IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HOPE BACKMAN, Appellant, vs. DANIEL GELBMAN, Respondent.	No. 88482-COA
HOPE BACKMAN, Appellant, vs. DANIEL GELBMAN, Respondent.	No. 91070-COA

ORDER OF AFFIRMANCE

Hope Backman brings consolidated appeals from a child custody modification order (Docket No. 88482-COA) and an order awarding attorney fees (Docket No. 91070-COA). Second Judicial District Court, Family Division, Washoe County; Cynthia Lu, Judge.

Backman and respondent Daniel Gelbman initially stipulated to joint legal and physical custody of their minor child, D.G., born in 2013. Several years later, in 2018, following an evidentiary hearing reflecting substantial parental conflict, the district court maintained joint legal custody and modified the physical-custody arrangement from a three-day alternating schedule to a weekly alternating schedule with additional parenting time changes.

In 2023, Backman, then proceeding pro se, moved to modify the physical-custody arrangement and sought primary physical custody for purposes of relocating with D.G. to San Antonio, Texas. She asserted that

relocation was warranted based on financial hardship, reduced income following the COVID-19 pandemic, and the availability of family support and employment opportunities. The district court found that she had made a prima facie showing and set the matter for an evidentiary hearing. Gelbman opposed her motion and filed his own motion for modification of custody asserting a substantial change of circumstances since the 2018 order and that it would be in D.G.'s best interest for Gelbman to have primary physical custody. Gelbman also moved to have Backman declared a vexatious litigant, and Backman later stipulated to that designation through counsel. The resulting stipulation imposed a prefiling-review requirement on future motions filed by Backman or her counsel which was later enforced during the underlying litigation.

Also in 2023, the district court approved the parties' request for the appointment of a custody evaluator, Herbert F. Coard III, Ed.D, who provided interim and final reports addressing the parties' mental health, D.G.'s functioning, and the parties' respective conduct. During the evaluation period, the district court entered temporary orders granting Gelbman primary physical custody and restricting Backman's contact with D.G. pending further proceedings. By the time of the evidentiary hearing, Backman had gone many months without any contact with D.G.

The relocation and custody modification issues were resolved after a multi-day evidentiary hearing at which the parties advanced evidence and arguments as to the reliability and neutrality of Dr. Coard's custody evaluation, the child's welfare, and the parents' conduct throughout the lengthy litigation. Backman challenged Dr. Coard's report and testimony, including his neutrality, methodology, and conclusions. Further, she presented rebuttal testimony from Robert Simon, Ph.D., who

criticized Dr. Coard's report and testimony as biased and unreliable. Backman also asked the district court to consider appointing a parenting coordinator as an alternative to modifying custody. Gelbman, by contrast, relied in part on Dr. Coard's opinions and other evidence of Backman's alleged aberrant conduct since 2018.

In a written custodial modification order entered in March 2024, the district court denied Backman's relocation request and modified the prior custody arrangement to award Gelbman primary physical custody. Although the court maintained joint legal custody, it granted Gelbman final decision-making authority over D.G.'s education and medical and mental health care, while granting Backman access to information, and decision-making authority in emergency care decisions during her custodial periods. Further, Backman retained the normal joint legal custody authority as to D.G.'s religious upbringing and extracurricular actives. The court awarded Backman alternating-weekend parenting time, divided holiday time, and extended summer parenting time. In reaching its decision, the court extensively discussed and made findings as to the best-interest factors, including the parties' inability to cooperate, the expert evidence, and concerns arising from Backman's conduct at school and with medical providers. The district court declined to appoint a parenting coordinator, reasoning that, although such an appointment might be helpful, Backman lacked the financial ability to share the cost. Backman subsequently appealed from the custody modification order.

The conflict between the parties continued after entry of the custodial modification order. In early 2025, Backman filed an emergency motion seeking temporary legal and physical custody based on allegations that Gelbman's fiancée had physically injured D.G. The district court

screened the motion under the vexatious-litigant procedure, determined that it had arguable merit, and set an evidentiary hearing. After hearing testimony and considering documentary evidence, the court denied the motion to modify, finding that the evidence did not establish intentional harm and that the incident reflected an accidental injury from roughhousing rather than child abuse or domestic violence.

Gelbman thereafter moved for attorney fees and costs. The district court determined that Backman lacked a reasonable basis to continue pursuing the motion after reviewing the available evidence and thus concluded that an award of attorney fees under NRS 18.010(2)(b) and NRS 125C.250 was appropriate. The court determined that an award of more than $9,900 in attorney fees was warranted, but reduced the amount in light of the parties' financial circumstances and ability to pay, resulting in an award to Gelbman of $2,000 payable in monthly increments of $100. Backman appealed from the order awarding Gelbman attorney fees and her two appeals were later consolidated.

On appeal, Backman raises several challenges to the district court's rulings across both the custodial modification order and the attorney fees order. She argues that the district court (1) modified custody without expressly finding a substantial change in circumstances affecting the child's welfare; (2) failed to meaningfully consider whether appointing a parenting coordinator was a less restrictive alternative to custody modification; (3) effectively awarded Gelbman sole legal custody despite stating that joint legal custody would continue; (4) relied on a custody evaluator whom Backman characterizes as biased and methodologically unreliable; (5) improperly considered her vexatious-litigant status and enforced the stipulation against her counsel; (6) improperly awarded attorney fees under

NRS 18.010(2)(b); and (7) relied on imputed income from a separate child-support matter when assessing her ability to pay attorney fees.

