IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIARA NATIVITY BELEN,
Appellant,
vs.
MORGAN LENNERT CHAPMAN,
Respondent.

No. 91144-COA

FILED
APR 28 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Kiara Nativity Belen appeals from a district court post-custody decree order. Eighth Judicial District Court, Clark County; Adriana R. White, Judge.

Kiara and respondent Morgan Lennert Chapman were not married and share one child in common, M.C., who was born in 2017. In 2019, the parties entered into a partial parenting agreement in which they agreed to share joint legal and physical custody of M.C. Later in 2019, the district court entered a custody decree awarding the parties joint legal and physical custody of M.C. consistent with the partial parenting agreement. In November 2024, Kiara filed a motion to modify the custodial arrangement, seeking primary physical custody and permission to relocate with M.C. to Puerto Rico where Kiara's fiancé resided. Morgan opposed Kiara's motion.

The district court conducted an evidentiary hearing where Kiara's fiancé, Kiara, Morgan's mother, and Morgan testified. The parties testified concerning their interactions with each other and with the child. In addition, as relevant to this appeal, Kiara attempted to present testimony concerning acts of domestic violence allegedly committed by

Morgan prior to the entry of the 2019 custody decree. Morgan objected, and the district court sustained the objection, finding that the testimony was not relevant to the current custody matters pursuant to *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P.2d 742 (1994).

The district court subsequently entered a written order denying Kiara's motion for modification of custody and permission to relocate. The district court determined that Kiara demonstrated a substantial change in circumstances based on her desire to relocate to Puerto Rico. However, the district court reviewed NRS 125C.0035(4)'s best interest factors and found, based on those factors, that it was not in M.C.'s best interest to modify custody to award Kiara primary physical custody. In addition, the district court reviewed Kiara's request to relocate to Puerto Rico with M.C. and found that the evidence demonstrated it was not in M.C.'s best interests to do so. This appeal followed.

Kiara argues on appeal that the district court abused its discretion by declining to permit testimony concerning acts of domestic violence allegedly committed by Morgan that predated the entry of the 2019 custody order.[1] Kiara contends the district court's findings related to her motion to modify custody and her request to relocate were erroneous, in part, because the district court did not consider this evidence. We review a district court's decision to exclude evidence for an abuse of discretion. *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). The district court's exercise of discretion will not be

[1]In her fast track statement, Kiara describes two prior incidents of domestic violence in the following manner. "Morgan had put Kiara in a chokehold when she tried to leave the relationship, and h[e] spit in her face during a child exchange."

disturbed "absent a showing of palpable abuse." *Id.* "Questions of law, however, we review de novo." *Nance v. Ferraro*, 134 Nev. 152, 156, 418 P.3d 679, 683 (Ct. App. 2018).

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, 3, 501 P.3d 980, 982 (2022) (emphasis added), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 404-05, 535 P.3d 1167, 1171 (2023). "Whenever a parent petitions to relocate under NRS 125C.006 or 125C.0065, that parent must satisfy the requirements enumerated in NRS 125C.007(1) and (2)." *Johnson v. Bennett*, 141 Nev., Adv. Op. 35, 575 P.3d 1023, 1030 (Ct. App. 2025). 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); *see also* NRS 125C.007(1)(b) (providing that the relocating parent must demonstrate that "[t]he best interests of the child are served by allowing the relocating parent to relocate with the child"). Moreover, a district court must consider the best interest factors in deciding whether to modify custody and to grant relocation. *Nance*, 134 Nev. at 161, 418 P.3d at 687; *see also Monahan v. Hogan*, 138 Nev. 58, 67-68, 507 P.3d 588, 595 (Ct. App. 2022) (providing that when making a best interests determination under the relocation statute, district courts should consider the enumerated NRS 125C.0035(4) factors as well as any other nonenumerated factor that may be applicable).

