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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUBA GONZALEZ N/K/A LUBA DACE Appellant, vs. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Respondent.	No. 92300-COA

ORDER OF AFFIRMANCE

Luba Gonzalez, n/k/a Luba Dace appeals from a district court order denying a motion seeking modification of a child custody arrangement and an order denying a motion for reconsideration. Eighth Judicial District Court, Clark County; Hon. Heidi Almase, Judge.[1]

Luba and respondent Enrique Ivan Velazquez-Gonzalez were married in 2013 and divorced in 2021. Their daughter was born in August 2016. Under the stipulated decree of divorce, Luba and Enrique shared joint physical and legal custody of the child and were required to confer with one another "on all important matters pertaining to [the child's] health" and "on all matters regarding [the child's] health care, including . . . dental."

In January 2025, the district court granted Enrique's motion to award him primary physical custody and hold Luba in contempt after Luba withheld the child from Enrique shortly before he was supposed to take the child on a trip to Mexico and rescheduled a dentist appointment for the child without notifying Enrique. *See Gonzalez v. Velazquez-Gonzalez*, No. 90570-

[1]The Honorable Heidi Almase signed the orders at issue in this appeal, but this matter was later reassigned to the Honorable Robert Teuton.

COA, 2026 WL 572716 (Nev. Ct. App. Feb. 27, 2026) (Order Affirming in Part and Reversing in Part). Relevant to the issues on appeal here, the district court's order modifying physical custody did not modify the holiday and vacation timeshare provisions of the divorce decree. *Id.* at *3 (noting that "the court maintained . . . the prior holiday and vacation timeshare").

In July 2025, Luba filed a "motion for temporary sole medical decision-making authority." In her motion, Luba alleged that the child needed certain orthodontic treatment. Luba alleged that Enrique was unreasonably "obstructing" the start of the first phase of orthodontic treatment "despite documented medical necessity" because he refused to consent to the two-phase treatment and requested Luba cancel an appointment she scheduled to get the first phase of treatment started. Luba argued that "immediate judicial intervention and modification of custody to grant Plaintiff sole or final decision-making authority" for medical care was needed because of Enrique's refusal to consent to the first phase of the proposed orthodontic treatment. In so moving the court, Luba relied exclusively on caselaw pertaining to custodial modifications and essentially argued that Enrique's alleged disregard of the orthodontist's recommended treatment plan constituted a substantial change in circumstances and that it was in the child's best interest to grant her sole medical decision authority.

In responding to the motion, Enrique disputed Luba's allegation that the orthodontic treatment was medically necessary. In support of his arguments, Enrique provided the district court with a copy of an email he received from the orthodontist's treatment coordinator in which the treatment coordinator stated that "a monitoring option is absolutely reasonable if you prefer to wait," and that the first phase of treatment "is considered 'preventive,' as [the child's] teeth are not causing any severe medical or dental issues yet."

The treatment coordinator also confirmed that the orthodontist was not in-network. Enrique also alleged that he was working with an in-network dentist to obtain a second opinion and referral to an in-network orthodontist. Enrique then argued that the factors enumerated in *Kelley v. Kelley*, 139 Nev. 359, 366, 535 P.3d 1147, 1154 (2023), weighed against granting Luba's requested relief.

In her reply, Luba included a July 28, 2025, communication from the treatment coordinator which she alleged supported her argument that the child needed immediate orthodontic care. In that communication, the treatment coordinator stated the while the orthodontist did not recommend delaying treatment, "this treatment (Phase I) is still only considered preventative as it is not considered medically necessary." With respect to the *Kelley* factors, Luba argued without any elaboration that "[a]ll the factors listed in *Kelley v. Kelley* favor for the minor child to have two baby teeth extracted without further delay."