The district court's omission of specific detailed findings under the substantial-change-in-circumstances prong was harmless

Backman contends the district court modified the 2018 joint-custody order without making a specific, distinct finding of a substantial change in circumstances affecting D.G. 's welfare, as Nevada law requires. She notes that, although the district court's order recites Nevada's custodial modification doctrine accurately, it moves directly into a best-interest analysis without a separate pre-/post-2018 comparison or explicit substantial change finding. She argues this omission alone warrants reversal. Backman further asserts that the post-2018 issues—ongoing conflict, medical and school disputes, increasingly hostile exchanges, alleged interference, and conflicts with others—reflect the same high-conflict pattern of behavior identified in 2014 and 2018, not a new substantial change in circumstances, and that, in any event, the record does not show any harm to D.G. 's welfare stemming from these issues.

Gelbman responds that the district court implicitly found a substantial change in circumstances by detailing new conduct that exceeded the mutual disrespect seen in 2018, which directly impacted D.G. 's emotional well-being. He further points out that both parties filed competing motions to modify custody in 2023 premised on changed circumstances—Backman seeking primary physical custody for purposes of relocation based on financial and relational changes, and Gelbman seeking primary physical custody based on behavioral changes. Backman replies that Gelbman fails to point to a concrete, labeled substantial-change-in-

circumstances finding in the custodial modification order, and that many of his examples are simply further iterations of earlier conflict. This court reviews district court decisions concerning child custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007); *see also Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) ("A court decision regarding [parenting time] is a custody determination." (internal quotation marks omitted)). "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 (footnote omitted). "[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).

When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis*, 131 Nev. at 451, 352 P.3d at 1143. A district court may modify a joint-physical custody arrangement only when the movant demonstrates that "(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Romano v. Romano*, 138 Nev. 1, 5, 501 P.3d 980, 983 (2022) (internal quotation marks omitted), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023); *see also Ellis*, 123 Nev. at 150, 161 P.3d at 242 (articulating a two-prong custodial modification inquiry). The district court must make "specific, relevant

findings" on both prongs and tie its custody determination to those findings so that appellate review is possible; absent such findings, or where the record does not show a sufficient change, modification is an abuse of discretion. *Davis*, 131 Nev. at 451-52, 352 P.3d at 1143.

The change-in-circumstances prong is a threshold requirement designed to preserve custodial stability and to discourage parties from repeatedly relitigating custody "until the right circumstances or the right judge allows them to achieve a different result, based on essentially the same facts," and district courts "should not take the [analysis of this] prong lightly." *Rennels v. Rennels*, 127 Nev. 564, 573, 257 P.3d 396, 402 (2011) (alteration in original) (internal quotation marks omitted). To properly apply the change-in-circumstances prong, the district court must therefore look back to "the evidence that underpinned its previous rulings" and compare the current situation to that baseline. *Nance v. Ferraro*, 134 Nev. 152, 159, 418 P.3d 679, 685 (Ct. App. 2018). Mere continuation or escalation of chronic parental conflict—standing alone—is generally insufficient to find a substantial change in circumstances because parental conflict almost always involves some fault on both sides and using custody changes to punish parental misconduct or to allow one "uncooperative parent to" "win a custody battle" is improper. *Mosley v. Figliuzzi*, 113 Nev. 51, 66, 930 P.2d 1110, 1119-20 (1997) (footnote and internal quotation marks omitted) (concluding generally that the fact that parents cannot get along will not justify modifying custody), *overruled on other grounds by Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004); *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993) (emphasizing that courts "may not use changes of custody as a sword to punish parental misconduct").

Here, the district court expressly referenced the 2018 baseline by noting that the August 2018 custody order had awarded joint legal and joint physical custody on an alternating-weekly schedule. Although the March 2024 custodial modification order does not include a separately captioned analysis under the substantial-change-in-circumstances prong of the *Ellis-Romano* framework, it recites the applicable two-prong standard and then sets out extensive findings that, on their face, concern post-2018 developments. Those findings included, among other things, that Backman was excluded from D.G.'s school for combative and threatening behavior, became subject to a six- month protection order that D.G.'s pediatric practice obtained against her, was convicted of misdemeanor battery for pepper-spraying a stranger, withheld D.G. during the custody evaluation, and made increasingly paranoid allegations—including that Gelbman started the Malibu fires and wanted to kill her and D.G.—which the district court credited as emotionally harmful to the child.

In prior unpublished decisions, this court has reversed orders resolving motions to modify child custody where the challenged order truly lacked any indication that the district court considered both of the *Ellis-*

Romano prongs.[1] But this case is different. While the district court could and should have more clearly labeled the first prong of the *Ellis-Romano* analysis and explicitly contrasted pre- and post- 2018 circumstances, its detailed factual findings, read in context, "at least minimally explains" why—even if not expressly stated—it viewed the circumstances as materially changed since 2018. *See Davis*, 131 Nev. at 452, 352 P.3d at 1144 ("A parent cannot reasonably be expected to show that 'a substantial change in circumstances' as to the child's best interest warrants modification of an existing child custody determination unless the determination at least minimally explains the circumstances that account for its limitations and terms.").

At oral argument, Backman insisted Nevada precedent compels district courts to make distinct substantial-change findings, separate and

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[1]*See*, *e.g.*, *Xavier v. Xavier*, No. 86767-COA, 2024 WL 358249, at *2 (Nev. Ct. App. Jan. 30, 2024) (Order of Reversal and Remand) (reversing a denial of custody modification where the court made no findings on whether a substantial change in circumstances occurred and provided only a conclusory best-interest statement, preventing meaningful appellate review); *see also Mead v. Mead*, Nos. 84843-COA & 84878-COA, 2023 WL 8828889, at *2 (Nev. Ct. App. Dec. 20, 2023) (Order Dismissing Appeal in Docket No. 84843-COA, and Reversing and Remanding in Docket No. 84878-COA) (reversing the grant of primary physical custody because the court did not apply the condition-precedent "substantial change in circumstances" standard and failed to analyze the NRS 125C.0035(4) best-interest factors); *Herzog v. Herzog*, No. 69904-COA, 2017 WL 882060, at *1-*2 (Nev. Ct. App. Feb. 24, 2017) (Order of Reversal and Remand) (reversing custody provisions—including severe limits on an incarcerated parent's

contact—where the decree contained no written best-interest findings tying the parties' circumstances to the imposed restrictions).

