

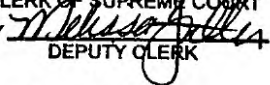
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NAE-RYUNG LEE,
Appellant,
vs.
JOSHUA LEE PERRY,
Respondent.

No. 90830-COA

FILED

MAY 20 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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

Nae-Ryung Lee appeals from a district court amended findings of fact, conclusions of law, and decree in a divorce and child custody action. Eighth Judicial District Court, Clark County; Mari D. Parlade, Judge.

Nae-Ryung Lee and respondent Joshua Lee Perry were married and resided in San Diego, California with their minor child, who was born in March 2019. In October 2021, the parties took a vacation to Nae-Ryung's home country of South Korea. In June 2022, Joshua and the minor child returned to the United States, while Nae-Ryung remained in South Korea. Joshua and the minor child then moved to Las Vegas in June 2022 to reside with the child's paternal grandmother, and Nae-Ryung joined them in Las Vegas in August 2022. Nae-Ryung lived with the family in Las Vegas for several months after but then alleged that Joshua had "kidnapped" the minor child as the parties had purportedly agreed that they would return to South Korea. Accordingly, Nae-Ryung filed a complaint for divorce in Las Vegas in October 2022 and sought primary physical custody of the child, permission to relocate with the child, and an order that Joshua not leave the state with the child. The district court entered an order in which it determined Nevada was not the home state of the minor child and dismissed

the custody portion of the divorce case in its entirety, declining to address whether the court could assert temporary jurisdiction on other grounds. Joshua appealed from that determination. This court reversed that decision and found the district court failed to address whether Nevada had jurisdiction under any of the other circumstances outlined in NRS 125A.305(1). *See Perry v. Lee*, No. 86002-COA, 2023 WL 6620106, at *2 (Nev. Ct. App. Oct. 10, 2023) (Order of Reversal and Remand).

In October 2023, Joshua filed a complaint for return of the minor child under the Hague Convention in South Korea as the minor child had been with Nae-Ryung in South Korea since November 2022. Joshua also filed a motion and emergency motion to enforce child custody in the district court case in Nevada in November. On remand, the district court held a hearing in December 2023 and determined that it was taking temporary emergency jurisdiction over the minor child and granted a pickup order. The court awarded Joshua temporary sole legal and primary physical custody subject to Nae-Ryung's supervised parenting time pending an evidentiary hearing. The court found that it was in the child's best interest to be returned to Nevada where the initial custody action was filed. In March 2024, Joshua filed a motion for an order to show cause since the minor child was still in South Korea.

In April 2024, the district court held an evidentiary hearing on jurisdiction, the order to show cause, and child custody. Nae-Ryung was not present at the evidentiary hearing in person or by video. Joshua and his witnesses, including his family members, testified concerning the minor child. The court issued a decree of divorce in June, determining that Nevada was not the home state of the minor child, and that the evidence failed to establish that the court had jurisdiction to resolve the issue of child

custody pursuant to NRS 125A.305(1)(b),(c), and (d). The district court relied on NRCP 60(a) and set aside its temporary order from the December 2023 hearing, where it took temporary emergency jurisdiction, noting that it could not do so since the minor child was not in Nevada.

Joshua thereafter filed a motion to reconsider the decree and argued that the district court should exercise jurisdiction over the minor child and adjudicate custody based on the evidence previously presented at the April 2024 evidentiary hearing. Nae-Ryung filed an opposition to the motion. The district court heard the motion and opposition in August 2024, noted that Nae-Ryung had not appeared, and deferred on ruling on the motion until resolution of the court proceedings in South Korea. On December 18, 2024, Joshua appeared at the return hearing, but Nae-Ryung did not, and the district court heard his motion to reconsider and granted it in its entirety.

In granting reconsideration, the district court found that the minor child's habitual residence country was the United States and that has never changed and that there was no risk to the minor child to return to Nevada and the United States. Thus, the court found that Nevada shall have exclusive and continuing jurisdiction over the custody issue of this case, and Joshua's request for issuance of a pickup order for the return of the minor child to Nevada was granted. The court also ordered Nae-Ryung to return the minor child to Joshua's care and custody in Nevada. The court awarded Joshua sole legal and sole physical custody. Shortly after, Nae-Ryung filed a motion to reconsider the district court's grant of Joshua's motion to reconsider, including the custody determination.

