IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCINE CURCIO A/K/A FRANCINE GORDON,
Appellant,
vs.
ERNEST HEMMINGS,
Respondent.

No. 90758-COA

FILED
MAR 05 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER DISMISSING APPEAL IN PART AND REVERSING AND REMANDING

Francine Curcio appeals from a district court post-divorce decree order modifying child custody. Eighth Judicial District Court, Family Division, Clark County; Bill Henderson, Judge.

Curcio and respondent Ernest Hemmings were previously married and share a minor child, H.H., born in 2009. The parties divorced in 2013 and pursuant to the divorce decree, Curcio received primary physical custody subject to Hemmings' parenting time. In 2021, the parties participated in mediation, which resulted in a stipulated custody arrangement where Curcio retained primary physical custody and Hemmings received parenting time every Friday through Monday.

In December 2024, Curcio filed a motion to modify custody, arguing she should receive sole physical custody because during H.H.'s most recent visit with Hemmings, Hemmings had slapped a snack from H.H.'s hand and H.H. stated she no longer wished to see him. Hemmings filed an opposition and countermotion to modify custody arguing that Curcio was interfering in his relationship with H.H. and that the incident was blown out of proportion. Curcio filed a reply and opposition to the countermotion

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which additionally alleged that H.H., who was 15 years old, had recently lost 30 pounds and informed Curcio that Hemmings was restricting her food, making inappropriate comments regarding her body, and had removed snacks from her hand before.

The district court scheduled a status check for February 2025. Prior to the status check, the parties agreed that H.H. and Hemmings would participate in joint therapy sessions with Kendra Meza. At the status check, the district court indicated it did not view this matter as a legal dispute but rather a "therapeutic/behavior case against a legal backdrop." The court then entered an order stating the 2021 custody order remained in effect, but that H.H. could exercise reasonable teenage discretion to refuse parenting time with Hemmings. Further, the court ordered the parties to continue taking H.H. to Meza and that neither party could make negative statements about H.H.'s body. The court then scheduled a follow-up status check hearing for May 2025 to discuss H.H.'s therapy.

The day before the May 2025 status check, Hemmings filed a supplement which attached a report from Dr. Donna Willburn. The supplement claimed that Meza would not provide a therapy report for the proceedings because she did not become involved in legal disputes and had instead referred the parties to Dr. Willburn. Dr. Willburn then conducted three appointments with H.H. and Hemmings and recommended the parties modify custody to a week-on, week-off schedule. Pursuant to the report, Dr. Willburn determined the issue between H.H. and Hemmings was that Hemmings failed to take responsibility for how his actions impacted H.H. but that she was nevertheless comfortable with her father and wished to spend time with him. According to Hemmings' supplement,

Dr. Willburn informed Hemmings that the real issue was Curcio's poor parenting. However, this was not in the written report.

At the May 2025 hearing, Curcio proceeded pro se and Hemmings was represented by counsel. Despite the hearing being a status check, the district court indicated it would modify custody consistent with Dr. Willburn's recommendation. Following a colloquy with Hemmings' counsel, the court stated it would adopt the week-on, week-off schedule beginning no earlier than May 29, 2025, and no later than the start of the 2025-2026 school year. Further, the court directed Hemmings' counsel to prepare a memorandum to support an award of attorney fees and costs. The court then entered an order consistent with its oral pronouncements. Curcio now appeals.

Curcio argues this court must reverse and remand this matter for further proceedings because the district court failed to conduct an evidentiary hearing and failed to make specific factual findings supporting its decision. We agree. This court reviews a custody determination for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). "An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). The district court's sole consideration when determining custody is the best interest of the child. NRS 125C.0035(1); *Ellis*, 123 Nev. at 149, 161 P.3d at 242.

When evaluating the child's best interest, the district court must consider all twelve factors set forth in NRS 125C.0035(4), and a written custody decree must contain findings regarding those factors and tie the findings to the ultimate custody determination. *Davis v. Ewalefo*, 131 Nev. 445, 450-51, 352 P.3d 1139, 1143 (2015). Further, a district court

must hold an evidentiary hearing before modifying child custody. *Arcella v. Arcella*, 133 Nev. 868, 871-72, 407 P.3d 341, 345-46 (2017) (holding a district court abuses its discretion by modifying custody without holding an evidentiary hearing); *see also Mizrachi v. Mizrachi*, 132 Nev. 666, 678-79, 385 P.3d 982, 990 (Ct. App. 2016) (holding the district court abused its discretion by modifying custody based solely "upon contradictory sworn pleadings [and] arguments of counsel" instead of holding an evidentiary hearing).

