113 Nev. 815, 819, 942 P.2d 139, 142 (1997). The Due Process Clause of the Fourteenth Amendment protects those liberty interests that are deemed fundamental and are "deeply rooted in this Nation's history and tradition." *Moore v. East Cleveland,* 431 U.S. 494, 503 (1977). These rights extend to fundamental parenting interests. *Troxel v. Granville*, 530 U.S. 57, 66 (2000) ("[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."); *see also Roe v. Roe*, 139 Nev. 163, 172, 535 P.3d 274, 286 (Ct. App. 2023) (recognizing that parents have a constitutional liberty interest in the care and custody of their children and a "permanent change to parenting time affects a parent's fundamental right

concerning the custody of their children"). This fundamental right can be implicated in the context of a denied request for continuance of proceedings. *See In re D.D.*, 127 Nev. 1131, 260 P.3d 183 (2011) (concluding that denying a father's motion for continuance of an adjudicatory hearing in a child welfare matter, solely on basis that another trial judge had previously denied an oral request for a continuance, was an abuse of discretion); *DJ v. CJ*, 464 P.3d 790, 808 (Haw. 2020) (holding that denying a pro se father a continuance to obtain counsel in a child custody relocation dispute was an abuse of discretion).

Relatedly, our courts have engaged in sua sponte analysis of statutory schemes that implicate broad constitutional challenges on due process grounds—even when the parties do not frame their due process arguments under those particular statutory schemes. *Cf. Palmieri v. Clark County*, 131 Nev. 1028, 1046-48, 367 P.3d 442, 455-57 (Ct. App. 2015) (recognizing that an appellate court has discretion to consider "issues of constitutional dimension" sua sponte and, on that basis, taking up at oral argument the unbriefed question whether administrative probable cause, rather than criminal probable cause, governed the illegal search question).

A review of Nevada caselaw suggests such sua sponte review is common in appellate review of guardianship and custody disputes where, as articulated above, parenting and family integrity are recognized as fundamental liberty interests. *See, e.g., In re Guardianship of Jones*, 139 Nev. 139, 145-48, 531 P.3d 1236, 1243-45 (2023) (treating guardian-removal and successor-appointment provisions enumerated under NRS Chapter 159 as the statutory framework that must be applied to protect liberty interests even when not raised in the district court); *In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 166 n.24, 87 P.3d 521, 526 n.24 (2004) ("[B]ecause this

appeal raises an important constitutional issue, we will address it sua sponte."). Thus, as Logan's procedural and substantive due process rights were impacted by the district court's denial of his motion for a continuance in this case, a sufficient "constitutional dimension" exists that warrants consideration of rule-based schemes that control the nature and timing of case management—notably NRCP 16 and 16.2—even if those particular rules were not clearly invoked or expressly argued on appeal by Logan under his due process arguments.

The unfairness created here was initially caused by the failure to create a discovery plan at the CMC, the absence of the required scheduling order, and Margaret's unexplained delay in seeking relocation. It was severely exacerbated by the district court's failure to grant a meaningful continuance with discovery deadlines and crippling Dr. Holland's investigation and testimony by unwarranted restrictions resulting in a due process violation. *See Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007) (holding that denial of a continuance may be an abuse of discretion when the delay is not attributable to the moving party and results in prejudice); *see also Virgin Valley Water Dist. v. Paradise Canyon, LLC*, 141 Nev., Adv. Op. 19, 567 P.3d 962, 975 (2025) (reversing a judgment where a party's due process rights were violated when the district court did not allow a meaningful opportunity for the party to present its case by unduly restricting its time of presentation and admission of evidentiary exhibits); *Cruz v. Garcia*, 377 P.3d 1028, 1031 (Ariz. Ct. App. 2016) (concluding that a mother was denied due process in a child custody proceeding when the decision was rendered without a formal evidentiary hearing because the best interest of the child requires that a party must have time to prepare and present all relevant evidence); *cf.* EDCR 5.210(a)

& (c)(2) (recognizing that a court may continue proceedings as necessary to accommodate court appointed special advocate services in a juvenile matter and also family services that would focus on the best interest of the children that are the subject of a custody dispute).

Margaret's position on appeal appears to move between three distinct ideas in her arguments for affirmance: whether the expert evidence was admissible, how much weight the district court would give it, and whether restricting it violated due process. But those are not identical inquiries. Once Margaret sought out-of-state relocation in the context of an initial custody determination of very young children, fairness demanded a real opportunity for Logan to develop evidence specifically addressing the consequences of that move. Equal liberty interests do not justify proceeding on an underdeveloped record; they heighten the need for careful process and encourage the district court to take an active role as contemplated under NRCP 16 and 16.2. But that did not happen in this case. As the district court recognized, "[t]here has to be a deadline," but the court set none for a relocation brief or discovery. That failure, standing alone, warrants reversal and remand, because the court denied a meaningful continuance despite recognizing the error and being fully able to remedy it to ensure Logan's due process rights were protected.