During a February 2025 hearing on Nae-Ryung's motion, the district court ordered the parties to brief the issue of whether its order for

custody from the December 2024 hearing should have been temporary or permanent. Upon further briefing by the parties, the district court entered its amended findings of fact, conclusions of law, decree and order in June 2025 which awarded Joshua sole legal custody and primary physical custody, subject to Nae-Ryung having supervised parenting time weekly. This appeal followed.

Nae-Ryung argues the district court erred in sua sponte amending its decree more than a year after it was initially entered and that her due process rights were violated as she did not have notice that the result of the evidentiary hearing would be the issuance of a final custody order. She argues that she was provided no notice of the prospect that Joshua would be granted sole legal and physical custody as a result of the December 2024 hearing. Thus, she asserts the child custody determination was not heard on the merits. In response, Joshua argues that the district court did not sua sponte amend the decree as it was entered after each party filed motions for reconsideration along with court hearings and that Nae-Ryung had sufficient notice to satisfy her right to due process.

“[P]rocedural due process requires notice and an opportunity to be heard.” *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (internal quotation marks omitted). “Due process is satisfied where interested parties are given an opportunity to be heard at a meaningful time and in a meaningful manner.” *Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) (internal quotation marks omitted). A party’s due process rights may be violated if the parties are not provided notice that the court will be considering a specific issue, such as parenting time. *Cf. Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996) (holding that the district court violated a party’s due process rights when the party had no

notice that the court would be considering the specific issue of parenting time).

Here, we are not persuaded by Nae-Ryung's assertions that she did not know the district court would issue final custody determinations in this case. The record demonstrates that Joshua filed a pretrial memorandum in early April 2024, which identified the unresolved issues for the evidentiary hearing, including jurisdiction and legal and physical custody of the minor child. Moreover, both parties came before the district court for a hearing in April 2024, in which the court confirmed the evidentiary hearing date would stand on April 26, 2024, and that the evidentiary hearing would address subject matter jurisdiction, the order to show cause, and custody. Although Nae-Ryung failed to appear at the evidentiary hearing on April 26, Joshua appeared and the court heard testimony that pertained to custody of the minor child.

While the district court's initial decree determined that the court did not have jurisdiction over the child custody issue, Joshua subsequently filed a motion for reconsideration in which he specifically requested that the district court assume jurisdiction over the minor child and resolve the issue of child custody. Joshua's motion for reconsideration of the court's initial decree contained a certificate of service indicating he served Nae-Ryung through the court's electronic filing system, *see* NRCP 5(b)(2)(E), and Nae-Ryung filed an opposition to the motion. Thus, Nae-Ryung had adequate notice that child custody was an issue the court needed to resolve. *See Matter of Guardianship of D.M.F.*, 139 Nev. 342, 351, 535 P.3d 1154, 1163 (2023) (stating that "[n]otice is sufficient to satisfy due process where it is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an

opportunity to present their objections” (internal quotation marks omitted)).

Moreover, Nae-Ryung’s argument that the district court sua sponte amended the decree and, in so doing, violated her due process rights, is without merit, given Joshua’s pending motion to reconsider, which specifically asked the court to find that it had jurisdiction over the minor child and issue a custody determination. The district court held an August 2024 hearing on Joshua’s motion, however, Nae-Ryung failed to appear although she had notice of the hearing, and it was continued to a future date. During the December 2024 hearing on Joshua’s motion, which Nae-Ryung again had notice of and failed to appear at, the district court noted that Nae-Ryung was duly notified of the hearing and determined it had jurisdiction over the minor child and thus awarded Joshua sole legal and physical custody. However, Nae-Ryung subsequently filed a motion to reconsider the district court’s grant of Joshua’s motion to reconsider. The district court held a February 2025 hearing on Nae-Ryung’s motion and ordered the parties to provide further additional briefing as to whether its custody order from the December 2024 hearing should be a temporary custody order or a permanent order. The district court thereafter issued a written decision making a custody decision based on the merits of the arguments and evidence properly presented by the parties.