apart from findings under the best-interest analysis.[2] But neither case she cited imposes that kind of formal requirement. *Murphy* v. *Murphy* stated the substantive rule that custody may be modified only when the parties' circumstances have materially changed and the child's welfare would be substantially enhanced. 84 Nev. 710, 711, 447 P.2d 664, 665 (1965), *overruled on other grounds by Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007). The *Murphy* court reversed because the record revealed only the mother's improved mental health and no evidence that a custody change would promote the child's welfare—not because the district court failed to make findings on each prong in a bifurcated, distinct manner. *Id*.

Mosley is similarly unhelpful to Backman, holding only that a district court may not relitigate custody based on essentially the same facts shortly after entry of a prior order, particularly without a proper motion, notice, or evidence of circumstances arising after the prior decree. *See* 131 Nev. at 57-59, 930 P.2d at 1114-15. Although *Mosley* reinforces that the changed-circumstances inquiry must be tethered to developments after the operative custody order, it does not require the district court to separately set forth changed-circumstances findings when the best-interest findings clearly support both inquiries. *Id*. at 58-59, 930 P.2d at 1114-15. Thus, read consistently with the *Ellis-Romano* framework that followed these cases, *Murphy* and *Mosley* require a record showing a material post-order change

[2]We note that Backman appeared to acknowledge at oral argument that a district court's best-interest findings may also support the substantial-change inquiry, even absent a separately captioned substantial-change finding, so long as those findings include facts demonstrating a substantial change in circumstances affecting the child's welfare. Backman maintained, however, that the findings here did not make that showing.

that warrants modification; they do not, however, require a separate, stand-alone set of findings using Backman's preferred formulation.

Here, the same factual findings that support the district court's best-interest conclusion in this matter make clear that materially different and more serious conduct arose following the entry of the 2018 custody order. While it would be preferable for the court to have explicitly identified the substantial change of circumstances since 2018 that warranted modification pursuant to the *Ellis-Romano* framework, we conclude the alleged error was harmless. *See 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."); *cf.* NRCP 61 (stating that courts "must disregard all errors and defects that do not affect any party's substantial rights").

As the district court effectively determined that a substantial change in circumstances occurred based on its specific and detailed findings outlined in its best-interest analysis, a reversal and remand would serve no purpose other than to allow the district court to reorganize or re-label its findings—elevating form over substance. This is especially true considering the court's emphasis on numerous events since 2018 affecting D.G.'s welfare, including Backman's exclusion from D.G.'s school, D.G.'s loss of his pediatrician—both due to Backman's behavior—and Backman's false statements to D.G. that his father might kill them. *See Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev. 278, 285, 163 P.3d 462, 467 (2007) (stating that appellate courts will not exalt form over substance); *cf. Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994) (preferring to review what a final judgment or order "actually *does*, not what it is called").

Given that a determination that a substantial change in circumstances occurred is implicit in the district court's findings, Backman has not demonstrated that, but for the failure to expressly state that a substantial change in circumstances occurred, a different result might reasonably have been reached. Thus, we conclude that any error in the court's failure to expressly state this finding was harmless and does not provide a basis for reversing the challenged custody order.

The district court did not abuse its discretion in not appointing a parenting coordinator and its best-interest finding is supported by substantial evidence

Backman argues the district court's best-interest analysis is inherently flawed because the court declined to appoint a parenting coordinator, even after acknowledging such an appointment "would be helpful." She maintains that the court had an obligation under *Roe* to seriously consider less restrictive, financially feasible tools to preserve her relationship with D.G., especially given his expressed desire to see her more often. *Roe v. Roe*, 139 Nev. 163, 176-77, 535 P.3d 274, 289-90 (Ct. App. 2023) (instructing that, when feasible, courts should consider less restrictive and financially realistic options to manage conflict while preserving parent-child relationships). Backman also contends the district court effectively rejected the coordinator option solely because she could not afford half the cost, without analyzing whether assigning more or all of the cost to the higher-income parent would be feasible.

Gelbman responds that Nevada law does not require consideration or appointment of a parenting coordinator before modifying custody, nor does a coordinator have authority to change custody. He also emphasizes that the core concerns here involved Backman's specific conduct and its impact on D.G., not merely generalized, tit-for-tat conflict,

suggesting that a coordinator could not remedy those underlying issues. Backman replies to clarify that she is not arguing for a universal requirement; but rather that the district court *did* consider a coordinator, acknowledged its potential benefits, and rejected it only because she is indigent. She further contends that Gelbman does not engage with *Roe*'s language about less restrictive and financially feasible options or offer authority supporting a pure inability-to-pay-half rationale. Nevertheless, we conclude Backman has not demonstrated that a parenting coordinator is required in this case to meet the child's best interest.

Once a substantial change in circumstances is shown, the district court must determine whether modification is in the child's best interest, guided by NRS 125C.0035(4) and its subparts, and the court must make specific findings tied to those factors. *Davis*, 131 Nev. at 451-52, 352 P.3d at 1143. Those factors include, among others, the child's wishes (if of sufficient age and capacity), the level of conflict between the parents, their ability to cooperate in meeting the child's needs, the mental and physical health of all parties, the nature of the child's relationship with each parent, and any history of violence or abuse. *See generally* NRS 125C.0035(4)(a)-(l). In evaluating requests for custodial modification, district courts must focus on the child, not on punishing a parent, and custody may not be used to punish parental misconduct. *Lewis v. Lewis*, 132 Nev. 453, 459, 373 P.3d 878, 882 (2016) (citing *Sims*, 109 Nev. at 1149, 865 P.2d at 330). On appeal, a best-interest determination is reviewed for an abuse of discretion and will not be disturbed if the court applied the correct legal standard and its findings are supported by substantial evidence; the appellate court does not reweigh evidence or reassess witness credibility. *Ellis*, 123 Nev. at 149-50, 161 P.3d at 241-42; *see also Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d

699, 704 (2009) ("The district court's factual findings, however, are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence.").

