



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASMINE ALEXIS ANDERSON-
ALEXANDER,
Appellant,
vs.
WAYNE HAROLD MOTEN, III,
Respondent.

No. 90813-COA

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

Jasmine Alexis Anderson-Alexander appeals from a district court post-custody decree order modifying child custody. Eighth Judicial District Court, Family Division, Clark County; Amy Mastin, Judge.

Anderson-Alexander and respondent Wayne Harold Moten, III, were never married but share one child together, who was born in July 2020. In February 2022, Moten filed a complaint for custody. During the initiation of the case, the district court noted the extremely high conflict between the parties. After an evidentiary hearing, the court entered a decree of custody in July 2023, which awarded Anderson-Alexander sole legal and physical custody of the minor child, with Moten receiving supervised parenting time. The decree stated that if Moten completed six months of supervised parenting time with positive reports, and completed a parenting course and other requirements, he may petition the court for unsupervised parenting time.

In December 2023, Moten filed a motion arguing that Anderson-Alexander had not been compliant with the district court's decree and was not allowing him to see the minor child, and requested that his parenting

time change. During a February 2024 hearing, the court noted concerns that Anderson-Alexander was not complying with the court's order that Moten have supervised parenting time with the minor child. An order was issued in April 2024 stating that Moten had completed most of the court's conditions imposed in the decree, and an evidentiary hearing was set for October 2024 as to whether to modify custody. After continued proceedings and the issuance of temporary orders, an evidentiary hearing on child custody modification occurred in March 2025, and each party testified on their own behalf. Subsequently, the district court entered its findings of fact, conclusions of law, and modification of custody order. The court awarded Moten sole legal and primary physical custody, subject to Anderson-Alexander having supervised parenting time for two hours every Thursday. This appeal followed.¹

On appeal, Anderson-Alexander argues that the district court did not make sufficient findings to modify child custody.² 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). A court may modify a physical custody arrangement only when the movant

¹Moten did not file a fast track answering brief in this matter, despite being directed to do so by this court. Thus, this appeal was decided with Anderson-Alexander's fast track opening brief and the record on appeal. See NRAP 3E(1).

²Because Anderson-Alexander does not expressly raise specific arguments challenging the district court's sole legal custody determination on appeal, we affirm the court's award of sole legal custody to Moten. See *Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (providing that arguments not raised on appeal are deemed forfeited).

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).

Here, the district court found that a substantial change in circumstances occurred, given the improvements that Moten had made since the initial decree was entered, whereas Anderson-Alexander had since interfered with his relationship with the minor child. Thus, to the extent Anderson-Alexander contends the district court improperly failed to consider whether a substantial change in circumstances had occurred since entry of the custody decree, we are not persuaded.³ *See Martin v. Martin*, 120 Nev. 342, 343, 90 P.3d 981, 981-82 (2004) (explaining that “a custodial parent’s substantial or pervasive interference with a noncustodial parent’s [parenting time] could give rise to changed circumstances warranting a change in custody”), *abrogated on other grounds by Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43.

Additionally, the district court evaluated the NRS 125C.0035(4) best interest factors in support of its award of primary physical custody to Moten, finding that seven best interest factors favored him and the rest

³Insofar as Anderson-Alexander contends that the district court considered pre-decree evidence, her argument is belied by the challenged order, which focuses on post-decree events in concluding that there had been a substantial change in circumstances and when evaluating the best interest factors.

were either neutral or not applicable. Therefore, none were found to favor Anderson-Alexander. The court noted Anderson-Alexander has repeatedly violated court orders and risked incarceration rather than fostering a relationship between the minor child and Moten. The court also found that Moten has abided by court orders and has limited his side of the conflict, while Anderson-Alexander has not done anything to reduce the parties' conflict and only increased it. The court also found that Anderson-Alexander has demonstrated she does not value Moten's input concerning the minor child's needs. The court further found that Anderson-Alexander has not allowed the minor child to have parenting time with Moten for extended periods and has never indicated respect for Moten's contributions as the minor child's father, has interfered with Moten's custodial rights, and has not demonstrated effective communication. Thus, the district court did not abuse its discretion when it awarded Moten primary physical custody, and granted Anderson-Alexander parenting time.

However, 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 is served by the greater restriction[s].” *Id.* at 176, 535 P.3d at 288.

Because the district court’s physical custody arrangement here resulted in the child residing solely with Moten and limited Anderson-Alexander’s parenting time to no significant in-person parenting time at two supervised hours per week that resulted in a severe restriction on Anderson-Alexander’s care, custody, and control of the child, the district court functionally granted sole physical custody to Moten. *See Roe*, 139 Nev. at 174, 535 P.3d at 287. Therefore, the district court abused its discretion in characterizing the arrangement as an award of primary physical custody to Moten. *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. 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 Moten sole physical custody. The court did not expressly find that Anderson-Alexander was unfit for the child to reside with, nor did the court make specific findings to adequately explain why awarding Moten 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 Anderson-Alexander’s parenting time with the child to such an extent that it constituted an award of sole physical custody to Moten. *See Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (“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 Anderson-Alexander with sufficient parenting time such that Moten 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.⁴



Bulla, C.J.



Gibbons, J.



Westbrook, J.

⁴Insofar as Anderson-Alexander raises other arguments not specifically addressed in this order, we have considered the same and conclude that they need not be reached given this court’s disposition.

cc: Hon. Amy Mastin, District Judge, Family Division
Jasmine Alexis Anderson-Alexander
Wayne Harold Moten, III
Eighth District Court Clerk