In August 2025, the district court entered an order denying Luba's motion. The court's order analyzed Luba's motion under two different rubrics. First, construing Luba's motion as a request to modify legal custody, the court determined that Luba did not allege or demonstrate a substantial change of circumstances affecting the welfare of the child. The court noted that the parties "have a long history of disagreeing over the child's medical and dental treatment," and determined that Luba had not alleged that this most recent disagreement was significantly different than the parties' prior disagreements. The district court also concluded that Luba had not established either a prima facie case that modification was necessary or adequate cause for an evidentiary hearing on her motion.

Second, the district court analyzed Luba's request for sole authority to make medical decisions under the *Kelley* factors. The court

determined Luba's allegations were insufficient to establish that the child would suffer serious physical harm absent immediate orthodontic treatment, and that the orthodontist's recommendation to begin the first phase of treatment was tempered by the treatment coordinator's statement that the monitoring was "absolutely reasonable" because the child was not suffering any severe dental issues. The district court also determined that Enrique articulated a reasonable concern that the child would require additional orthodontic treatment once the child's adult teeth grew in.

Luba moved the district court for reconsideration. First, Luba argued the court abused its discretion by considering whether she had demonstrated a substantial change in circumstances—i.e., the standard for custody modifications—rather than assessing her claim under the *Kelley* factors. Second, Luba argued the district court "ignored material evidence" consisting of the aforementioned July 28, 2025, communication from the orthodontist's treatment coordinator. Third, Luba argued the district court had not properly weighed the first *Kelley* factor by "equat[ing] 'not medically necessary' with absence of harm." Fourth, Luba asserted the district court abused its discretion by failing to make specific findings regarding the best interest of the child. Fifth, Luba argued the district court misapprehended facts regarding cancellation of the child's follow-up appointment with the orthodontist and details regarding insurance. Luba also argued reconsideration was warranted because of an alleged "pattern of judicial bias or, at minimum, the appearance of partiality that undermines confidence in the fairness of these proceedings."

During the pendency of Luba's motion for reconsideration, Enrique filed a "motion to clarify winter break holiday provision and for related orders." Enrique argued that the language in the winter break provision specifying that

the second part of the winter break ended on "the first Wednesday in January, the normal exchange day" lacked clarity and created confusion because the district court's January 2025 modification of physical custody had changed the normal exchange day to Mondays rather than Wednesdays. Enrique requested that the court update the "first Wednesday in January" to conform with the parties' new normal exchange day and confirm that the second segment of winter break would end on the first Monday after the winter break when school resumes.

Luba opposed Enrique's motion, but counter-moved the district court to modify the winter break schedule to conform with the court's standard winter break schedule, which provided that the second part of the winter break schedule continued "until school resumes following the Winter Break." In addition, Luba counter-moved the court to revise and clarify *all* holiday provisions in the decree, arguing that the current custodial arrangement essentially awarded Enrique most of the holidays. Luba also requested that the court modify the video call contact schedule of the decree. Finally, with respect to the dental/orthodontic disputes, Luba also argued that Enrique was unreasonably refusing to approve additional necessary treatment.

In his combined reply and response to Luba's countermotion, Enrique disputed Luba's allegation that he was unreasonably refusing to approve treatment, and alleged that he was merely opposing Luba's unnecessarily complex and costly scheduling of multiple dental appointments with overlapping and repetitive treatments. Enrique additionally accused Luba of misrepresenting the child's oral health.

In February 2026, the district court entered a combined order denying Luba's motion for reconsideration of the August 2025 order, granting in part Enrique's motion to clarify the winter break schedule, denying Luba's

countermotion, and vacating previously scheduled hearings on the same. The court's order rejected each of Luba's arguments in favor of reconsideration.