As to the district court's consideration of the expert testimony itself, the court's prospective declaration that it would give no weight to a relocation expert's testimony if the other party was not included, was not a neutral weight determination made after hearing the evidence. Yet it shaped the litigation before trial and was then used to justify the refusal to meaningfully continue the matter. The district court's restriction therefore exceeded a simple continuance or evidentiary ruling within its discretion

and instead operated to violate Logan's procedural and substantive due process rights.

Notably, none of the best interest or relocation factors expressly require expert testimony, but none restrict it, and the best interest factors identified in NRS 125C.0035(4) are not exclusive ("In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things . . . ."), and the NRS 125C.007 relocation factors contain a catchall provision. *See* NRS 125C.007(1)(f) (stating that the court may consider other factors necessary to assist the court in determining whether to grant permission to relocate). One of the best interest factors was directly affected by the district court's exclusion of Dr. Holland's testimony, namely, the physical, developmental and emotional needs of these children. *See* NRS 125C.0035(4)(g). Likewise, the relocation factor in NRS 125C.007(1)(e) was critical, in that it states an important question that must be answered when there is a relocation request: "Whether there will be a realistic opportunity for the non-relocating parent to maintain a [parenting time] schedule that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted . . . ."

Although the district court allowed Dr. Holland to provide expert testimony on the general effects of relocation, it was not case-specific, and thus she was shackled by not being able to describe and analyze the situations that occurred between these parties. Margaret was then able to easily argue that Logan was an uncooperative parent that caused conflict in the early stages of their divorce. Importantly, Dr. Holland could not give case-specific opinions and recommendations regarding the best interest of the children and the relocation factors. Nonetheless, she was able to

demonstrate that expert testimony was relevant and helpful. Once the court accepted that the subject matter was proper for expert assistance, the restriction of her testimony to abstract generalities appears arbitrary and was inadequately justified. If the expert's testimony is useful in a general sense, logic suggests that case-specific testimony would be even more beneficial—especially as the district court's final decision turned on child-centered predictions about this family's future functioning.

In sum, the district court did not merely regulate the form of Logan's expert proof, it prevented him from presenting meaningful, case-specific evidence on the central issue in a close relocation dispute during an initial custody determination that would have far reaching effects throughout the children's minority. This case is the quintessential example of a family case involving fundamental parental rights, short of termination of those rights. *See Monahan v. Hogan*, 138 Nev. 58, 58, 507 P.3d 588, 589 (Ct. App. 2022) (recognizing relocation cases are among the most difficult cases a court must resolve). Because the court simultaneously refused to continue trial, failed to facilitate a workable process for obtaining an effective relocation assessment, and then discounted the resulting incomplete expert evidence because it was too general, Logan was denied a meaningful opportunity to be heard. On this record, this court should reverse and remand to allow Dr. Holland to conduct a relocation assessment and testify about the circumstances of this case and the children's best interest.

Other error and prejudice

Logan also argues that the district court erred by granting Margaret's relocation request based on the tone of his closing brief, thereby accepting argument by counsel as evidence, and he emphatically reinforced

this contention during oral argument. Margaret responds that the district court was within its discretion to consider Logan's closing brief, as it was more than just argument of counsel because it referenced testimony and exhibits presented during trial.

The role of the district court is to apply the law to the facts and evidence before it and reach a decision that is supported by substantial evidence, otherwise it abuses its discretion. *See Real Est. Div. v. Jones*, 98 Nev. 260, 265-66, 645 P.2d 1371, 1373-74 (1982). As the trier of fact, the district court's weighing of evidence is given great deference. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). However, arguments of counsel are not evidence and do not establish the facts of the case. *Hunter v. Gang*, 132 Nev. 249, 262, 377 P.3d 448, 457 (Ct. App. 2016). Furthermore, "[f]acts or allegations contained in a brief are not evidence." *Phillips v. State*, 105 Nev. 631, 634, 782 P.2d 381, 383 (1989). This court does not owe deference to legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015).

As the district court expressly stated that it would be an abuse of discretion to deny Margaret's requests because of the tone of Logan's closing brief, that decision controlled its custody and relocation determination. Because the arguments of counsel are not evidence, *see Hunter*, 132 Nev. at 262, 377 P.3d at 457, the district court must base its factual determinations on substantial evidence, *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009), not argument. To the extent that the court based its decision to grant Margaret's request to relocate on its view that Logan's closing brief was offensive, the district court abused its discretion. *Cf. Roe*, 139 Nev. at 184 n.21, 535 P.3d at 294 n.21 (holding that sanctions pursuant to EDCR 5.219 for vexatious litigation were improper in

a child custody proceeding without notice and an opportunity to be heard but emphasizing the need for civility from counsel and citing examples of lack of civility by opposing counsel under EDCR 5.218).

Logan argues he was prejudiced by the district court's decision to deny his motion to continue the trial, restrict his expert's testimony, and base its determination in part on the tone in Logan's closing brief. Margaret responds that the district court acted within its discretion in denying the request for a continuance, that it correctly determined that the use of an expert was not necessary, and that it properly relied on evidence and arguments in reaching its decision.

