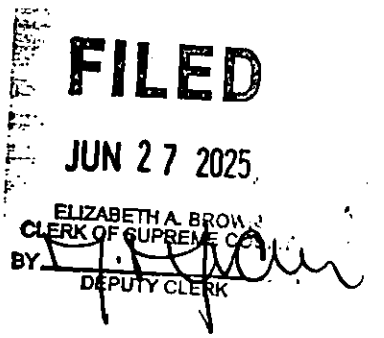
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MEGAN SORGET F/K/A MEGAN ALICIA EMDE,
Appellant,
vs.
TYLER JAMES AUSTIN,
Respondent.

No. 89474-COA



ORDER OF AFFIRMANCE

Megan Sorget f/k/a Megan Alicia Emde appeals from a district court order modifying child custody. Eighth Judicial District Court, Family Division, Clark County; Dedree Butler, Judge.

Sorget and respondent Tyler James Austin were never married but share two minor children together: S.A., born January 2016, and L.A., born October 2018. In the proceedings below, the district court initially entered a decree of custody in November 2020, which awarded the parties joint legal custody and Sorget primary physical custody. However, shortly thereafter, in December 2020, Sorget filed a motion for permission to relocate to Michigan with the minor children. The district court granted the motion and allowed her to relocate in May 2021, subject to Austin receiving liberal parenting time with the children. The district court found that relocation was in the children's best interest because Michigan had a comprehensive medical center that could assist L.A. with his medical conditions. The parties subsequently had many difficulties co-parenting the children.

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In February 2022, Austin filed a motion for an order to show cause alleging that Sorget denied him his parenting time with the children over Thanksgiving 2021 and Christmas 2021. While the district court instructed the parties to see if they could reach a settlement as to their disputes, the parties were ultimately not able to reach any kind of agreement. Austin thereafter filed a motion in April 2023 seeking, among other things, to modify physical custody, return the children to Las Vegas, and award him child support. In his motion, Austin asserted that Sorget withheld the children from him and did not consult with Austin or inform him regarding medical and school decisions related to the children. Sorget filed an opposition. During a June 2023 hearing, the district court ordered that both children needed to be in Nevada for Austin's summer 2023 parenting time. While Sorget represented to Austin in July 2023 that she was planning on relocating back to Nevada, she indicated at an August 2023 hearing that she no longer intended to relocate to Nevada.

The district court subsequently held an evidentiary hearing concerning child custody and related issues that spanned multiple days. The evidence presented at the evidentiary hearing primarily consisted of the testimony of the parties, messages between the parties, and testimony from Sorget's ex-partner from a previous relationship regarding difficulties coparenting with Sorget. During the proceedings, Austin testified at length that Sorget had deprived him of parenting time and addressed the difficulties the parties had in coparenting. He testified that when the children are in his care, he encourages them to contact Sorget with phone calls and Facetime calls. He testified that he believed that the level of conflict between himself and Sorget was high, that Sorget was attempting to get in the way of him being a father to the children, and that she did not

treat him like an equal parent. Conversely, Sorget testified that she believed that she was the better parent to care for the minor children and asserted that she was more knowledgeable about the children's needs. She explained that she believed that she was better able to care for L.A.'s medical needs and asserted that she believed when L.A. is in Austin's care that he is not being watched enough. She further asserted that Nevada had inferior medical care and education compared to Michigan. She also could not recall if the children had been made available to Austin for all of his ordered parenting time since June 2021.

Following the first day of the evidentiary hearing, on August 22, 2023, the district court determined it was in the children's best interest to remain in Austin's care in Nevada—where they currently were for his summer parenting time—and ordered that Austin be awarded compensatory time for all of the days he had been denied with the children since Sorget's 2021 relocation to Michigan. Austin was further granted permission to enroll S.A. in elementary school in Las Vegas for the 2023-2024 school year. The court extended these temporary orders through the second and third days of the evidentiary hearing, which took place in September and October of 2023, as it concluded leaving the children primarily with Austin was in their best interest. It later determined these orders should remain in place until the last day of the evidentiary hearing, which was scheduled for June 7, 2024, and ordered the parties to confer regarding a holiday parenting time schedule.

