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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIA LEE CAPPARELLI, Appellant, vs. JEREMIE SCHWARTZ, Respondent.	No. 92176-COA

ORDER OF AFFIRMANCE

Antonia Lee Capparelli appeals from an order of the district court modifying a child custody arrangement. Second Judicial District Court, Washoe County; Hon. Sandra A. Unsworth, Judge.

Capparelli and respondent Jeremie Schwartz were never married but share two minor children. One child was born in 2010, and one child was born in 2011. Capparelli filed a petition to establish custody, and the parties later reached an agreement concerning the outstanding custody issues. The district court thereafter entered an order awarding the parties joint legal and physical custody of the children.

Disputes arose between the parties, and Capparelli subsequently filed several motions seeking modification of the custody arrangement. In 2018, the district court entered an order modifying the physical custody arrangement and awarding Capparelli primary physical custody of the children. The parties later acknowledged that Schwartz moved to Pennsylvania in 2018 while Capparelli remained in Nevada with the children. Following Schwartz's relocation to Pennsylvania, Capparelli again moved to

modify the custody arrangement, and the district court entered an order in 2019 awarding Capparelli sole legal custody of the children.

In December 2024, Schwartz returned to Nevada and resided in Fernley. Capparelli, in January 2025, filed a motion in which she sought, among other things, a modification of the custody arrangement considering Schwartz's return to Nevada.

Schwartz subsequently moved to modify custody, explaining that modification of custody was warranted as Capparelli was recently arrested for an act of domestic violence involving a different romantic partner. The district court issued an order temporarily awarding Schwartz with sole legal custody and primary physical custody of the children due to Capparelli's arrest. The district court also set an evidentiary hearing concerning modification of the custody arrangement and related issues.

Both parties testified at the hearing and discussed their communication issues and difficulties coparenting the children. The parties also introduced documents depicting their text messages, as well as medical and school records concerning the children. Schwartz explained the circumstances concerning his move to Pennsylvania and his recent return to Nevada. Schwartz also explained that, since his return to Nevada and prior to Capparelli's arrest, Capparelli did not permit him to have much parenting time with the children and limited his contact with them. In addition, Capparelli discussed her mental health breakdown that occurred on Mother's Day 2025 and some of the circumstances concerning her arrest. Capparelli also explained that the related criminal proceedings were ongoing. Capparelli noted her mental health difficulties and that those issues impacted the children in several ways.

Both parties discussed an apparent suicide attempt by the eldest child. The parties also explained that, as the child was receiving care in a hospital, they engaged in an argument in the presence of hospital staff. Schwartz explained his deep concern for the child's mental health, as Schwartz's brother had died by suicide, and Schwartz indicated his desire to help the child with his mental health difficulties. Capparelli also discussed her strained relationship with the child and acknowledged she texted Schwartz that the child had abusive behaviors. However, Capparelli testified that she has a good relationship with the youngest child, and Schwartz acknowledged that his relationship with the youngest child had deteriorated recently. The district court later separately interviewed the children and incorporated the information gained from those interviews into its ultimate custody decision.

The district court subsequently entered a written order in which it noted that Capparelli acknowledged Schwartz's return to Nevada constituted a change in circumstances and that she accordingly sought a change in the parenting time schedule. The court also reviewed NRS 125C.0035(4)'s best interest factors and found, based on those factors, that it was in the children's best interest to modify the custody arrangement. The court explained that the oldest child expressed his desire to reside primarily with Schwartz and that the youngest child expressed her desire to reside primarily with Capparelli. The district court further found that three of the remaining best interest factors favored Schwartz while the remaining factors were either neutral or not relevant.

In particular, the district court noted that documents introduced at the hearing demonstrated that Capparelli sought to exclude Schwartz from

the children's lives. The court also focused on the oldest child's mental health issues and noted that Schwartz was best positioned to care for the child. In addition, the court expressed its concern for Capparelli's mental health issues and noted that Capparelli failed to recognize that her relationship with the oldest child was extremely damaged. In addition, the district court noted that the parties each accused the other of committing acts of domestic violence but had provided such limited information that it was unable to find that either party committed an act of domestic violence.

Based on those findings, the district court determined it was in the children's best interest to award Schwartz primary physical custody of the oldest child and to award the parties joint physical custody of the youngest child. It also elected to award the parties joint legal custody of the children but awarded Schwartz final decision-making authority concerning the oldest child's medical issues and most school-related issues. This appeal followed.

Capparelli raises several arguments concerning the district court's decision to modify the physical custody arrangement. Capparelli argues the court abused its discretion by modifying custody without finding that there was a substantial change in circumstances warranting such a modification. Capparelli also argues the court did not properly evaluate the best interest factors and that its findings were not based upon substantial evidence. In addition, Capparelli asserts the district court mischaracterized the parties' communication issues, disregarded documentary evidence, and relied upon uncorroborated sources when reaching its decisions.

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). 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.* at 149, 161 P.3d at 242. When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015). Further, "we presume that the district court properly exercised its discretion in determining the best interests of the child." *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

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, 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). The party requesting modification bears the burden to satisfy both prongs. *Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43. A court may award one parent primary physical custody if it determines that joint physical custody is not in the best interest of the child. NRS 125C.003(1).