Thus, insofar as Nae-Ryung argues that she did not have notice of the December 2024 hearing, her motion to reconsider the court’s order from this hearing acknowledged that she received a notice of hearing but was under the impression that it was a chamber’s hearing, in which she did not need to appear. To the extent she argues that she did not know the court would issue custody orders from this hearing, she was served Joshua’s

reconsideration motion which requested that the court adjudicate the issue of child custody. Based on the foregoing, Nae-Ryung's due process rights were satisfied as she had the opportunity to be heard before the district court ultimately entered its amended decree in June 2025 reflecting its custody determinations.

Nae-Ryung also challenges the district court's amended decree for improperly relying on NRCP 60(a) as a basis for relief, but we are not persuaded any such error warrants relief. *See* NRCP 60(a) (authorizing the district court to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record"). Because the court amended the decree in response to the parties' respective motions for reconsideration for the reasons discussed above, *see* NRCP 59(e), we conclude any error in relying on NRCP 60(a) was harmless, *see Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that an error is harmless if it does not affect a party's substantial rights); *cf.* NRCP 61 (providing that a court must disregard all errors and defects that do not affect a party's substantial rights).

Next, Nae-Ryung argues that the district court abused its discretion by awarding Joshua sole legal custody of the child and the court's findings were not supported by the evidence. In response, Joshua asserts the district court did not abuse its discretion in its legal custody determination.

This court reviews district court decisions concerning legal custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007); *Mack-Manley v. Manley*, 122 Nev. 849, 857, 138 P.3d 525, 531 (2006) (reviewing a district court's decision to modify legal custody for an abuse of discretion). "Legal custody involves having basic legal

responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing." *Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022). There is a statutory presumption that joint legal custody would be in the best interest of the child when certain conditions are met. NRS 125C.002(1)(a). However, this presumption is overcome when the district court finds that the parents are unable to cooperate, communicate, and compromise in the best interest of the child. *See Rivero*, 125 Nev. at 420, 216 P.3d at 221.

In reviewing child custody determinations, this court will affirm the district court's factual findings if they are supported by substantial evidence, "which is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis*, 123 Nev. at 149, 161 P.3d at 242. "[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 our review is deferential, we do not defer "to legal error or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted).

Here, the district court awarded Joshua sole legal custody. The court considered that Nae-Ryung had been withholding the minor child from Joshua since November 2022 and Nae-Ryung's pattern of not following the court's December 2023 order awarding Joshua temporary sole legal and primary physical custody of the minor child. The court further noted that Nae-Ryung obtained a South Korean passport for the minor child without Joshua's knowledge or consent. The court further considered Nae-Ryung's

pattern of behavior, which included ongoing violations of the court's orders and wrongful withholding of the minor child from Joshua, which established that Nae-Ryung was unable to cooperate, communicate, and compromise to act in the best interest of the minor child. In light of the aforementioned circumstances, which are supported by the evidence presented at the evidentiary hearing, we discern no abuse of discretion by the court in awarding Joshua sole legal custody. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241; *Mack-Manley*, 122 Nev. at 858, 138 P.3d at 531. Therefore, we conclude that Nae-Ryung is not entitled to relief based on this argument.

Finally, Nae-Ryung argues that the district court abused its discretion by awarding Joshua sole physical custody without making the requisite findings. Conversely, Joshua argues that the district court made sufficient findings for why primary physical custody was not in the child's best interest due to Nae-Ryung's actions.

Again, we review district court decisions concerning child custody for an abuse of discretion. *Ellis*, 123 Nev. at 149, 161 P.3d at 241; *see also Wallace*, 112 Nev. at 1019, 922 P.2d at 543 ("A court decision regarding [parenting time] is a custody determination." (internal quotation marks omitted)).

A district court abuses its discretion when it "improperly characterize[s] its custodial award as primary physical custody when it [is] in actuality sole physical custody." *Roe v. Roe*, 139 Nev. 163, 164-65, 535 P.3d 274, 281 (Ct. App. 2023). Sole physical custody is "a custodial arrangement where the child resides with only one parent and the noncustodial parent's parenting time is restricted to no significant in-person parenting time." *Id.* at 174, 535 P.3d at 287. "[A] sole physical custody order [results in] the severe restriction on the noncustodial parent's care,

custody, and control of their child [and] requires additional findings and procedure as compared to entry of a joint or primary physical custody order.” *Id.* Examples of a sole physical custody arrangement are when a district court issues orders “that limit[] parenting time to restrictive supervised parenting time, virtual contact, phone calls, letters, texts, a very limited block of hours on a single day of the week, or a similarly restraining parenting time arrangement.” *Id.*