Here, the district court abused its discretion by modifying child custody without holding an evidentiary hearing, considering the NRS 125C.0035(4) best interest factors, or making factual findings supporting its decision. The parties filed conflicting motions, which alleged that modifying child custody was warranted because Hemmings was allegedly harming H.H. by restricting food and making inappropriate comments regarding her body or because Curcio was allegedly attempting to alienate H.H. and restrict Hemmings' parenting time with her. Thus, the court needed to conduct an evidentiary hearing to address the conflicting allegations and obtain the evidence necessary to evaluate the NRS 125C.0035(4) best interest factors, and could not resolve the conflict based solely off Dr. Willburn's recommendation.[1] *See Myers v. Haskins*, 138 Nev. 553, 557-58, 513 P.3d 527, 532 (Ct. Ap. 2022) (holding "a district court should not weigh the evidence or make credibility determinations before holding an evidentiary hearing"). Additionally, the district court failed to evaluate the

[1]While the recommendation of a therapist could be relevant for resolving the dispute, district courts cannot delegate their decision-making authority to a therapist. *See Bautista*, 134 Nev. at 337, 419 P.3d at 159-60 (concluding a district court abused its discretion by improperly delegating the decision to modify custody to a parenting coordinator).

NRS 125C.0035(4) factors or otherwise make factual findings regarding why granting joint physical custody was in H.H.'s best interest.[2] As a result, we reverse the district court's custody modification order and remand for the district court to hold an evidentiary hearing, evaluate the NRS 125C.0035(4) best interest factors in determining the custody arrangement for H.H, and make written findings supporting its decision.[3] Accordingly, we

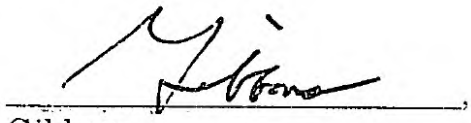
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[2]Because we were concerned whether a parenting agreement may have existed, this court directed the parties to submit supplemental briefing addressing the portion of the district court's order which read "a Parenting Agreement was provided to the Court" and clarify whether the parties, in fact, agreed to modify custody to joint physical custody. Curcio filed a supplemental brief and record which argued that the district court's statement that the parties presented a parenting agreement was not supported by substantial evidence. Hemming did not file a response despite our order to do so. Having reviewed the supplemental briefing and order, we conclude that substantial evidence does not support the district court's statement that the parties provided a parenting agreement to the district court or that one existed. *See Bautista*, 134 Nev. at 336, 419 P.3d at 159. Here, Hemming's counsel admitted during the hearing that the parties did not have a parenting agreement and were instead before the court on competing motions to modify custody. Further, there is no evidence in the record that Curcio agreed with the therapist's recommendation or otherwise agreed to joint physical custody. Accordingly, this portion of the order is unsupported by substantial evidence and absent a parenting agreement, the district court was required to conduct an evidentiary hearing to determine H.H.'s best interest.

[3]In light of our above conclusion, we need not address Curcio's alternative arguments challenging the district court's custody determination. Further, we dismiss the portion of the appeal addressing attorney fees because the district court has not entered a written order granting fees and thus there is no final order for review. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) ("A post-judgment order awarding attorney's fees and/or costs may be appealable as a special order made after final judgment."); *see also* NRAP 3(c)(1)(B) (providing that a

ORDER the appeal DISMISSED IN PART and the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


, C.J.
Bulla


, J.
Gibbons


, J.
Westbrook

cc: Hon. Bill Henderson, District Judge, Family Division
Patricia A. Marr, Ltd.
Ernest Hemmings
Eighth District Court Clerk

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notice of appeal must "designate the judgment, order, or part thereof being appealed"). However, we note that when a judgment is reversed, the accompanying costs and attorney fee award is necessarily vacated. *See Roe v. Roe*, 139 Nev. 163, 183, 535 P.2d 274, 293 (Ct. App. 2023) ("An award of attorney fees and costs is appropriately vacated when a portion of the underlying order is reversed.").