IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK EDWARD SUMMIT,
Appellant,
vs.
MARGARET MARIE SUMMIT,
Respondent.

No. 90741-COA

FILED

APR 24 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART AND REMANDING

Mark Edward Summit appeals from a post-decree custody order. Eighth Judicial District Court, Clark County; Mari D. Parlade, Judge.

Mark and Margaret Summit were married in September 2010, and have two minor children, M.S. and L.S. They divorced in December 2015. Over the following years, various disputes arose between the parties, and they sought modification of the custody order and child support obligations. Under the most recent order preceding the instant litigation, Margaret had primary physical custody and Mark had parenting time on the first, third, and fifth weekends of each month as well as overnights on the second and fourth Thursdays of each month. Mark was also obligated to pay $1,887.98 per month in child support.

In June 2023, Mark had taken the children on vacation but refused to relinquish them to Margaret upon their return. Margaret filed a motion for an order to show cause seeking to have the district court hold Mark in contempt. She requested the children's return, compensatory

parenting time, counseling for the children, supervised visits for Mark for 45 days, and to reduce the child support arrears to a judgment. Mark opposed the order to show cause and moved to modify custody and child support. Mark alleged that he had become the de facto primary custodian because Margaret had not been exercising her parenting time and there was violence in Margaret's home and its effect on the children constituted a substantial change in circumstances warranting a change in custody. The district court entered an order to show cause on Margaret's motion and found that Mark's allegations were sufficient to hold an evidentiary hearing.

At the subsequent hearing, Margaret and Mark testified about the allegations and the report by Dr. Donna Wilburn, who conducted the brief focused assessments (BFA). After the hearing, but before the district court issued its order, Margaret filed notice that she had obtained a temporary protection order (TPO) against Mark based on evidence that Mark slashed her tire while at their children's school. The district court reopened discovery and conducted another hearing during which both Mark and Margaret testified and the court reviewed photographs of the tire damage and the video recording of the event on the school's security system.

The district court ultimately entered an order in which it found that there had been a substantial change in circumstances affecting the children's welfare based on evidence that M.S. had become more violent and that L.S.'s mental health was suffering. After hearing from both Mark and Margaret, the district court found that Margaret's testimony was credible, consistent, and compelling while Mark's testimony was largely inconsistent and not credible. The court also found that Mark slashed Margaret's tire

and that this constituted an act of domestic violence. *See* NRS 33.018(1)(e)(5) (stating domestic violence includes "[a] knowing, purposeful or reckless course of conduct intended to harass" including destruction of private property).

In evaluating the best interest factors, the district court found that the children were of age and capacity to form an intelligent preference and wanted more time with Mark. *See* NRS 125C.0035(4)(a). However, it found that Margaret's willingness to permit Mark extra parenting time when the children would ask for it demonstrated that she cooperated in coparenting and permitted the children more frequent associations with Mark. *See* NRS 125C.0035(4)(c), (e). Conversely, Mark had not demonstrated that he communicated, cooperated, or consulted with Margaret on matters affecting the children's needs. *See* NRS 125C.0035(4)(e). The court found that Margaret's efforts to provide structure and discipline better served the physical, developmental, and emotional needs of the children, while Mark's failure to do the same undermined Margaret's efforts and resulted in significant conflict. *See* NRS 125C.0035(4)(d), (g). While both parents appeared physically healthy, the court was concerned by Mark's mental health given his act of domestic violence, his lack of restraint during the hearing, and his antipathy toward engaging in therapy. *See* NRS 125C.0035(4)(f). The court found that the parental abuse factor was neutral as Mark did not demonstrate that Margaret abused their children, but the evidence showed M.S. engaged in violent behavior in Margaret's home. *See* NRS 125C.0035(4)(j). Lastly, the district court found by a preponderance of the evidence that Mark had improperly withheld the children from Margaret, *see* NRS 125C.0035(4)(l),

and engaged in domestic violence when he punctured Margaret's tire, *see* NRS 125C.0035(4)(k).