Here, the district court explicitly considered and rejected appointing a parenting coordinator, concluding that a coordinator could be helpful but declining the option in light of Backman's inability to share the expense. The court did not separately analyze whether allocating more or all of the cost to Gelbman might have been financially feasible or whether such an arrangement could have supported a somewhat less restrictive schedule for Backman while still protecting D.G. *See Roe*, 139 Nev. at 176-77, 535 P.3d at 289-90; NRS 125C.001(1), (3). But nothing suggests that the court was obligated to do this as an alternative to a change in custody. Backman's argument to apply the less restrictive alternative doctrine from *Roe* is inapposite, as that doctrine only applied there to ameliorate the effect of sole physical custody or the effect of completion of counseling with an unaffordable counselor as a prerequisite to any in-person parenting time—circumstances distinct from the present facts. 139 Nev. at 176-77, 535 P.3d at 288-89.

While the appointment of a parenting coordinator could indeed be helpful, Backman has not shown that it was essential in the determination of the best interest of the child. *Cf. Harrison v. Harrison*, 132 Nev. 564, 571, 376 P.3d 173, 178 (2016) (emphasizing that "a parenting coordinator *could* be an outlet for conflict resolution of nonsubstantive issues, thereby minimizing any adverse impact of the persistent conflict on the children" (emphasis added)); *see also Rosie M. v. Ignacio A.*, 138 Nev. 539, 546 n.6, 512 P.3d 758, 764 n.6 (2022) ("Moreover, the decision to make the child a party or to appoint a guardian ad litem is committed to the

discretion of the district court."). Further, the need for a parenting coordinator in this matter would diminish under the district court's modified custody order because the level of conflict would presumably drop simply because there will be fewer interactions between the parties as Gelbman will be making some of the previously contentious legal custody decisions on his own and the parties will not see each other weekly for custody exchanges.

The record indeed demonstrates that the district court conducted a thorough, multifactor best -interest review based on two days of testimony from nine witnesses and extensive documentary evidence. Specifically, the court heard from both parents, D.G.'s school principal, an expert evaluator, and a rebuttal expert—and had before it a record spanning more than a decade. The court made detailed findings that Backman's conduct at school and with D.G. 's pediatrician escalated to the point that she was excluded from campus and subject to a protection order; she was convicted of battery against a strange r; she exhibited "a great deal of paranoia" about Gelbman that was "more elevated than normal," including Backman's allegations that he started the Malibu fires and wished to kill her and D.G.; and she withheld D.G. during the evaluation and told him his father would harm or kill them—conduct the court accepted as emotional abuse. It weighed those concerns against D.G.'s bond with both parents and his desire to spend time with Backman and still concluded that a primary physical custody arrangement in favor of Gelbman with structured but reduced time for Backman best protected D.G. 's safety and emotional stability.

Those factual findings—which are supported by substantial evidence in the record—go directly to several statutory factors, including

the level of conflict, ability to cooperate, "mental and physical health of the parents," and the ability to meet the child's needs, that were found in favor of Gelbman. NRS 125C.0035(4)(d), (f), (g). We will not revisit those findings with respect to the weight or credibility of the evidence proffered, as the district court is in the best place to make such determinations. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242; *see also Roe*, 139 Nev. at 171, 535 P.3d at 285; *Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010) ("This court's rationale for not substituting its own judgment for that of the district court, absent an abuse of discretion, is that the district court has a better opportunity to observe parties and evaluate the situation." (internal quotation marks omitted)).

Therefore, on this record, a parenting coordinator, while potentially useful in managing everyday disputes, would not have resolved the more serious concerns the district court identified about Backman's conduct and its effect on D.G. Given the breadth of the court's best-interest findings, we conclude that the court did not abuse its discretion when it decided not to more fully explore the appointment of a coordinator and reallocate the costs to Gelbman in its best-interest determination.

The district court's custodial modification order did not effectively award Gelbman sole legal custody

Backman contends that the district court improperly awarded sole legal custody to Gelbman despite the order's label of joint legal custody. Specifically, Backman argues that because the court granted Gelbman authority over education, medical, and mental-health decisions for D.G. and limited her to information rights only in those areas, and joint authority merely over secondary topics like extracurricular activities, the order functionally amounts to an award of sole legal custody. She urges this court to apply the reasoning from *Roe* on sole physical custody to legal

custody—contending that heightened findings are required, such as unfitness or the inadequacy of narrower mechanisms, before depriving a parent of their fundamental right to jointly make decisions regarding the care, custody, and control of their children. 139 Nev. at 176-77, 535 P.3d at 289-90.

Gelbman responds that the district court order reflects a permissible *Rivero*-style allocation of decision-making authority within a joint-legal-custody framework, under which parents need not have equal decision-making power so long as both remain legal custodians. *See Rivero v. Rivero*, 125 Nev. 410, 420-21, 216 P.3d 213, 221-22 (2009), *overruled in part by Romano*, 138 Nev. 1, 501 P.3d 980. He notes that because Backman retains joint authority over other domains, such as religion and extracurricular activities, her proposed extension of the law would improperly collapse all unequal allocations into sole legal custody.