Here, Schwartz and Capparelli both testified at the evidentiary hearing concerning Schwartz's return to Nevada in 2024 and how that decision impacted the children. As explained previously, the district court noted in its written order that Capparelli previously acknowledged that Schwartz's return to Nevada constituted a change in circumstances and that she sought a modification of the parenting time arrangement following his return. The court's findings concerning Schwartz's return to Nevada are supported by substantial evidence in the record, *see Ellis*, 123 Nev. at 149, 161 P.3d at 242,

and this court will not second guess a district court's resolution of factual issues involving conflicting evidence, *see Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). Moreover, Capparelli fails to demonstrate that Schwartz's return to Nevada did not constitute a substantial change in circumstances affecting the welfare of the children, and she is accordingly not entitled to relief.

Turning to Capparelli's challenge to the district court's findings concerning the NRS 125C.0035(4) best interest factors, we conclude she is not entitled to relief. "Failure of the district court to properly consider any best interest factor and make specific findings constitutes an abuse of discretion." *Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 849 (Ct. App. 2025); *see also Lewis v. Lewis*, 132 Nev. 453, 459-60, 373 P.3d 878, 882 (2016) ("In determining the best interest of the child, the court *shall* consider and set forth its specific findings concerning [the best interest factors]."). Moreover, "[e]valuating the child's best interest in determining custody is designed to place the child's welfare and developmental needs at the forefront of all child custody decisions, ensuring that the outcomes support their physical, emotional, and psychological well-being." *Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 848-49. However, the NRS 125C.0035(4) best interest factors are non-exhaustive and should be considered along with any other relevant information the district court deems significant. *See Ellis*, 123 Nev. at 152, 161 P.3d at 243.

Here, the district court made extensive findings concerning the evidence presented at the evidentiary hearing, including information pertaining to the NRS 125C.0035(4) best interest factors, and it tied those findings into its custody decision. *See Davis*, 131 Nev. at 451, 352 P.3d at 1143

(explaining the district court's "order must tie the child's best interest, as informed by specific, relevant findings respecting the [best interest factors] and any other relevant factors, to the custody determination made"). The court noted the children's preferences. *See* NRS 125C.0035(4)(a). The court found that, based upon the documentary evidence and the parties' testimonies, Capparelli interfered with Schwartz's relationship with the children and sought to erase him from their lives but also noted Schwartz exhibited hostility toward Capparelli. *See* NRS 125C.0035(4)(c), (d). In addition, the district court considered evidence related to the oldest child's mental health and developmental issues, explained that the oldest child has significant needs in those areas and that the youngest child also has difficulties and found that neither party cooperated with the other to meet the needs of the children. *See* NRS 125C.0035(4)(e).

The district court next reviewed the evidence presented concerning the parties' physical and mental health, expressing its concern regarding Capparelli's mental health issues. *See* NRS 125C.0035(4)(f). The court further reviewed whether the parties were able to meet the physical, developmental, and emotional needs of the children, and found that factor strongly favored Schwartz. *See* NRS 125C.0035(4)(g). In particular, the court reviewed Capparelli's text messages concerning the oldest child and found they demonstrated she did not recognize his needs. In addition, the court noted the information presented concerning the parties' relationship with the children and found that Capparelli's relationship with the oldest child was damaged and that Schwartz's hostility toward Capparelli impacts the children. *See* NRS 125C.0035(4)(h). Moreover, the court found that the children have a half-sibling who resides with Capparelli and the court wished for the children to

maintain a relationship with their half-sibling. *See* NRS 125C.0035(4)(i). In addition, the district court did not find that there was a history of parental abuse, but it expressed concern regarding Capparelli's behavior on the recent Mother's Day. *See* NRS 125C.0035(4)(j).

Notably, the district court found there was insufficient evidence presented for it to find either party committed an act of domestic violence discussed under NRS 125C.0035(4)(k). *See Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 849 (explaining that a district court must consider "whether domestic violence has been proven by a preponderance of the evidence in determining which custody arrangement is in the child's best interest").[1] The court found that there had been no acts of abduction. *See* NRS 125C.0035(4)(l). Finally, the district court expressed its concern that Capparelli continually sought to use the suicide of Schwartz's brother as a weapon and barred her from discussing that issue with the children.

The factual findings made in support of these determinations are supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. To the extent Capparelli argues that the district court should have weighed

[1]The district court also recognized that NRS 125C.0035(5)'s rebuttable presumption against awarding a parent physical custody did not apply as domestic violence had not been proven by clear and convincing evidence. Capparelli states that the court held her to a higher burden of proof than was appropriate, apparently referencing the district court's findings concerning the rebuttable presumption under NRS 125C.0035(5). However, the district court correctly recognized that NRS 125C.0035(5)'s rebuttable presumption against awarding a parent physical custody applies when the commission of an act of domestic violence "has been established by clear and convincing evidence." *Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 848. Capparelli therefore is not entitled to relief based upon this argument.

the evidence differently, this court is not at liberty to reweigh the evidence. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. Considering the foregoing, we conclude that Capparelli does not demonstrate the district court abused its discretion in reaching the aforementioned decisions.

In light of the foregoing, we conclude that Capparelli is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

Bulla, C.J.

Gibbons, J.

Westbrook, J.

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[2]Capparelli also contends that procedural irregularities resulted in a denial of due process. In addition, she contends that she was prejudiced by errors concerning the exclusion of relevant evidence, inconsistent treatment of objections, and reliance upon matters outside of the record. However, Capparelli does not provide cogent argument in support of these statements. As a result, we need not consider these issues. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by cogent argument).

Moreover, insofar as Capparelli 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.

cc: Hon. Sandra A. Unsworth, District Judge
Antonia Lee Capparelli
Jeremie Schwartz
Second District Court Clerk