The district court concluded that the best interest factors weighed in favor of Margaret retaining primary physical custody of the children. Additionally, the court determined that Mark's act of domestic violence had also been proven by clear and convincing evidence and that Mark failed to rebut the presumption that it was not in the children's best interest to award him sole or joint physical custody. *See* NRS 125C.0035(5).[1] The court accordingly denied Mark's motion to modify custody. The district court maintained Margaret's primary physical custody and modified the parenting time arrangement to award Mark supervised parenting time every Saturday and Sunday from 12:00 p.m. to 2:00 p.m., and nightly FaceTime calls with the children Monday through Friday from 7:00 p.m. to 7:15 p.m. This appeal followed.

On appeal, Mark contends that the district court erred in denying his motion to modify custody, asserting that the district court's conclusions regarding several of the best interest factors were not supported by the evidence. Margaret asserts that the district court correctly found Mark failed to demonstrate circumstances warranting a change in custody and that his position was significantly weakened by the evidence she presented showing that Mark engaged in domestic violence.

This court reviews district court decisions concerning child custody for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161

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[1]The parties stipulated to the dissolution of the TPO and the inclusion of a no contact/mutual behavior order.

P.3d 239, 241 (2007); *see also Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) ("A court decision regarding [parenting time] is a custody determination." (internal quotation marks omitted)). 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." *Ellis*, 123 Nev. at 149, 161 P.3d at 242. "[C]redibility determinations and the weighing of evidence are left to the trier of fact." *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). While our review is deferential, we do not defer "to legal error or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted).

When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis*, 131 Nev. at 451, 352 P.3d at 1143. A court may modify a physical custody arrangement only when the movant demonstrates 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). We conclude that Mark fails to demonstrate that the district court abused its discretion in denying his motion to modify custody for the reasons discussed below.

First, Mark argues that the district court failed to acknowledge and afford sufficient weight to the evidence of violence in Margaret's home, in particular, Margaret's admission to slapping M.S. He asserts that this

violence manifests as anger in the children and resulted in M.S. lashing out verbally, physically, and even brandishing a knife toward Margaret as well as L.S.'s suicidal ideation. He also points to prior litigation in which he alleged that Margaret pulled the children's ears and whipped them with electrical cords. Mark asserts that Margaret takes the children's cell phones so that they cannot call for help.

Mark's allegations of domestic violence within Margaret's home were a key focus of the evidentiary hearing. *See Castle v. Simmons*, 120 Nev. 98, 105, 86 P.3d 1042, 1047 (2004) (providing that a district court "must hear all information regarding domestic violence in order to determine the child's best interests."). Mark testified that the children told him about the alleged acts of domestic violence and described them for the court. He introduced text messages purportedly referring to these acts. The district court heard testimony from Margaret about M.S.'s behavior—verbal abuse, threats, and physical violence—and her responses to them. Margaret testified that she used force when necessary to repel M.S. and discipline him. Further, she often withheld the children's devices or internet access to address misbehavior.

Contrary to Mark's argument, the district court did not improperly fail to give due weight to evidence of purported violence in Margaret's home. The district court expressly found Margaret's testimony, based on her demeanor and the consistency of the facts to which she testified, was credible and Mark's was not. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. The court also found Margaret's testimony regarding how M.S.'s behavior mirrored Mark's behavior to be credible and consistent. Thus, the district court's conclusion regarding the domestic violence best

interest factor, *see* NRS 125C.0035(4)(k), was supported by substantial evidence. To the extent that Mark attempted to demonstrate a substantial change in circumstances based on allegations that were considered at the prior custody determination, he failed to demonstrate that the district court erred in this regard. *See Nance v. Ferraro*, 134 Nev. 152, 153, 418 P.3d 679, 681 (Ct. App. 2018) (holding that a party seeking to modify custody may not use evidence of domestic violence known to the parties or the court when the prior custody was entered to show substantial change in circumstances). To the extent that Mark relied on the prior allegations of abuse to demonstrate that the best interest factors favored him, the district court reviewed "the facts and evidence underpinning its prior rulings or custody determinations in deciding whether the modification of a prior custody order is in the child's best interest," *id.*, and concluded that Mark did not testify credibly in the instant proceedings and prior courts found his testimony regarding these allegations lacked credibility as well. Accordingly, the district court did not abuse its discretion in this regard.

Second, Mark contends that the district court's decision to credit evidence about him slashing Margaret's tire while discrediting his allegations of abuse against Margaret was rooted in bias. We disagree.