Backman replies that, while she accepts *Rivero*'s flexibility, she also submits that when all core domains (education, medical, mental health) are placed solely under one parent, while the other retains only marginal decisions, the latter cannot realistically be said to share legal custody of the child's health, education, and welfare. In support, she points out that the district court's modification order contains no finding that she is unfit to make legal decisions or that no narrower measure (e.g., a tiebreaker mechanism) would suffice—suggesting that this methodology, as employed by the district court, is wholly inadequate where her constitutional rights are tied to the care and maintenance of D.G.

"[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."

Troxel v. Granville, 530 U.S. 57, 66 (2000). Consistent with this guiding principle, under Nevada law, legal custody concerns the parents' basic responsibility for the child and the right to make major decisions regarding the child's health, education, and welfare. *Rivero*, 125 Nev. at 420, 216 P.3d at 221. *Rivero* also makes clear that, in a joint-legal-custody arrangement, parents need not have equal decision-making power and one parent may be granted authority over specific domains, such as education or healthcare. *Id*. at 421, 216 P.3d at 221; *see also Mack v. Ashlock* , 112 Nev. 1062, 1067, 921 P.2d 1258, 1262 (1996) (Shearing, J., concurring) ("[W]hen parents cannot agree on an important subject like the education of a child, the parents come into court on an equal footing. The sole question for the court is which parent's choice is in the best interests of the child.").

Here, while the district court order vests Gelbman with "sole legal decision making" authority over education, medical care, and mental health care, the arrangement can still be viewed as a valid form of joint legal custody with tailored allocations of authority, consistent with *Rivero*, rather than as a grant of what amounts to sole legal custody. The custodial modification order states that legal custody "shall continue to be awarded to the parties jointly," then allocates final decision-making authority to Gelbman "as to" education, medical care, and mental health care, while preserving Backman's status as a legal custodian, her information rights in those domains, and her equal decision-making authority in other meaningful spheres of D.G.'s life—an arrangement that fits within *Rivero*'s contemplated subject-matter allocation in a joint-legal-custody framework.

Indeed, *Rivero* is instructive here on two points. The first is the guiding definition of legal custody—concerning a parent's "basic legal responsibility for a child and making major decisions regarding the child,

including the child's health, education, and religious upbringing." 125 Nev. at 420, 216 P.3d at 221. The second point relates to the effect of unequal authority within joint legal custody, clarifying that parents "need not have equal decision making power in a joint legal custody situation," and that one parent may have decision making authority regarding certain areas or activities of the child's life, such as education or healthcare." *Id*. at 421, 216 P.3d at 221. Although *Rivero* acknowledges that joint legal custody can involve unequal decision-making power, there is a qualitative difference between giving one parent final say over some domains and vesting that parent with "sole legal decision making" authority over all domains that the law associates with legal custody.

Further, the reasons for the district court's allocation in this matter are specifically tied to and supported by substantial evidence—and our appellate review of legal-custody allocations mandates that we do not reweigh such evidence in making an assessment of those findings. As discussed at length above, the court found that Backman's conduct at school and with the pediatrician became so combative and disruptive that she was removed from campus and subject to a protection order obtained by the pediatrician's office, resulting in D.G.'s loss of his pediatrician; her scathing communications about vaccines, masking, and sex education undermined relationships with school official and healthcare providers; and her paranoia about Gelbman and her statements to D.G. raised serious concerns about her judgment in those high-impact domains. The district court concluded that continued shared decision-making in those areas risked further disruption of D.G.'s schooling and healthcare.

Under these circumstances, vesting Gelbman with final authority in education and medical/mental-health matters, while

maintaining Backman's legal-custodian status and preserving her authority in other significant domains such as religion and extracurricular activities, is reasonably viewed as a targeted allocation of decision-making power within joint legal custody, rather than a disguised award of sole legal custody. Although the allocation is seemingly one-sided, nothing in our jurisprudence requires a separate finding as to a parent's fitness (or lack thereof) whenever a district court narrows one parent's decision-making authority in specific domains under a joint-legal-custody label. Because both parents remain legal custodians, Backman retains meaningful decision-making authority outside the carved-out domains. And the challenged order explains why shared authority in those specific areas is no longer in D.G.'s best interest—a conclusion supported by detailed findings that are grounded in substantial evidence—and we conclude that the district court did not abuse its discretion in structuring legal custody in this manner.

The district court's order is not based upon a biased custody evaluation

Backman argues the district court should have excluded or heavily discounted the report advanced by the custody evaluator, Dr. Coard, due to alleged bias and procedural flaws, including unilateral communications with Gelbman's counsel, ex parte contacts, inadequate documentation, inaccuracies in his curriculum vitae, plagiarism, and conclusions she says conflict with his own testing and with testimony provided by her expert, Dr. Simon. She asserts the court erred by finding Dr. Coard followed applicable standards and by relying on his opinions.

Gelbman responds that the district court expressly found Dr. Coard complied with the applicable regulatory and ethical requirements and treated the evaluation as one piece of evidence rather than dispositive.

He argues that under the abuse-of- discretion standard, this court may not reweigh the competing experts' credibility.

Backman replies that Gelbman does not contest most of the specific criticisms of Dr. Coard's methodology and behavior and offers no substantive rebuttal to Dr. Simon's critique. She argues that his reliance on the district court's brief endorsement of Dr. Coard, without grappling with the detailed record, is insufficient, and that on this record Dr. Coard cannot be treated as a neutral arm of the district court.