As to Enrique's motion to clarify the winter break schedule and Luba's competing countermotion, the district court determined that their requests substantially overlapped, construed this as a stipulation to clarify the winter break schedule, and ordered that winter break "will begin on the day the school calendar releases for the break and shall continue until December 26th at 12:00 p.m. (noon), when the other parent's timeshare shall begin, to continue until school resumes following the Winter Break." The court then denied Luba's request to modify the entire holiday schedule without prejudice, reasoning that Luba had not established a substantial change of circumstances warranting modification, nor had she established the modification was in the child's best interest. Further, the district court granted Luba's request to modify the video call schedule and ordered that Luba would have video calls with the child on Tuesdays and Thursdays but also imposed an additional condition that such video calls could not exceed 15 minutes. This appeal followed.

Sole medical decision-making authority

Luba asserts the district court abused its discretion in denying her motion for temporary sole medical decision-making authority because it applied the wrong legal standard. Luba argues that the district court improperly treated her motion as a request to modify legal custody and only cursorily recited the *Kelley* factors. Luba additionally argues the district court abused its discretion in resolving her motion without an evidentiary hearing because she alleges "the medical dispute turns on credibility and timeline presentation in the parties' submissions."

This court reviews district court decisions concerning legal custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239,

241 (2007); *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138 P.3d 525, 531 (2006). "Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing." *Rivero v. Rivero*, 125 Nev. 410, 420, 216 P.3d 213, 221 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022).

We conclude the district court did not abuse its discretion in denying Luba's motion. Generally, parents who share joint legal custody are both responsible for making decisions regarding the child's health. *Kelley v. Kelley*, 139 Nev. 359, 361-62, 535 P.3d 1147, 1151 (2023). When the parents are unable to agree on a parenting decision involving health care, the parents can petition the district court to determine what is in the child's best interest. *Id.* The district court may then enter "an order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest." NRS 125C.0045(1)(a). Unlike physical custody determinations, district courts are not required to consider the NRS 125C.0035(4) factors when determining which proposed course of treatment is in the child's best interest. *Kelley*, 139 Nev. at 365, 535 P.3d at 1153. Recognizing that tie-break decisions are inherently individualized, the supreme court stressed "that district courts have discretion . . . [and] should consider any information that is relevant under the circumstances." *Id.*; *see also Arcella v. Arcella*, 133 Nev. 868, 873, 407 P.3d 341, 346-47 (2017) (emphasizing that the identified factors are "illustrative rather than exhaustive").

The district court made factual findings supported by substantial evidence that the *Kelley* factors did not weigh in favor of granting Luba's request for sole authority to make decisions regarding the child's medical care. *Ellis*, 123 Nev. at 149, 161 P.3d at 242; *Kelley*, 139 Nev. at 365, 535 P.3d at

1153. The district court determined that Luba had not alleged a substantial likelihood of harm absent immediate orthodontic treatment because her chosen orthodontist had indicated the phased treatment was "still only considered preventative" and was not medically necessary. The court also determined it was relevant that Luba's selected orthodontist was not an in-network provider and that the anticipated $8,000 cost for the first phase of treatment was "no small sum." The court further noted that Luba had not provided an explanation as to why she did not seek a second opinion with an in-network provider as Enrique had proposed. Additionally, the district court determined that the orthodontist's recommendation to begin the first phase of treatment was tempered by the treatment coordinator's statement that "a monitoring option is absolutely reasonable" because the child was not suffering any severe medical or dental issues.

Furthermore, the district court did not abuse its discretion in ruling on Luba's motion without conducting a hearing. "A district court abuses its discretion only when no reasonable judge could reach a similar conclusion under the same circumstances." *Myers v. Haskins*, 138 Nev. 553, 556, 513 P.3d 527, 531 (Ct. App. 2022) (quotation omitted). "A district court must hold an evidentiary hearing on a request to modify custodial orders if the moving party demonstrates 'adequate cause.'" *Arcella*, 133 Nev. at 871, 407 P.3d at 345 (quoting *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993)). A party demonstrates "adequate cause" by presenting "'a prima facie case' that the requested relief is in the child's best interest." *Id.* (quoting *Rooney*, 109 Nev. at 543, 853 P.2d at 125). In doing so, the moving party must establish that "(1) the facts alleged in the affidavits are relevant to the [relief requested]; and (2) the evidence is not merely cumulative or impeaching." *Id.*

As noted above, Luba's chosen orthodontist had indicated the recommended treatment was not medically necessary and involved an estimated out-of-network cost of $8,000. And the orthodontist's treatment coordinator indicated that she could reasonably wait and monitor the child's development. Thus, even crediting Luba's evidence, she failed to establish a prima facie case that it was in the child's best interest to award her sole medical decision-making authority.