As discussed above, the district court's conclusions regarding the allegations against Margaret were supported by substantial evidence. Further, the allegation of domestic violence against Mark was supported by Margaret's testimony, which the court found credible, as well as photographs of the tire damage and surveillance video. Mark does not demonstrate that the district court judge's decision was based on knowledge acquired outside of the proceedings or reflected "a deep-seated favoritism or

antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"). Accordingly, Mark is not entitled to relief based on this argument.

Third, Mark argues that the evidence showed that he had de facto primary physical custody in the time leading up to the instant custody determination. He insists that the record showed that he had the children 75 to 80 percent of the time. He also noted that Margaret acknowledged that she tended to grant the children's requests to spend more time with Mark 90 percent of the time.

Mark fails to demonstrate that the district court abused its discretion by not acknowledging that he had de facto primary custody since the last custody determination. *See Johnson v. Bennett*, 141 Nev., Adv. Op. 35, 575 P.3d 1023, 1028 (Ct. App. 2025) (explaining a district court did not need to make findings as to "the parties' de facto physical custody arrangement" when evaluating a request to modify physical custody). Additionally, the district court concluded that Mark did not testify credibly about the parties' physical custody since the prior determination such that his contentions that the children were with him the majority of the time

lacked merit. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. Accordingly, Mark is not entitled to relief based on this argument.

Fourth, Mark argues that the evidence showed that Margaret unilaterally stopped taking M.S. to therapy. He asserts that the court ordered the children to be enrolled in therapy at hearings which preceded the evidentiary hearing. However, despite the order and the concerns about M.S.'s violence, Mark alleges M.S. only attended therapy four times. Similarly, Mark argues Margaret did not seek outside help for L.S. when he reported suicidal ideation but instead relied on a school counselor to speak with L.S.

At the first evidentiary hearing, Margaret testified that she tried to engage in family therapy with her sons but neither child would participate. L.S. refused to go to therapy; M.S. refused to talk to the therapist. The therapist advised her that therapy would not benefit M.S. if he did not participate. L.S. did speak with a school counselor after he expressed thoughts of harming himself. Margaret testified that L.S.'s anxiety stemmed from concern over falling behind in school. Margaret also testified at the second evidentiary hearing that she was seeking to engage M.S. in a different therapeutic program in response to him running away after the TPO issued. She also testified that Mark stated that he did not believe in therapy, had prompted the court to recommend therapy for him in the past, and had refused to take the children to therapy during his parenting time. The district court expressly found Margaret's testimony credible and did not credit Mark's testimony. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. Accordingly, Mark did not demonstrate that, based on the evidence before it, the district court abused its discretion in concluding

that the physical, emotional, and developmental needs of the children, *see* NRS 125C.0035(4)(g), were better served by Margaret.

Fifth, Mark argues that Margaret's insistence that Mark disregarded court orders was not supported by the record. He acknowledges that he withheld the children during June and July 2023 but contends that there were no other acts of withholding before or after that time. Mark also contends that the district court failed to acknowledge Margaret's lack of enforcement of her custody time.

Both Mark and Margaret testified that Mark withheld the children from Margaret when they returned from vacation in the summer of 2023. Mark insisted it was because of what the children told him about purported abuse. As discussed above, the district court did not find Mark's testimony about Margaret's alleged abuse and why he withheld the children to be credible. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. Notably, Mark did not report the abuse to the police or child protective services. Further, Margaret's assertion that Mark routinely disregarded court orders was demonstrated not only by the act of withholding in 2023, but by the record which shows that Mark willfully failed to pay child support, submitted financial disclosures that were inaccurate and incomplete, and did not report his children showing up at his house after the TPO issued. Thus, to the extent Mark contends that the district court erred in concluding that NRS 125C.0035(4)(l) favored Margaret, he fails to show how the district court abused its discretion based on the court's findings.

To the extent that he argues that the district court did not acknowledge Margaret's failure to exercise her parenting time, this lacks merit as well. As discussed above, the court found that Margaret testified

credibly that she exercised primary custody consistent with the standing order. Further, the court acknowledged that Margaret often permitted Mark additional parenting time. It was within the district court's discretion to view Margaret's accommodations in this regard as an attempt to foster a more cooperative coparenting relationship and not view it as the abandonment of her parenting time. *See* NRS 125C.0035(4)(c), (e) (stating that when determining the best interest of the child, the court shall consider "[w]hich parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent" and the "ability of the parents to cooperate to meet the needs of the child."). Accordingly, Mark fails to demonstrate he is entitled to relief based on this argument.