During a March 2024 motion hearing, Sorget raised various issues with Austin's care of the children and requested that the court lift the temporary orders. At this time Sorget represented that she would be relocating back to Las Vegas. The court subsequently set the matter for a

status check to see if the parties could reach a settlement, but at the April 2024 status check the parties indicated they were unable to reach an agreement. At this time, Sorget confirmed she had relocated back to Las Vegas and requested that the court enter temporary joint custodial orders. In response, the court instructed her to file a motion seeking this relief and to file an order shortening time if she wanted her request to be considered at the fourth day of the evidentiary hearing. Although Sorget filed a motion in May 2024 seeking primary physical, or in the alternative, joint physical custody, she did not file a request for an order shortening time as the court had directed.

On the fourth day of the evidentiary hearing, held June 7, 2024, the district court noted that Sorget failed to file any request to expedite the hearing on her motion to modify custody leaving the court in the position to simply consider the evidence and testimony presented thus far in resolving the parties' custodial dispute. Following the court's statement on this point, Sorget rested her case without providing additional testimony or evidence and the parties agreed to submit written closing arguments and proposed findings of fact.

Following the submission of these materials, the district court entered a written order granting Austin's motion to modify custody. In its order, the court noted that the parties stipulated to joint legal custody. With regard to physical custody, the court concluded that the evidence established that there had been a substantial change in circumstances affecting the welfare of the children since entry of the previous custody decision. Specifically, the court found that, since her relocation to Michigan, Sorget had violated the court's prior orders regarding Austin's parenting time with the children on numerous occasions, did not permit him to have

parenting time with the children, was dishonest about L.A.'s medical treatment, and interfered with Austin's ability to speak with medical providers and to make joint decisions. The court further found that Sorget used the relocation to Michigan to restrict Austin's parenting time and communications with the children, despite her representations at the relocation evidentiary hearing.

The district court also found that several of the best interest factors set forth in NRS 125C.0035(4) favored awarding Austin primary physical custody because Sorget withheld the children from him and did not include him in medical and educational decisions for the minor children. *See* NRS 125C.0035(4)(c), (d), (e) (collectively, the child custody best interest factors related to which parent is more likely to allow the children to have frequent associations and a continuing relationship with the noncustodial parent; level of conflict between the parents; and the parents' ability to cooperate to meet the needs of the children). The court also determined that Austin was in good mental and physical health, and that while Sorget was in good physical health, Austin was concerned as to her mental health given her instability and that the inability to take ownership of her actions was harmful to the children, and thus this factor favored Austin. *See* NRS 125C0035(4)(f) (the mental and physical health of the parents). With respect to NRS 125C.0035(4)(g) (the physical, developmental, and emotional needs of the children), the district court determined that this factor favored Austin because Sorget made unilateral decisions related to L.A.'s medical care that severely impacted Austin's custodial rights and that Austin credibly testified to being able to provide comparable care for the children. In considering NRS 125C.0035(4)(i) (ability of the children to maintain a relationship with any sibling), the court determined that this

factor favored Austin because the minor children's half-sibling resided in Nevada and Austin encouraged and fostered this relationship. The court determined that the remaining best interest factors were neutral.

Based on the evidence presented and its findings, the court concluded it was in the children's best interest to award Austin primary physical custody. Thus, the court awarded Sorget parenting time every first, third, and fifth weekend of the month from Friday at school pick-up until Monday at school drop-off. The court also provided Sorget with two overnights during the weeks she did not have weekend parenting time from Tuesday pick-up from school until Thursday at school drop-off. When school is not in session for summer break, the court ordered the parties to exercise a week on/week off timeshare. Additionally, the district court ordered Sorget to pay child support in the amount of $1,021.21 per month for the two children. This appeal followed.

On appeal, Sorget challenges the district court's decision to modify physical custody and asserts that the court "failed to address the best interest of the children." Conversely, Austin asserts the district court properly exercised its discretion by modifying physical custody and that the court's findings were supported by substantial evidence.

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 children. NRS 125C.0035(1). 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).

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., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). A court may award one parent primary physical custody if it determines that joint physical custody is not in the best interest of the children. NRS 125C.003(1). Here, a review of the record demonstrates that substantial evidence supports the district court's modification of physical custody.

The district court first determined that there had been a substantial change in circumstances affecting the welfare of the children since the entry of the previous custody decision. Specifically, the court found that, since her relocation to Michigan, Sorget had violated the court's prior orders regarding Austin's parenting time with the children on numerous occasions, did not permit him parenting time with the children, was dishonest about L.A.'s medical treatment, and interfered with Austin's ability to speak with medical providers and to make joint decisions. The court further found that Sorget used the relocation to Michigan to restrict Austin's parenting time and communications with the children, despite her representations at the relocation evidentiary hearing that she would continue to encourage the children's relationship with Austin. While Sorget disputes the district court's findings regarding her withholding the children

from Austin, the court's findings are supported by substantial evidence in the record and thus we are unpersuaded by her argument in this regard. *Ellis*, 123 Nev. at 149, 161 P.3d at 242.

