



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ADRIAN PLATA,
Appellant,
vs.
ALONDRA HOLGUIN GUTIERREZ,
Respondent.

No. 91173-COA

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

Jose Adrian Plata appeals from a district court order in a child custody matter. Eighth Judicial District Court, Clark County; Hon. Charles J. Hoskin, Judge.

Plata and respondent Alondra Holguin Gutierrez married in 2020 and share three minor children, born in 2011, 2015, and 2018. The parties divorced in 2024, and Gutierrez was awarded primary physical custody and \$1,126 per month in child support from Plata. Following entry of the divorce decree, Gutierrez filed several motions to enforce and/or for an order to show cause regarding contempt, alleging Plata was not paying child support or reimbursing her for the children's medical expenses and was accruing arrears.

During the pendency of the proceedings, Child Protective Services (CPS) was alerted to an incident that occurred in July 2024 with Gutierrez and the parties' youngest child. In February 2025, Gutierrez faced a criminal charge as a result of the incident, but the charge was later dismissed after she successfully completed a class.

Plata opposed Gutierrez's motions to enforce and based on the July 2024 incident, filed a countermotion to modify custody, parenting time,

and arrearages. In addition, Plata requested modification of his child support obligation, arguing he was facing financial hardship and unable to meet his obligation. The district court found Plata demonstrated adequate cause for an evidentiary hearing. The district court also issued an order to show cause, directing Plata to show cause why he should not be held in contempt of the parties' divorce decree for failing to pay child support.

Eventually, the case proceeded to an evidentiary hearing on Plata's countermotion to modify custody and the contempt proceedings, where Plata and Gutierrez both presented documentary evidence and testified. Following the hearing, the district court entered a written order denying Plata's request to modify custody, finding him in contempt for failing to comply with the parties' divorce decree concerning his child support obligation, and imposing monetary sanctions. This appeal followed.

On appeal, Plata first challenges the district court's denial of his motion to modify custody, contending the district court abused its discretion by determining he failed to demonstrate a substantial change in circumstances or that the children's best interest were served by modification. Plata contends that the July 2024 incident where Gutierrez hit one child with a belt warranted modification of the custody arrangement and that the court should have applied NRS 125C.0035(5)'s rebuttable presumption when there is domestic violence. Plata also asserts that the district court's analysis of the best interest factors was flawed, arguing that the court erroneously determined that several factors favored Guiterrez and should have instead determined that they favored him.

The district court enjoys "broad discretionary powers to determine child custody matters, and we will not disturb the district court's custody determinations absent a clear abuse of discretion." *Ellis v. Carucci*,

123 Nev. 145, 149, 161 P.3d 239, 241 (2007). In reviewing child custody determinations, this court will affirm the district court’s factual findings if they are supported by substantial evidence, “which is evidence that a reasonable person may accept as adequate to sustain a judgment.” *Id.* When making a custody determination, the sole consideration is the best interest of the children. NRS 1250.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Further, we presume the district court properly exercised its discretion in determining the children’s best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004). We review purely legal questions de novo. *Rennels v. Rennels*, 127 Nev. 564, 569, 257 P.3d 396, 399 (2011).

To establish that a custodial modification is appropriate, the moving party must show that “(1) there has been a substantial change in circumstances affecting the welfare of the child[ren], and (2) the child[ren]’s best interest is served by the modification.” *Romano v. Romano*, 138 Nev. 1, 5, 501 P.3d 980, 983 (2022) (internal quotation marks omitted), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023). The party requesting modification bears the burden to satisfy both prongs. *Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43.

Here, the district court found Plata failed to demonstrate a substantial change in circumstances warranting modification and that the applicable best interest factors favored Gutierrez maintaining primary physical custody. Although the court found many factors neutral or inapplicable, it found several factors favored Gutierrez.