To the extent Luba argues that the district court applied the wrong legal standard by "treating a present joint-legal medical impasse as a custody-modification issue requiring a substantial-change/adequate-cause threshold rather than applying the proper *Kelley* best-interest/medical tie-break framework," Luba's motion and her supporting reply repeatedly couched her motion as a request to modify custody and cited caselaw pertaining to custody modification. Thus, insofar as Luba contends the district court erred by evaluating her case under the custody-modification standard, she invited any error by asking the court to apply that legal standard below. *See Eivazi v. Eivazi*, 139 Nev. 408, 429, 537 P.3d 476, 494 (Ct. App. 2023) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself has introduced or provoked the court or the opposite party to commit." (quoting *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994))). Furthermore, Luba has not demonstrated on appeal that a reasonable judge faced with the same circumstances would not have reached the same conclusion regarding Luba's request to modify legal custody. *Id.* at 556, 513 P.3d at 531. In sum, we conclude Luba has not demonstrated the district court abused its discretion in denying her motion

without conducting an evidentiary hearing.[2]

Winter break, holiday, and parenting time schedules

Luba also challenges the portion of the district court's combined order that granted Enrique's motion to clarify the winter break schedule and denying in part her countermotion to modify the holiday schedule and her schedule for video calls with the child. As a preliminary matter, Luba asserts the district court was divested of jurisdiction over issues related to the aforementioned schedules because at the time of the entry of the order, her appeal in Docket No. 90570-COA challenging the court's prior order modifying physical custody and holding her in contempt was pending resolution by this court. It is well-established that a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction with the appellate courts. *See Mack-Manley*, 122 Nev. at 855, 138 P.3d at 529-30. However, the district court still "retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal's merits." *Id.* at 855, 138 P.3d at 530.

As noted above, Luba appealed from the district court's January 2025 order modifying physical custody and holding her in contempt, which did not affect the divorce decree's vacation and holiday schedule or the provision

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[2]We likewise conclude that although Luba appealed from the district court's denial of her motion to reconsider its denial of her motion for temporary sole medical decision-making authority, she does not present any cogent argument on appeal regarding reconsideration. We therefore conclude Luba has not demonstrated the district court abused its discretion by denying her request for reconsideration. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (explaining appellate courts review a district court's decision to deny a motion for reconsideration for abuse of discretion); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider issues that are not supported by cogent argument).

regarding Luba's video call schedule. *See Gonzalez*, No. 90570-COA, 2026 WL 572716. Thus, these issues were independent from the order at issue in the prior appeal and we conclude the district court retained jurisdiction to resolve the parties' disputes on these collateral issues.

Turning to the substance of Luba's challenges, Luba asserts that the district court abused its discretion in clarifying the winter break schedule because its clarification was substantively a modification of physical custody that reduced her parenting time with the child, and because the court did not support this de facto modification with the requisite best interest findings. As this court has previously explained, "a modification alters the parties' substantive rights, while a clarification involves the district court defining the rights that have already been awarded to the parties and leaves their substantive rights unchanged." *Mizrachi v. Mizrachi*, 132 Nev. 666, 674, 385 P.3d 982, 987 (Ct. App. 2016) (quotation omitted).