At the evidentiary hearing, Austin testified at length that Sorget had deprived him of parenting time and discussed the difficulties the parties had in coparenting. Conversely, Sorget testified that she did not recall if the children had been made available for all of his parenting time as ordered since June 2021. In addressing Austin's lack of parenting time with the children after she relocated, Sorget argued, both below and on appeal, that L.A.'s doctor indicated he could not travel. And on appeal she contends that the district court improperly disregarded medical professionals in finding that she withheld the children from Austin. But her arguments on this point are not supported by the record.

Notably, Sorget's communications with one of L.A.'s medical doctors was admitted as an exhibit during the evidentiary hearing and the district court found these communications demonstrated that Sorget initiated the concern for L.A.'s travel. The district court further found, based on evidence submitted at the evidentiary hearing, that L.A.'s neurologist had approved L.A.'s travel. Under these circumstances, we cannot say that the district abused its discretion in finding that Sorget improperly withheld the children from Austin and interfered with his parenting time after she relocated to Michigan, as the record supports the court's conclusion in this regard. *Ellis* 123 Nev. at 149, 161 P.3d at 242.

Our supreme court has recognized that a custodial parent's substantial or pervasive interference with a noncustodial parent's parenting time constitutes changed circumstances. *See Martin v. Martin*, 120 Nev. 342, 346, 90 P.3d 981, 983 (2004), *abrogated on other grounds by*

Ellis, 123 Nev. 145, 161 P.3d 239. Thus, for the reasons noted above, we conclude the district court properly determined that there had been a substantial change in circumstances affecting the welfare of the children that supported modification of the prior custody arrangement.

Moreover, we are not persuaded by Sorget's assertion that the district court failed to account for the children's best interest as the court considered the enumerated best interest of the child factors under NRS 125C.0035(4) and found the following factors favored Austin: "[w]hich parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent;" "[t]he level of conflict between the parents," "[t]he ability of the parents to cooperate to meet the needs of the child;" "[t]he mental and physical health of the parents;" "[t]he physical, developmental and emotional needs of the child;" and "[t]he ability of the child to maintain a relationship with any sibling;" *See* NRS 125C.0035(4)(c), (d), (e), (f), (g), (i).

Relevant to the frequent associations factor, NRS 125C.0035(4)(c), Austin testified at length that Sorget deprived him of parenting time and addressed the difficulties the parties had in coparenting. He further testified that, when the children are in his care, he encourages them to contact Sorget with phone calls and Facetime calls. He also testified that he believed that the level of conflict between himself and Sorget was high, that Sorget was attempting to get in the way of him being a father to the children and that she did not treat him like an equal parent. Given this testimony, and our determination above that Sorget's claim that she withheld the children due to L.A.'s doctors preventing him from traveling is unsupported by the record, we discern no abuse of discretion in

the district court's determination that the frequent associations factor favored Austin.

Additionally, the district court found that there is a high level of conflict between the parties, but that this conflict was primarily due to Sorget's actions. More specifically, the court find that Sorget instigated substantial conflict between the parties through her inappropriate communications with Austin, which the court noted were demeaning and not conducive to positive coparenting. As a result, the court concluded that the conflict factor favored Austin. *See* NRS 125C.0035(4)(d). The court further found that Sorget failed to include Austin in medical and educational decisions for the minor children, and enrolled L.A. in a preschool program and had him evaluated for autism without discussing with Austin. Considering the aforementioned findings, the court concluded that Sorget was unwilling to cooperate with Austin to meet the children's needs, and the cooperation factor thus favored Austin. *See* NRS 125C.0035(4)(e).

In addition, the court determined that Austin was in good mental and physical health but noted Austin's concerns for Sorget's mental health given her instability and that her inability to take ownership of her actions was harmful to the children. Based on this finding, the court determined that the mental and physical health factor favored Austin. *See* NRS 125C0035(4)(f). With respect to the parents' ability to meet the physical, developmental and emotional needs of the children factor—NRS 125C.0035(4)(g)—the district court determined that this factor favored Austin because Sorget made unilateral decisions related to L.A.'s medical care that severely impacted Austin's custodial rights and that Austin credibly testified to being able to provide comparable care for the children.