This court has explained that district courts must make specific written findings beyond the statutory best interest factors to support the entry of an order granting one parent sole physical custody. *Id.* at 175, 535 P.3d at 288. An entry of sole physical custody requires, among other things, that courts make specific findings either that the noncustodial parent is unfit for the child to live with or that awarding primary physical custody to one parent, thereby allowing significant parenting time with the noncustodial parent, is not in the child’s best interest. *Id.* Further, after making these express, written findings supporting sole physical custody, *Roe* requires district courts to consider the least restrictive parenting time arrangement possible that is in the child’s best interest and, if less restrictive alternatives to what the court adopts are proposed or considered, the court “must provide an explanation as to how the best interest of the child[ren] is served by the greater restriction[s].” *Id.* at 176, 535 P.3d at 288.

Here, the district court underwent an extensive NRS 125C.0035(4) best interest analysis in support of its award of primary physical custody to Joshua, finding that the best interest factors were either neutral, not applicable, or favored him. The court noted that Joshua’s testimony supported that he attempted to foster Nae-Ryung’s relationship

with the minor child, while Nae-Ryung withheld the child from him for over two years. The court also noted Joshua's testimony that he was the primary caretaker of the minor child when the parties were in South Korea together and that the minor child exclusively lived with him in Nevada when he and the minor child returned to the United States without Nae-Ryung. Thus, the court awarded Joshua primary physical custody and granted Nae-Ryung weekly supervised parenting time. Because this arrangement resulted in the child residing solely with Joshua and limited Nae-Ryung's parenting time to no significant in-person parenting time and resulted in the severe restriction on Nae-Ryung's care, custody, and control of the child, the district court functionally granted sole physical custody to Nae-Ryung. *See id.* at 174, 535 P.3d at 287 (recognizing that "an order that limits parenting time to restrictive supervised parenting time, virtual contact, phone calls, letters, texts, a very limited block of hours on a single day of the week, or a similarly restraining parenting time arrangement" constitutes sole physical custody). Therefore, the district court abused its discretion in characterizing the arrangement as an award of primary physical custody to Joshua. *See id.* at 164-65, 535 P.3d at 281.

We further conclude the district court failed to make sufficient findings to support the sole physical custody award. Further, as we noted in *Roe*, after explaining its reasons and making additional findings why primary physical custody is not in the best interest of the child necessitating an award of sole physical custody, the district court must "then order the least restrictive parenting time arrangement possible that is within the child's best interest." *Id.* at 175-76, 535 P.3d at 288.

Here, the district court failed to make sufficient findings as required by *Roe* that would justify awarding Joshua sole physical custody.


The court did not expressly find that Nae-Ryung was unfit for the child to reside with, nor did the court make specific findings to adequately explain why awarding Joshua the functional equivalent of sole physical custody was in the child's best interest. *See id.* at 175, 535 P.3d at 288. Further, there were no findings in the court's order concerning why other less restrictive arrangements were not feasible and not advisable. *See id.* at 164, 535 P.3d at 281 (explaining that the "district court must consider the least restrictive parenting time arrangement possible to avoid constraining the parent-child relationship any more than is necessary to prevent potential harm caused by an unfit parent and meet the best interest of the child"). Given the lack of written findings from the district court on this point, we cannot discern whether the court properly evaluated less restrictive alternatives before limiting Nae-Ryung's parenting time with the child to the extent it constituted an award of sole physical custody to Joshua. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142 ("Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error." (internal citations omitted)).

Accordingly, we reverse the physical custody and parenting time decisions and remand to the district court to either impose a primary physical custody parenting time arrangement that provides Nae-Ryung with sufficient parenting time such that Joshua is not functionally awarded sole physical custody, or make appropriate findings under Nevada jurisprudence to support its sole physical custody determination. *See Roe*, 139 Nev. at 174, 535 P.3d at 287 ("In a primary physical custody arrangement, a child spends most, but not all, of their time residing with

one parent. Comparatively, in a sole physical custody arrangement, the child reasonably can be said to reside with only one parent.”). Thus, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Mari D. Parlade, District Judge
The Grigsby Law Group
Cohen Fic & Squires
Eighth District Court Clerk

¹Insofar as Nae-Ryung raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.