Specifically, the district court found that Gutierrez permitted additional parenting time to Plata in excess of what was required by the

decree and Plata unilaterally took additional time and testified he would violate court orders if the children asked him to do so. *See* NRS 125C.0035(4)(c). Further, the court found the parties were mostly able to coparent, but Plata did not respect court orders during Gutierrez’s parenting time and failed to identify any time where Gutierrez withheld the children during his parenting time. *See* NRS 125C.0035(4)(e). The court also found Gutierrez met the children’s needs and that Plata had not provided much information as to how he handles the children’s needs. *See* NRS 125C.0035(4)(g). Next, the court accepted Plata’s testimony that he was close with the children and wanted them to live with him but nevertheless found the relationship factor favored Gutierrez based on her role as the primary physical custodian and the evidence presented during the divorce proceedings. *See* NRS 125C.0035(4)(h); *see also Nance v. Ferraro*, 134 Nev. 152, 153, 418 P.3d 679, 681 (Ct. App. 2018) (explaining that district courts are not barred from reviewing facts and evidence underpinning prior rulings or custody determinations in deciding whether modification of a custody order is in the children’s best interest).¹

The parties’ testimony and evidence supported these findings. Specifically, Plata acknowledged he did not follow the custody arrangement set forth in the divorce decree when he was asked to deviate from it by the children and explained he would pick up the children during Gutierrez’s

¹We note that Plata argues the best interest factor concerning any history of abuse or neglect must favor him, *see* NRS 125C.0035(4)(j), but the district court’s order reflects that the court found that factor was in his favor based on the July 2024 incident. The court, however, declined to make a finding of abuse or neglect against Gutierrez because CPS did not remove the children and found Gutierrez to be a safe placement and her criminal charges were ultimately dismissed. The evidence supports this finding. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

custody time without notice or her consent. Additionally, although Plata accused Gutierrez of withholding the children from him, he acknowledged that she turned the children over to him during his parenting time and that he withheld the children on various occasions. The evidence further showed that Gutierrez paid the children's health insurance premiums and medical bills and repeatedly requested that Plata contribute to such expenses, but he often failed to contribute to those expenses. And when asked whether he thought his disregard of the court orders harmed the children and undermined the consistency Gutierrez provided, Plata testified that he did not see any harm in his failure to follow court orders. Thus, the aforementioned factual findings made in support of the district court's determinations are supported by substantial evidence in the record. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Moreover, we are unpersuaded by Plata's contention that the July 2024 incident should have resulted in the domestic violence factor favoring him, that his testimony alone satisfies the clear and convincing evidence standard for the domestic violence rebuttable presumption from NRS 125C.0035(5), and that the district court should not have relied on other agencies' conclusions. In making these arguments, he essentially asks this court to believe his version of events and make findings he believes are correct, which we cannot do. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009) (explaining that "credibility determinations and the weighing of evidence are left to the trier of fact"); *cf. Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 848 (Ct. App. 2025) (explaining that NRS 125C.0035(5)'s rebuttable presumption against awarding a parent physical custody applies when the commission of acts of domestic violence "has been established by clear and convincing evidence").

Moreover, the district court's finding that the domestic violence factor, NRS 125C.0035(4)(k), was neutral was based on substantial evidence. Gutierrez testified about the incident, wherein she acknowledged the incident occurred but explained that it was disciplinary and not intended to harm the child. The record demonstrates CPS closed the case and found that the July 2024 incident was an isolated event, the children were safe in Gutierrez's care, and the children did not express fear of Gutierrez. Moreover, the parties agreed that the charges against Gutierrez were ultimately dismissed. Thus, because the district court's finding with respect to this factor is supported by substantial evidence, we cannot say the court abused its discretion. *See Schwartz v. Schwartz*, 126 Nev. 87, 91, 225 P.3d 1273, 1276 (2010) (explaining that under an abuse of discretion standard, "we will not substitute our judgment for that of the district court"); *see also In re J.D.N.*, 128 Nev. 462, 477, 283 P.3d 842, 852 (2012) (explaining that "the family division of the district court is in a better position to weigh the credibility of witnesses"); *Roggen v. Roggen*, 96 Nev. 687, 689, 615 P.2d 250, 251 (1980) (noting that it "is not the duty of a reviewing court to instruct the trier of facts as to which witnesses, and what portions of their testimony are to be believed").

Additionally, the district court repeatedly found Plata had significant credibility issues, largely due to his failure to comply with court orders and his mischaracterizations of events. The court also made additional findings that it was in the children's best interest to have Gutierrez remain the primary physical custodian and that Gutierrez provided the children with stability, which further served their best interest.