In considering NRS 125C.0035(4)(i), the court determined that the factor pertaining to the ability to maintain relationships with siblings favored Austin because the minor children's half-sibling resided in Nevada and Austin encouraged and fostered this relationship. The court determined that the other factors were neutral.

Based on our review of the record and the parties' arguments, we conclude that the district court's findings as to the above factors are supported by substantial evidence in the record, particularly the testimony presented at the evidentiary hearing. *Ellis*, 123 Nev. at 149, 161 P.3d at 242. To the extent Sorget challenges the district court's factual findings and contends it should not have found that modification of physical custody was in the children's best interest, her arguments in this regard do not provide a basis for relief. While Sorget is dissatisfied with how the district court weighed the evidence and testimony, this court does not reweigh the evidence or witness credibility determinations on appeal. *See Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009); *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"). Accordingly, we discern no abuse of discretion by the district court in the district court's examination of the children's best interest. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

In challenging the physical custody award, Sorget further asserts that the district court did not consider the fact that she moved back to Nevada while the evidentiary hearing was ongoing, but this argument is belied by the record. Notably, the record reflects that the court took her return to Nevada into account, as it awarded her weekend and midweek

parenting time with the children during the school year and week on/week off during the children's summer break. But the court also found that Sorget was not credible with regard to her testimony regarding her planned relocations as she had changed plans between relocating to Nevada and staying in Michigan. Thus, while the court took her relocation to Nevada into account, the above noted findings, which are supported by substantial evidence in the record, reflect that the court did not find this fact sufficient to overcome the other evidence supporting awarding Austin primary physical custody.[1] *See Ellis*, 123 Nev. at 149, 161 P.3d at 241. Given that the district court made extensive findings in support of its decision to award Austin primary physical custody, which were supported by substantial evidence, we cannot say the district court abused its discretion in not finding Sorget's return to Nevada to be dispositive of this issue. *See Ellis*, 123 Nev. at 149,161 P.3d at 241.

Next, to the extent Sorget asserts that the district court's custodial schedule, which allows her to have week on/week off parenting time during the summer is actually a joint custody timeshare, that argument lacks merit. Notably, even when taking the parties' week on/week off timeshare during the summer vacation into account, the

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[1]To the extent Sorget's argument regarding her relocation to Nevada is directed at the court's failure to address her post-move motion to award her primary physical custody, or in the alternative, joint physical custody, the court declined to consider her motion at the fourth day of the evidentiary hearing based on her failure to request that it be heard on shortened time in accordance with the court's directive. And on appeal, Sorget offers no explanation as to why she failed to comply with this directive. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

custodial schedule constitutes primary physical custody in Austin's favor given that he is the children's primary custodian during the majority of the year and in light of the court's best interest analysis. *See, e.g., Metz v. Metz*, 120 Nev. 786, 789, 101 P.3d 779, 781 (2004) (affirming a primary custodial order where the nonprimary custodial parent had parenting time "every other weekend" and "custody of the child during the month of July"); *see also Bluestein v. Bluestein*, 131 Nev. 106, 112, 345 P.3d 1044, 1048 (2015) (explaining that a custodial arrangement in which each parent has physical custody of the child at least 40 percent of the time generally constitutes joint physical custody, although the district courts may deviate from this guideline based on the best interest of the children, which is the paramount consideration in determining whether a custodial arrangement qualifies as joint or primary physical custody).

Finally, Sorget summarily asserts that the district court modified child support in favor of Austin with no offset to her even though she is a stay-at-home parent. However, Sorget offers only a single sentence addressing this point, and she fails to provide any specific facts or develop any arguments to assert that the decision to impute income to her based on the court's findings that she was healthy and able to work full time, or the resulting calculation of child support, was inappropriate. Under these circumstances, where Sorget has failed to develop any cogent argument on this issue, we need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues unsupported by cogent argument).

In sum, based on the reasoning set forth above, we discern no abuse of discretion in the district court's child custody and support determinations. *See Ellis*, 123 Nev. at 149, 161 P.3d at 241; *Wallace v.*

Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (reviewing child support determinations for an abuse of discretion). Accordingly, we

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



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Dedree Butler, District Judge, Family Division
Megan Sorget
Leavitt Family Law Group
Eighth District Court Clerk

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