Next, Mark challenges the district court's order to the extent it altered the physical custody arrangement by reducing Mark's parenting time to four hours of supervised time on weekends with 15-minute weeknight FaceTime calls. Mark contends that the district court's order, while stating it was keeping the prior primary physical custody determination in place, actually resulted in a modification that amounted to an award of sole physical custody to Margaret or a termination of his parental rights without sufficient findings.

A district court abuses its discretion when it "improperly characterize[s] its custodial award as primary physical custody when it [is] in actuality sole physical custody." *Roe v. Roe*, 139 Nev. 163, 164-65, 535 P.3d 274, 281 (Ct. App. 2023). Sole physical custody is "a custodial arrangement where the child resides with only one parent and the noncustodial parent's parenting time is restricted to no significant in-person

parenting time." *Id.* at 174, 535 P.3d at 287. "[A] sole physical custody order [results in] the severe restriction on the noncustodial parent's care, custody, and control of their child [and] requires additional findings and procedure as compared to entry of a joint or primary physical custody order." *Id.* Examples of a sole physical custody arrangement are when a district court issues orders "that limit[ ] parenting time to restrictive supervised parenting time, virtual contact, phone calls, letters, texts, a very limited block of hours on a single day of the week, or a similarly restraining parenting time arrangement." *Id.*

This court has explained that district courts must make specific written findings beyond the statutory best interest factors to support the entry of an order granting one parent sole physical custody. *Id.* at 175, 535 P.3d at 288. An entry of sole physical custody requires, among other things, that courts make specific findings either that the noncustodial parent is unfit for the children to live with or that awarding primary physical custody to one parent, thereby allowing significant parenting time with the noncustodial parent, is not in the children's best interest. *Id.* Further, after making these express, written findings supporting sole physical custody, *Roe* requires district courts to consider the least restrictive parenting time arrangement possible that is in the children's best interest and, if less restrictive alternatives to what the court adopts are proposed or considered, the court "must provide an explanation as to how the best interest of the child[ren] is served by the greater restriction[s]." *Id.* at 176, 535 P.3d at 288.

Here, the district court underwent an extensive NRS 125C.0035(4) best interest analysis in support of its award of primary

physical custody to Margaret, finding that the best interest factors favored her and it was not in the children's best interest for Mark to have joint or primary physical custody. The court then indicated that it awarded Margaret primary physical custody and granted Mark four hours of supervised parenting time and 75 minutes of FaceTime calls with the children per week. Because this arrangement resulted in the children residing solely with Margaret and limited Mark's parenting time to a few hours in-person time, the district court functionally granted sole physical custody to Margaret. *See id.* at 174, 535 P.3d at 287 (recognizing that "an order that limits parenting time to restrictive supervised parenting time, virtual contact, phone calls, letters, texts, a very limited block of hours on a single day of the week, or a similarly restraining parenting time arrangement" constitutes sole physical custody). Therefore, the district court abused its discretion in characterizing the arrangement as an award of primary physical custody to Margaret. *See id.* at 164-65, 535 P.3d at 281.

We further conclude that the record does not reveal that the district court made sufficient findings to support the sole physical custody award. We recognize that the court did not make these findings because it characterized its physical custody order as one for primary versus sole. But this is not an accurate characterization based on Mark's restrictive parenting time. And as we noted in *Roe*, after explaining its reasons and making additional findings why primary physical custody is not in the best interest of the children necessitating an award of sole physical custody, the district court must "then order the least restrictive parenting time arrangement possible that is within the [children's] best interest." 139 Nev. at 175-76, 535 P.3d at 288.