At oral argument, Backman contended Dr. Coard's bias infected the district court's best-interest analysis such that it should be disregarded or stricken from the record. But Nevada law does not support automatic exclusion, or reversal, merely because a party claims or even proves that a witness was biased. Our supreme court has long recognized the "admissibility and competency of opinion testimony, either expert or nonexpert, is largely discretionary with the trial court." *Watson v. State*, 94 Nev. 261, 264, 578 P.2d 753, 756 (1978). And where a party challenges the reliability, credibility, or partiality of a witness, those concerns ordinarily go to the weight of the evidence considered by the trier of fact. *Cf. Passarelli v. State*, 93 Nev. 292, 294, 564 P.2d 608, 610 (1977) (explaining that alleged unreliability in testimony generally concerns credibility and weight, not exclusion); *Rowland v. Lepire*, 99 Nev. 308, 312, 662 P.2d 1332, 1334 (1983) ("It is the prerogative of the trier of fact to evaluate the credibility of witnesses and determine the weight of their testimony.").

That principle applies with particular force where the alleged defect is bias. Bias is plainly relevant because it may discredit the witness or reduce the persuasive force of the witness's opinion. *See Capanna v. Orth*, 134 Nev. 888, 892-93, 432 P.3d 726, 732 (2018) (recognizing that a fact-

finder may consider an expert witness's alleged bias in assessing credibility); *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) ("[J]udging the credibility of the witnesses and the weight to be given to their testimony are matters within the discretion of the district court."). It does not follow, however, that Dr. Coard's purported bias automatically requires the district court to strike or disregard his testimony and report in total. Instances demonstrating bias in this case may affect the persuasive value of the evaluator's opinions, but they do not, without more, establish that the district court abused its discretion in considering the evaluator's testimony as part of the broader evidentiary record.

And to the question of weight, the record also undermines Backman's claim of unfair prejudice because the district court expressly stated that it did not treat Dr. Coard's testimony or report as dispositive of the custodial determination. The court's custodial modification order shows that it did not simply adopt Dr. Coard's recommendations wholesale. Even though the court uttered Dr. Coard's name dozens of times in its order, many of these were neutral statements, a finding against Gelbman, or a finding in favor of Backman. For instance, the district court noted under the best-interest factors that Dr. Coard testified that Gelbman disparaged Backman to D.G. and that both parents needed therapy. The court also disagreed with Dr. Coard regarding Backman's paranoia about Gelbman in that the court believed it was partially justified because Gelbman hired a private investigator to follow her, and that Backman did take some responsibility for her actions that Dr. Coard had criticized. Additionally, the district court noted that despite Dr. Coard's concerns that Backman "attempts to create fears" in D.G. about Gelbman, Dr. Coard stated that

D.G. has a good relationship with each parent, and he confirmed that D.G. loves his mother and they have a healthy relationship.

Ultimately, the record shows that the district court's custody decision rests on a broad evidentiary foundation rather than narrowly on Dr. Coard's report and testimony. The court acknowledged the concerns raised about Dr. Coard's methods and neutrality, but explicitly concluded that the evaluation was not "entirely invalid," and should be considered "as one piece of evidence" with "appropriate weight" alongside extensive evidence independent from Dr. Coard's evaluation, including testimony from D.G.'s school principal, pediatric staff, and other witnesses. Many key factual findings—such as Backman's exclusion from D.G.'s school, the pediatric protection order, and her battery conviction—are independently supported in the record and do not depend on accepting Dr. Coard's psychological insights.

While the rebuttal evidence from Dr. Simon properly highlights significant flaws in Dr. Coard's work, as previously stated, the district court expressly treated the evidence as only one part of a larger evidentiary picture and grounded its critical findings in evidence unrelated to Dr. Coard's testimony or purported expert opinions. Consistent with *Ellis*, *Schwartz*, and others, we will not second-guess the court's credibility determinations or assignment of evidentiary weight to that end, especially where, as here, substantial evidence supports its findings regarding its award of primary physical custody to Gelbman. *Ellis*, 123 Nev. at 152, 161 P.3d at 244; *Schwartz*, 126 Nev. at 90, 225 P.3d at 1275. On review of the challenged order and adjoining record, we conclude that the district court's decision not to totally exclude Dr. Coard's evidence does not constitute an abuse of discretion or reversible error.

The district court did not improperly consider or enforce Backman's vexatious-litigant status against her or her counsel

Backman challenges both the validity of the August 2023 vexatious-litigant stipulation and order and its use in the district court's custody analysis. She argues that the order does not satisfy *Jordan*'s four-factor framework and that parties cannot stipulate to vexatious-litigant status in lieu of judicial findings. *See Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 60-62, 110 P.3d 30, 42-44 (2005). She also asserts that applying the designation to her counsel is overbroad and that invoking her vexatious -litigant status in the best-interest discussion improperly uses custody to punish litigation conduct.

Gelbman responds that Backman, with counsel, stipulated to being treated as a vexatious litigant, consistent with the *Jordan* four-factor analysis, in exchange for vacating a scheduled evidentiary hearing, and he argues stipulations are binding absent mistake, fraud, or similar grounds. He further argues that the custody order refers to the vexatious-litigant designation only as part of the broader history of high -conflict litigation, not as an independent basis for modifying custody.

Backman reiterates in reply that stipulations still must meet legal requirements and cannot substitute for judicial analysis, arguing that Nevada caselaw supports invalidating stipulated custody arrangements that lack those necessary findings. Pointing to the findings in the final custody order, she notes how the district court cites to her vexatious-litigant status within its best-interest discussion under NRS 125C.0035(4)(d) to suggest a direct contravention of controlling law.