Overall, Plata's challenges to the district court's best interest findings are essentially requests for this court to reweigh the evidence in his favor. However, he fails to acknowledge that there was unfavorable evidence presented about both parties and, as explained previously, this court is not at liberty to reweigh the evidence or the district court's credibility determinations. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080.

In light of the district court's best interest findings, we need not determine whether the district court abused its discretion in finding Plata failed to establish a substantial change in circumstances. Even assuming without deciding that determination was erroneous, any error was harmless as the district court did not abuse its discretion by determining it was not in the children's best interest to modify custody, and the failure to demonstrate the best interest prong of the modification test is fatal to his request to modify the custody arrangement. *See Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43 (providing that a party seeking to modify custody must satisfy both prongs of the test); *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that an error is harmless if it does not affect a party's substantial rights); *cf.* NRCP 61 (providing that a court must disregard all errors and defects that do not affect a party's substantial rights).

Next, Plata argues that his child support obligation should have been modified because he informed the district court of his inability to pay due to his unemployment and the seasonal nature of his work. "We review decisions regarding child support for an abuse of discretion." *Romano*, 138 Nev. at 7, 501 P.3d at 985. Below, Plata requested modification of his child support obligation in his countermotion to modify custody, arguing he was facing financial hardship and unable to meet his obligation. Despite this,

the district court's order incorrectly stated that Plata did not request modification of his child support obligation and included no findings related to his child support request. While the district court made various findings regarding Plata's credibility, it is unclear whether those findings related to Plata's child support modification request. As such, we necessarily reverse the district court's order to the extent it failed to consider Plata's request to modify child support and remand for the court to consider that request and make the requisite factual findings. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142 (explaining that, 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); *see also Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.").

Finally, Plata argues the district court abused its discretion by holding him in contempt for failing to make child support payments in contravention of the divorce decree without making findings regarding his ability to pay.² This court reviews contempt orders for an abuse of discretion. *Lewis v. Lewis*, 132 Nev. 453, 456, 373 P.3d 878, 880 (2016); *see also Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) (explaining that, while orders of contempt are not appealable, this court has

²The district court additionally held Plata in contempt for violating its August 2024 order requiring him to refinance or sell his residence by January 1, 2025, in order to satisfy the amount he owed Gutierrez pursuant to the parties' divorce decree. Plata does not address that contempt finding on appeal, and he has therefore forfeited any arguments related to this issue. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (stating that issues that are not raised on appeal are deemed forfeited).

jurisdiction to review contempt findings when included in an order that is otherwise independently appealable). NRS 22.010(3) provides that disobedience to any lawful order issued by a court is contempt. A court may punish a party found guilty of such contempt by imposing a fine. NRS 22.100(2). However, before holding a party in contempt for failure to pay child support, the court must determine that the party “ha[d] the ability to comply with the child support order but failed to make an effort to do so.” *Rodriguez v. Eighth Jud. Dist. Ct.*, 120 Nev. 798, 811, 102 P.3d 41, 50 (2004). In this case, the court did not make findings regarding whether Plata had the ability to pay his child support obligation when it found him in contempt, and we are constrained by supreme court precedent which requires the court to make such findings. *See id.*; *see also Eivazi v. Eivazi*, 139 Nev. 408, 418 n.7, 537 P.3d 476, 487 n.7 (Ct. App. 2023) (recognizing that this court is bound by Nevada Supreme Court precedent). While we recognize the district court found that Plata was not credible and willfully violated the child support order, we note that, as discussed above, the court did not recognize Plata requested to modify child support based on alleged financial hardship, and it is unclear whether the court considered that fact in reaching its contempt determination. Under these facts, we conclude that the district court abused its discretion by failing to make findings regarding Plata’s ability to pay his obligation, and we reverse and remand for the court to make the necessary findings. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142 (explaining that deference is not owed findings so conclusory they may mask legal error); *see also Bland v. Bland*, No. 49197, 2008 WL 6099075, *4 (July 11, 2008) (Order Affirming in Part, Reversing in Part and Remanding) (remanding a district court’s monetary contempt

penalty for a father's failure to pay child support where the court failed to make findings regarding the father's ability to pay). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.³



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Charles J. Hoskin, District Judge
Cohen Fic & Squires
Alondra Holguin Gutierrez
Eighth District Court Clerk

³Insofar as Plata raises other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.