Here, the district court failed to make sufficient findings as required by *Roe* that would justify awarding Margaret sole physical custody. The court did not expressly find that Mark was unfit for the children to reside with, nor did the court make specific findings to adequately explain why awarding Margaret primary physical custody was not in the children's best interest to support sole custody, which it functionally ordered. *See id.* at 175, 535 P.3d at 288. Further, while the district court summarily found that the custody arrangement was the least restrictive arrangement necessary to ensure the children's safety, there were no findings in the court's order concerning why other arrangements were not feasible. *See id.* at 164, 535 P.3d at 281 (explaining that the "district court must consider the least restrictive parenting time arrangement possible to avoid constraining the parent-child relationship any more than is necessary to prevent potential harm caused by an unfit parent and meet the best interest of the child"). Given the lack of written findings from the district court on this point, we cannot discern whether the court properly evaluated less restrictive alternatives before limiting Mark's parenting time with the children to the extent it constituted an award of sole physical custody to Margaret. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142 ("Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error." (internal citations omitted)).

Accordingly, we vacate the parenting time order and remand to the district court to either impose a primary custody parenting time arrangement that provides Mark with sufficient parenting time such that Margaret is not functionally awarded sole physical custody. Alternatively,

the court must make appropriate findings under Nevada jurisprudence to support its sole physical custody determination. *See Roe*, 139 Nev. at 174, 535 P.3d at 287 ("In a primary physical custody arrangement, a child spends most, but not all, of their time residing with one parent. Comparatively, in a sole physical custody arrangement, the child reasonably can be said to reside with only one parent.").

Next, Mark contends that the district court failed to review and modify the child support obligation. He contends that modification of support was necessary because there had been a de facto change in primary physical custody and his income had significantly changed since the last determination.

We review orders regarding child support for an abuse of discretion. *Backman v. Gelbman*, 141 Nev., Adv. Op. 8, 565 P.3d 330, 333 (Ct. App. 2025). An abuse of discretion occurs when findings are not supported by substantial evidence. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano*, 138 Nev. at 6, 501 P.3d at 984. "[T]he district court only has authority to modify a child support order upon finding that there has been a change in circumstances since the entry of the order and the modification is in the best interest of the child." *Id.* at 431, 216 P.3d at 228.

As discussed above, the district court found Mark did not testify credibly concerning the parties' exercise of physical custody. The district court further concluded that Mark was not forthcoming and had not testified credibly about his finances. *See Grosjean*, 125 Nev. at 366, 212 P.3d at 1080. Notably, Mark submitted an inaccurate financial disclosure form (FDF). Despite not indicating he received rental income, Mark

acknowledged he owns three manufactured homes in Arizona from which he receives rental income. He acknowledged owning seven other vacant lots in Arizona. Mark also did not disclose that he owns a lot in Idaho which he estimated was worth at least $200,000. As to his employment, Mark testified that he receives business income from Martin Wells, LLC; however, he asserted that his mother owned the company while he only owned the company's website. Mark's FDF indicated he received about $600 per month from Cylinder Head Products, but Mark insisted that the business had been closed for three years. Mark did not have any stated income for 2021 and 2022 and stated that he borrowed money to pay his expenses during those years. The district court took judicial notice of the child support case that describes Mark's total arrears as $84,209.16. Ultimately, the district court found that Mark was unemployed or underemployed without good cause and for purposes of evading child support and therefore declined to modify his child support obligation. Given the evidence before it, Mark has not shown that the district court abused its discretion by declining to modify Mark's child support obligation. *See Rivero*, 125 Nev. at 431, 216 P.3d at 228. Accordingly, Mark fails to demonstrate he is entitled to relief based on this argument.

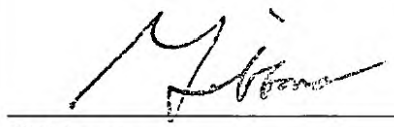
Lastly, Mark contends that the district court erred in awarding excessive attorney fees. The district court order from which Mark appealed did not actually award attorney fees. Without a final judgment addressing attorney fees, this issue is not ripe for review. *See Sicor, Inc. v. Sacks*, 127 Nev. 896, 900, 266 P.3d 618, 620 (2011) (explaining that appeals are proper from appealable interlocutory orders only when the order finally resolves the particular issue); *McGlamery v. Pub. Employees' Retirement Sys. of Nev.*,

No. 80609, 2020 WL 1531392, at *1 (Nev. March 26, 2020) (Order Dismissing Appeal) (concluding that a post-judgment order awarding attorney fees in an amount to be determined is not appealable under NRAP 3A(b)(8) because it does not resolve the issue of attorney fees with finality). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Mari D. Parlade, District Judge
Mark Edward Summit
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