When a moving party shows that an error is prejudicial, the error is not harmless, and reversal may be appropriate. *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010). "To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached." *Id.*

Here, Logan was prejudiced by the denial of the continuance. He correctly points to the written order of the district court where the court commented that Dr. Holland's testimony was the strongest support for his case, and there were only four witnesses in this trial, magnifying the importance of her testimony. Further, the district court commented that the general information provided by the expert was important. Thus, it stands to reason that allowing Dr. Holland time to properly investigate and prepare a full report, present her opinions on the effect of a relocation across the country on the children, and the best interest of these children, would have been crucial information and could have altered the outcome in this matter. Her testimony would have been dramatically more extensive as to

the facts in this case, the impact on these parties and children, and her opinion on the best interest of the children, if allowed to be case-specific, as exemplified by the twelve areas of inquiry and testimony identified in the motion to continue and designation of expert witness.

The investigation and testimony allowed by the district court restricted Dr. Holland from making recommendations, from interfacing or conducting interviews with any party, or opining on school issues, which conflicts with customary rules of evidence. *See* NRS 50.285(1) & (2) (allowing an expert to rely on facts or data perceived by or made known to the expert at or before the hearing, *even if inadmissible*, if experts in the field would reasonably rely on them); *see also* NRS 50.295 (stating experts may give opinions on the ultimate issue to be decided by the trier of fact); *cf. Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 850 (holding, in the context of a case with allegations of domestic violence, that the district court should consider at trial, all relevant information in child custody matters).

The district court's decision to severely limit expert testimony regarding the children and the family was not supported by the law or the facts. The record further reveals that the district court engaged in contradictory actions regarding the value of the expert testimony. Pretrial, the court expressed that the testimony would be of little value and ultimately restricted it to generalizations. *See Myers*, 138 Nev. at 557, 513 P.3d at 532 (stating in the context of a motion to modify custody, the district court should not "weigh the evidence or make credibility determinations before holding an evidentiary hearing"). After the trial, the court viewed the information as somewhat important but did not appear to give it any weight because it was too general. Considering those actions, combined with the proposed purpose of the relocation expert to provide case-specific

evidence about the best interest of these children in the relocation context, it is reasonable to conclude that the district court could have reached a different conclusion had it allowed the expert to make specific conclusions and recommendations on the case. *Cf. Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 852-53.

Moreover, the district court's decision to reject Logan's request for a short continuance and extended discovery deadlines was erroneous when the court had less restrictive alternatives including ordering an expedited discovery schedule. The court's decision effectively disallowed Logan from presenting expert witness testimony on the specific effects of relocation on these children and cannot be considered harmless especially in light of this "close call" that was apparently tipped in Margaret's favor by the tone of the closing briefs. This is also evident as not harmless because the court based part of its custody and relocation decision on the brief's lack of decorum when it stated in the written order after trial that "[b]ased off the tone of [Logan's] final brief, it would be abusive [sic] discretion to deny [Margaret's] requests." The court could have alternatively considered imposing sanctions on Logan's counsel rather than having the children potentially suffer from the mistakes of counsel. *See Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993) (emphasizing that a district court may not use a custody determination "as a sword to punish" the misconduct of the parties); *see also Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2015) (providing that the district court's custody decision must be made for appropriate legal reasons).

The district court expressly remarked that Logan's closing brief was "hyper aggressive" and vitriolic and that it undermined his legal positions. That language is troubling and not harmless error even if

substantial evidence supported relocation because the district court treated it as dispositive of the outcome of the custody and relocation dispute. Again, the district court stated Logan's closing brief "largely impacts the courts (sic) discretion to award joint physical custody, as well as the courts (sic) ability to deny [Margaret's] relocation request." And the court further stated that, because of the tone of the briefing, it would be an abuse of discretion to deny Margaret's requests for primary custody and relocation.

When a case is described by the district court itself as "a close custodial call," comments showing impatience with one party's presentation matter more, not less. The court's own words suggest that the court assessed the merits of the case through the lens of counsel's rhetoric rather than strictly through evidence and law. In that context, comments by the district court showing indignation with one party's presentation matter more, not less. In a close case, like here, signs of punitive reasoning demonstrate a lack of harmlessness, even if counsel's conduct was reprehensible.

Therefore, despite what otherwise appear to be proper findings regarding the best interest of the children and relocation, I cannot confidently say that the same result would have necessarily been reached had the district court considered all the intended evidence. *See 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 . . . and remand for further proceedings."); *see also Johnson v. Bennett*, 141 Nev., Adv. Op. 35, 575 P.3d 1023, 1031 (Ct. App. 2025). Likewise, the way the district court used the tone of Logan's post-trial brief to support its decision was not harmless.

The better course in this case would be to reverse the district court's relocation order and, on remand, allow Dr. Holland to conduct a relocation assessment and present testimony addressing the circumstances of this case and the children's best interest, rather than rely upon a record that restricted her testimony to theoretical relocation issues like the district court did. Maintaining the existing custody order pending those proceedings would minimize disruption while ensuring a fair and informed decision. *See Davis*, 131 Nev. at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand).

Accordingly, for the reasons set forth above, I respectfully dissent.

_____, J.
Gibbons