Nevada law has adopted four factors from the United States Court of Appeals for the Ninth Circuit, which require that vexatious -litigant orders entered over objection be supported by notice, an adequate record, substantive findings of frivolous or harassing filings, and narrow tailoring. *Id*. at 60 n.27, 110 P.3d at 42 n.27 (citing *De Long v. Hennessey*, 912 F.2d 1144, 1147-48 (9th Cir. 1990); *see also Jones v. Eighth Jud. Dist. Ct.*, 130 Nev. 493, 496-500, 330 P.3d 475, 477-80 (2014) (vacating a "cursory" vexatious-litigant order that failed to identify which filings were harassing or meritless). But nothing in *Jordan* or *Jones* prohibits a represented party from voluntarily stipulating to vexatious-litigant status that includes a prefiling-review framework for future pleadings that initiate litigation, particularly where the stipulation—as in this matter—specifically references the *Jordan* standard and was accepted by the district court.

Indeed, while represented by counsel, Backman stipulated in August 2023 to being treated as "a vexatious litigant consistent with the Jordan four-factor analysis," and did so "in exchange for vacating" a scheduled evidentiary hearing on one of Gelbman's motions. And stipulations made with counsel "are controlling and conclusive" absent a showing of mistake, fraud, or similar defect—a showing that Backman has not made here. *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118, 197 P.3d 1032, 1042 (2008). Moreover, the custody order mentions the vexatious-litigant designation only once, in describing a decade of continuous litigation and the parties' high conflict relationship. The custody order's best-interest findings, however, are grounded in Backman's conduct with school officials, medical providers, law enforcement, and D.G. himself, not in her vexatious-litigant status.

We acknowledge that the stipulation's breadth—particularly its reference to motions filed by Backman's counsel—sits uneasily with our jurisprudence, which emphasizes narrow tailoring and focus on a litigant's own conduct as prudent to curb vexatious litigation. *See Jordan*, 121 Nev. at 61-62, 110 P.3d 30 at 43 ("We note that when a litigant's misuse of the legal system is pervasive, a restrictive order that broadly restricts a litigant from filing any new actions without permission from the court might nonetheless be narrowly drawn."); *see also Jones*, 130 Nev. at 498-500, 330 P.3d at 479-80 (recognizing the inherent authority of the district court to impose sanctions and that narrowly drawn injunctive restrictions on filings may be necessary to curb conduct that impairs the rights of other litigants or limits the ability of the court to carry out its functions). Even so, as mentioned, the order following the stipulation was made with the advice of counsel and appears to be—at best—an invited error. *See Eivazi v. Eivazi*, 139 Nev. 408, 429, 537 P.3d 476, 494 (Ct. App. 2023) (stating that the doctrine of invited error contemplates "that a party will not be heard to complain on appeal of errors which [she herself] has introduced or provoked the court or the opposite party to commit"); *see also Chadwick v. State*, 140 Nev. 104, 115, 546 P.3d 215, 227 (Ct. App. 2024) (stating that "an appellant is not entitled to relief if they induced or provoked the error in the trial court" (internal quotation marks omitted)).

Although a district court may not punish parental misconduct or improper litigation behavior by changing custody, *Sims*, 109 Nev. at 1149, 865 P.2d at 330, the limited reference to Backman's vexatious-litigant stipulation here is contextual rather than outcome-determinative. Moreover, the extensive and independent evidence supporting the modification renders any arguable defect in the stipulation and order's form

or breadth as harmless. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778; *cf.* NRCP 61. Accordingly, we conclude there was no reversible error in the district court's acknowledgment or limited use of the vexatious-litigant stipulation in its custody determination.

The district court did not abuse its discretion in awarding attorney fees under NRS 18.010(2)(b) and NRS 125C.250

Backman challenges the attorney fee award arising from her post-evidentiary hearing ex parte custody motion asserting domestic violence. She argues "the motion was not groundless" because she presented some supporting evidence—D.G.'s use of the word "punch," photographs of his lip, an officer's corroboration of the description, and prior conflict with Gelbman's fiancée—and emphasizes that the court had previously found her allegations had arguable merit for *Jordan*-screening. She contends that the presence of any credible supporting evidence precludes a finding that her claim was brought or maintained without reasonable ground.

Gelbman responds that, even assuming the motion may have had arguable merit at filing, its continued pursuit became unreasonable after the police report made clear that the minor injury occurred during roughhousing and was accidental. He relies on the district court's findings that Backman's testimony contradicted D.G.'s contemporaneous statements to the police officer, that the report clearly indicated no intentional harm, and that she continued to assert allegations of intentional domestic violence and to seek sweeping emergency relief despite this neutral evidence. Backman replies only with emphasis that the dipositive question is whether there was any credible evidence supporting her claim, not whether the court ultimately rejected it, and that Gelbman cites no authority to support

treating a mother's safety-driven response to a visible injury and punching allegation as objectively unreasonable.

"[A]ttorney[ ] fees are not recoverable absent a statute, rule or contractual provision to the contrary." *Rowland v. Lepire*, 99 Nev. 308, 315, 662 P.2d 1332, 1336 (1983). NRS 18.010(2)(b) authorizes attorney fees to a prevailing party when the opposing claim "was brought or maintained without reasonable ground or to harass," and it is to be liberally construed to deter frivolous or vexatious claims. *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018). A claim is frivolous or groundless under this statute when no credible evidence supports it. *Id.* (citing *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009)); *see also Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d 720, 724 (1993) (emphasizing that allegations in a complaint are "groundless" if they are unsupported "by any credible evidence at trial" (internal quotation marks omitted)). While the existence of authority to support an attorney fee award is a question of law reviewed de novo, the underlying determination that a claim was brought or maintained without reasonable grounds is reviewed for abuse of discretion. *In re Est. & Living Tr. of Miller*, 125 Nev. 550, 552-53, 216 P.3d 239, 241 (2009).