In this case, both Enrique and Luba advised the district court of concerns regarding the winter break schedule in the divorce decree given the change of the parties' normal exchange day. The district court's clarification of the start date of the second part of the winter break did not affect either Enrique or Luba's substantive rights to parenting time with the child. Rather, it merely clarified the holiday break schedule the parties had previously agreed to in the divorce decree. Accordingly, Luba has not demonstrated she is entitled to relief on this argument.

Luba further argues the district court abused its discretion by denying her countermotion to revise the holiday and vacation schedules in their entirety. A party seeking to modify parenting time is required to establish that there has been a substantial change in circumstances affecting the child's welfare and that the requested modification is in the child's best

interest. *Ellis*, 123 Nev. at 150, 161 P.3d at 242. Luba did not assert a substantial change in circumstances warranting her requested wholesale modification of the holiday and vacation schedule, nor did she assert that such a modification was in the child's best interest. Accordingly, Luba has not demonstrated the district court abused its discretion in denying her request.[3]

Luba next argues that the district court abused its discretion in modifying the video call schedule beyond what she sought in her countermotion. As discussed above, Luba requested that the court clarify the video call schedule to conform to the parties' new exchange day. The court granted that request and additionally clarified that Luba's twice-weekly video calls with the child cannot exceed 15 minutes. Luba argues that the court's imposition of a time-limit on video calls equates to "a substantive restriction on parent-child contact," and that the court's time restriction lacked an evidentiary basis and violated her due process right to notice. We conclude Luba has not demonstrated she is entitled to relief on this claim. Much like the changes to the winter break schedule, the district court's revision of the video call provision of the divorce decree amounted to a clarification of Luba's already-established right to twice-weekly video calls with the child. *See Mizrachi*, 132 Nev. at 674, 385 P.3d at 987. We therefore conclude Luba has not demonstrated the district court's imposition of a time-limit on video calls with the child was an abuse of discretion.

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[3]To the extent Luba argues the district court was required to first conduct an evidentiary hearing before evaluating the parties' requests concerning winter break, vacation, and parenting time, we conclude she does not demonstrate she is entitled to relief. *Cf. Myers*, 138 Nev. at 556, 513 P.3d at 531 ("[A] district court only needs to hold an evidentiary hearing if the movant demonstrates 'adequate cause' for one.").

We further conclude that Luba's contention that her due process rights were violated when the district court clarified the video call schedule lacks merit. "[P]rocedural due process requires notice and an opportunity to be heard." *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (internal quotation marks omitted). A party's due process rights may be violated if the parties are not provided notice that the court will be considering a specific issue, such as parenting time. *Cf. Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996) (holding that the district court violated a party's due process rights when the party had no notice that the court would be considering the specific issue of parenting time).

Here, Luba does not demonstrate a lack of notice or a lack of opportunity to be heard on the issue of the video call schedule. Luba herself put the specific issue of video calls with the child before the district court in her countermotion. *See Martinez v. Martinez*, 140 Nev., Adv. Op. 73, 559 P.3d 863, 868 (2024) (reviewing a due process challenge in a child custody matter and determining that the appellant's due process right was not violated because appellant "put the specific issue of [parenting time] before the district court" and that "[a]warding increased [parenting time] after a hearing regarding custody and [parenting time] [wa]s squarely within the scope of potential outcomes"). And while the court did not conduct a hearing on this request, Luba fails to demonstrate this resulted in a violation of her right to due process. *See Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) ("Due process is satisfied where interested parties are given an opportunity to be heard at a meaningful time and in a meaningful manner . . . ." which often takes "takes the form of a live hearing but in some cases the parties may be afforded sufficient opportunity to present their case through affidavits and supporting documents." (internal quotation marks and citations omitted)).

Accordingly, we conclude Luba failed to demonstrate she is entitled to relief based on this argument.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.[4]

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Heidi Almase, District Judge
Hon. Robert Teuton, District Judge
Luba Gonzalez
Enrique Ivan Velazquez-Gonzalez
Eighth District Court Clerk

[4]Insofar as Luba raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.