

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RALPH KRAUSS,  
Appellant,  
vs.  
MELANIE LYNNE THOMAS,  
Respondent.

No. 71148

**FILED**

MAR 28 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order modifying child custody. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

In the underlying action, both parties moved to modify their joint physical custody arrangement. After a hearing, the district court found that modification to provide respondent with primary physical custody was in the child's best interest. This appeal followed.

On appeal, appellant primarily argues that the changed circumstances doctrine precluded the district court from considering evidence relating to an alleged domestic violence incident that predated the parties' divorce decree. But because the parties were seeking a modification of joint physical custody, the changed circumstances doctrine did not apply.<sup>1</sup> See *Rivero v. Rivero*, 125 Nev. 410, 430, 216 P.3d 213, 227 (2009) (explaining that a joint physical custody arrangement may be

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<sup>1</sup>To the extent that the court erroneously concluded that the changed circumstances doctrine would have applied in the absence of *Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004), any error in this regard was harmless, as it did not affect the outcome of the modification motion. See NRCP 61 (requiring the court at all stages of the proceedings to disregard any error that does not affect a party's substantial rights).

modified whenever modification “is in the child’s best interest,” but that a primary physical custody arrangement may only be modified “when there is a substantial change in the circumstances affecting the child and the modification serves the child’s best interest”). Instead, the court only needed to find that modification was in the child’s best interest. *See id.*

And in regard to the child’s best interest, the district court based its decision to grant modification on its express consideration of each of the statutory best interest factors.<sup>2</sup> *See* NRS 125C.0035(4) (setting forth a non-exhaustive list of factors to be considered in determining the best interest of a child with regard to custody). On appeal, however, the only argument appellant makes regarding the best interest analysis is that the court failed to afford sufficient weight to the recommendation of Dr. Gary Lenkeit. The district court’s order demonstrates, however, that the court considered the recommendation, and it was within the discretion of the district court to decide how much weight to afford that recommendation. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007) (recognizing “the district court’s broad discretionary powers to determine child custody matters” and noting that the appellate court “will

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<sup>2</sup>The district court’s finding that appellant had committed an act of domestic violence gave rise to a rebuttable presumption that it was not in the child’s best interest for appellant to have sole or joint physical custody of the child. *See* NRS 125C.0035(5); NRS 125C.230(1). Upon making that finding, NRS 125C.0035(5)(b) and NRS 125C.230(1)(b) required the district court to make “[f]indings that the custody or visitation arrangement ordered by the court adequately protects the child and [respondent].” Although the district court did not make such findings in this case, the failure to do so has not been raised as an issue on appeal, the district court’s order does not grant appellant sole or joint physical custody, and the order otherwise appears to be consistent with the concerns addressed by the statutory requirements. Thus, we do not address the statutory presumption further in this order.

not disturb the district court's custody determinations absent a clear abuse of discretion").

As appellant has not demonstrated that the district court abused its discretion in modifying child custody, we

ORDER the judgment of the district court AFFIRMED.



\_\_\_\_\_, C.J.

Silver



\_\_\_\_\_, J.  
Tao



\_\_\_\_\_, J.  
Gibbons

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division  
Ralph Krauss  
Kainen Law Group  
Eighth District Court Clerk