Here, the district court carefully distinguished Backman's initial concern from her decision to continue pursuing the motion regarding custody once the full record was available. The court acknowledged the visible injury and D.G.'s initial description, but credited the officer's conclusion that the incident occurred in a roughhousing context, Gelbman's fiancée's injury was more significant, no charges or CPS referral were warranted, and the contact was accidental in nature. The district court explicitly found that Backman's testimony conflicted with D.G.'s

contemporaneous statements and that she continued to assert unsubstantiated claims despite knowing the contents of the police report. As a result, it determined that the motion, as maintained through the hearing, lacked reasonable grounds.

Those findings are supported by substantial evidence and fall within NRS 18.010(2)(b)'s "brought or maintained without reasonable ground" language. This statute allows fees where the claim, once fully developed, proves unsupported by credible evidence and should have been withdrawn, even if it appeared colorable at the outset. *See Capanna*, 134 Nev. at 895, 432 P.3d at 734. Therefore, we conclude that the district court did not err in determining that the statutory standard was met.

In any event, the attorney fee order also relies upon NRS 125C.250 as an independent basis for the award, which allows the award of reasonable attorney fees in an action to determine the custody of a child, but Backman does not present a challenge to that statute's application. Accordingly, we may treat her attorney fee argument as forfeited and affirm the fee award on that alternative statutory ground as well. *See Hung v. Genting Berhad*, 138 Nev. 547, 550, 513 P.3d 1285, 1288 (Ct. App. 2022) ("[T]he failure to properly challenge each of the district court's independent alternative grounds leaves them unchallenged and therefore intact, which results in a waiver of any assignment of error as to any of the independent alternative grounds.").

The district court did not abuse its discretion in the amount of attorney fees awarded

Backman further argues that, even if some attorney fee award was permissible, the $2,000 amount payable at $100 per month is unreasonable given her limited means. She notes that the district court found her gross monthly income to be $717.16 and that she spends that

income on necessities, yet it required her to devote nearly one-seventh of her gross monthly income each month to Gelbman's fees. She also disputes the court's reliance on imputed minimum-wage income from a separate child support case as an accurate measure of her current ability to pay.

Gelbman answers that he incurred $12,553.50 in attorney fees defending the motion regarding custody, and that the district court—after reviewing counsel's declaration and billing records—found $9,905.50 would be a reasonable fee under the *Brunzell* factors. Nevertheless, the court reduced the amount awarded to $2,000 solely because of the disparity in the parties' incomes and spread payment over 20 months. He characterizes this as a modest, partially compensatory award, but Backman reiterates that, from the perspective of an indigent parent represented by pro bono counsel, paying nearly one-seventh of her subsistence-level income each month cannot reasonably be construed as modest. She stresses that the district court's fee order does not meaningfully explain how the court reconciled its recognition of her financial hardship with the chosen amount awarded and the payment schedule.

After establishing statutory authority to award attorney fees, the amount of a fee award lies within the district court's discretion, guided by the *Brunzell* factors and, in domestic cases, the parties' relative financial positions. *See Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005) (clarifying the requirement for trial courts to evaluate the *Brunzell* factors when deciding attorney fee awards); *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998) (emphasizing the importance of the disparity-of-income factor in conjunction with the *Brunzell* test in domestic cases); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (requiring trial courts to consider various factors when deciding

the amount of attorney fees to award). The combined inquiry under the *Brunzell* and *Wright-Miller* frameworks therefore requires the district court to consider a conjunctive set of factors before awarding attorney fees, including (1) "the qualities of the advocate," (2) the character of the work, (3) the work performed and time spent, and (4) the result—as well as, in domestic cases, (5) the disparity in the parties' financial positions. *Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

"We review an award of attorney fees for an abuse of discretion." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). While the failure to make explicit findings as to the *Brunzell* factors is not a per se abuse of discretion, the district court must still "demonstrate that it considered the required factors, and the award must be supported by substantial evidence." *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 245, 416 P.3d 249, 259 (2018) (quoting *Logan*, 131 Nev. at 266, 350 P.3d at 1143).

Here, the district court had uncontroverted evidence that Gelbman incurred $12,553.50 in fees in connection with Backman's ex parte motion. After considering counsel's experience and hourly rate, the nature and complexity of the work, the time spent, and the complete success in defeating the requested relief, the court expressly found that $9,905.50 was a reasonable fee under *Brunzell*. The court then turned to the parties' finances, acknowledging Backman's gross monthly income of $717.16 and her limited resources, but also noting an imputed minimum-wage income of $2,080 per month found in a related child support matter. *Cf.* NRS 47.170 ("Judicial notice may be taken at any stage of the proceeding prior to submission to the court or jury."). On that basis, the district court found a significant income disparity between the parties and reduced the

otherwise-reasonable fee to $2,000—approximately one-fifth of the amount it deemed reasonable—and ordered payment over 20 months at $100 per month.

The attorney fees order does not contain a detailed analysis, but under the substantial-evidence standard, the question is whether a sensible or reasonable person could accept the evidence as adequate to support the award—not whether a different judge might have chosen a smaller amount or longer schedule. *See Williams*, 120 Nev. at 566, 97 P.3d at 1129 (reviewing district court decisions in family law proceedings for an abuse of discretion and declining to disturb rulings supported by substantial evidence). Given the documented fee, the court's explicit *Brunzell* analysis, its substantial downward adjustment based solely on Backman's finances, and the installment structure, the record contains substantial evidence to support the $2,000 award. While the obligation is significant relative to Backman's income, the district court's accommodations—a sharp reduction from the reasonable fee and a long payment horizon—keep the award within the permissible bounds of its discretion. We therefore conclude the district court did not abuse its discretion in setting either the amount of fees or the payment terms.

Accordingly, as to both the custodial modification order in Docket No. 88482-COA and attorney fees order in Docket No. 91070-COA, we ORDER the judgments of the district court AFFIRMED. [3]

[3]Insofar as Backman has raised other 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.

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Cynthia Lu, District Judge, Family Division
Israel Kunin, Settlement Judge
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