To that end, because of the "very real threat domestic violence poses to a child's safety and well-being when determining custody between

parents," this court has held that "[d]omestic violence allegations must be carefully considered in child custody proceedings." *Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842, 844 (Ct. App. 2025) (internal quotation marks omitted). This court has held that while a party seeking to modify physical custody cannot use evidence of domestic violence known to the parties or the court at the time the prior custody order was put in place to demonstrate a substantial change in circumstances warranting a modification of custody, such evidence may be considered when determining whether modification is in the child's best interest. *Nance*, 134 Nev. at 163, 418 P.3d at 688. In addition "[t]he court must hear *all* information regarding domestic violence in order to determine the child's best interests." *Castle v. Simmons*, 120 Nev. 98, 105, 86 P.3d 1042, 1047 (2004). Thus, evidence of prior acts of domestic violence should have been heard when the district court evaluated whether it was in M.C.'s best interest to award Kiara primary physical custody. *See* NRS 125C.0035(4)(k).

Here, the district court considered some evidence of alleged domestic violence and made findings related thereto but it sustained Morgan's objection to Kiara's testimony and declined to consider information about any incidents of domestic violence that predated the 2019 custody order. We conclude this constituted an abuse of discretion as the district court should have heard all information regarding domestic violence to determine the child's best interest. *See Castle*, 120 Nev. at 105, 86 P.3d at 1047. We note that, during cross-examination, Morgan elicited testimony from Kiara that Morgan put her "in a chokehold with my daughter in 2018" and that he spit in her face during an exchange of M.C. in 2019. However, the district court's order does not discuss a 2018 chokehold incident or a 2019 spitting incident and did not make specific findings concerning these

incidents of domestic violence in determining whether modification of custody or relocation were in M.C.'s best interest.[2] *See Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 844; *Nance*, 134 Nev. at 163, 418 P.3d at 688.

In light of the decision to exclude some information regarding domestic violence and the absence of written findings related to any testimony concerning the alleged pre-decree domestic violence as it bore upon the child's best interest, we cannot state, based on the record before this court, that the district court would have reached the same result had it considered all of the information of domestic violence. *See Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 850; *cf. Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that "[a]n error is harmless when it does not affect a party's substantial rights" and harmless error does not warrant reversal). Accordingly, we reverse and remand this matter to the district court to conduct an additional evidentiary hearing where the parties may present evidence regarding alleged incidents of domestic violence that predate the 2019 custody order and make appropriate findings as how any of those allegations bear upon the best interest of the child under NRS 125C.0035(4)(k) or the custodial presumption under NRS 125C.0035(5) based upon the entirety of the evidence. *See Nance*, 134 Nev. at 162, 418 P.3d at 687-88 (reversing and remanding where the district court failed to

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[2]In addressing the best interest factor regarding acts of domestic violence, NRS 125C.0035(4)(k), the district court order states, "Kiara testified that sometime in 2022 Morgan spit in her face and pushed her out of the way upon learning that she began dating." Kiara testified during the evidentiary hearing that there were two spitting incidents and described a spitting incident that she initially stated occurred in 2022 that matches the facts recounted in the district court's order. However, on cross-examination, Morgan asked Kiara, "There wasn't a spitting incident in 2022, was there?" In response, Kiara testified, "I mistook the dates."

consider domestic violence evidence before granting a party's motion for primary physical custody and relocation); NRS 125C.0035(5) (stating there is a rebuttable presumption against sole or joint physical custody for a perpetrator of domestic violence if proven by clear and convincing evidence).

In reaching this result, we express no opinion with respect to the merits of Kiara's motion to modify custody and relocate with the child. Instead, we merely conclude that an additional evidentiary hearing is warranted as to the domestic violence allegations consistent with this court's opinions in *Nance*, 134 Nev. at 159, 418 P.3d at 685 (recognizing that, when district courts evaluate the child's best interest to determine physical custody, limitations on the use of evidence to establish domestic violence are generally inappropriate, as domestic violence is a critical consideration in the best interest analysis), and *Soldo-Allesio*, 141 Nev., Adv. Op. 9, 565 P.3d at 848-50 (discussing the evidentiary standard that applies when evaluating the best interest factors). For these reasons, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[3]



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

[3]In light of our disposition, we do not address the parties' remaining arguments.

cc: Adriana R. White, District Judge
Pecos Law Group
Mills & Anderson Law Group
Eighth District Court Clerk