

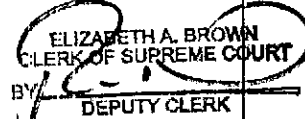
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MADELINE BURDEN,
Appellant,
vs.
KILIAN LEE,
Respondent.

No. 74131

FILED

APR 20 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Madeline Burden appeals from a district court order granting respondent Kilian Lee's motion to modify parenting time and denying her motion to modify custody. Eighth Judicial District Court, Family Court Division, Clark County; Kathy Hardcastle, Senior Judge.

Madeline and Kilian have one child together.¹ They share joint legal custody of the child, but Kilian has primary physical custody. Kilian moved to modify the parenting time schedule due to a change in his work schedule. Madeline opposed Kilian's motion and counter-moved to modify custody.

Following a hearing, the district court granted Kilian's motion. In so doing, it significantly reduced Madeline's parenting time. The district court also denied Madeline's motion to modify custody.

Madeline timely filed a motion to reconsider or amend the district court's order modifying parenting time and the denial of her motion to modify custody. Following a hearing on that motion, the district court denied Madeline's motion to reconsider.²

¹We do not recount the facts except as necessary to our disposition.

²Judge Linda Marquis presided over Madeline's motion to reconsider which is not at issue on appeal.

On appeal, Madeline argues that the district court abused its discretion by (1) granting Kilian's motion to modify the timeshare, and (2) denying Madeline's motion to modify custody.

The district court abused its discretion by significantly reducing Madeline's parenting time without making any findings

Madeline argues the district court abused its discretion by reducing the frequency and duration of her timeshare without ensuring "that the best interest of the child [was] achieved." NRS 125C.010(1)(a). Kilian argues best interest findings are unnecessary. We review a district court's decision regarding parenting time schedules for an abuse of discretion. *See Rennels v. Rennels*, 127 Nev. 564, 568-69, 257 P.3d 396, 399 (2011). We will uphold the district court's factual findings if they are supported by substantial evidence. *See id.* at 569, 257 P.3d at 399.

In custody determinations, the child's best interest "is the paramount concern." *St. Mary v. Damon*, 129 Nev. 647, 654, 309 P.3d 1027, 1033 (2013). A district court's decision on a motion to modify parenting time is a "custody determination." *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). An appellate court must be able to see that the district court's decision regarding a custody determination was made for appropriate reasons. *Davis v. Ewalefo*, 131 Nev. ___, ___, 352 P.3d 1139, 1143 (2015). Therefore, the district court commits reversible error if it fails to make any findings to support its decision whether to modify parenting time. *See id.*

Here, the district court modified the parties' parenting time schedule by significantly reducing Madeline's parenting time—the district court nearly cut Madeline's parenting time in half. However, the district court failed to articulate *any* findings or conclusions, orally or in writing, as to how the best interest of the child was served by greatly limiting Madeline's parenting time. As the court was not simply adjusting a parenting time

schedule, we conclude that the district court abused its discretion and we reverse the district court's order modifying parenting time and remand for further proceedings.³

The district court did not abuse its discretion by denying Madeline's motion to modify custody

Madeline argues the district court abused its discretion by denying her motion to modify custody without conducting an evidentiary hearing. Madeline also argues that a substantial change in circumstances supports a modification to custody, as it would be in the best interest of the minor child.

"District courts have broad discretion in child custody matters . . ." *Rivero v. Rivero*, 125 Nev. 410, 428 216 P.3d 213, 226 (2009). To modify primary physical custody, the noncustodial parent must demonstrate that modification is in the child's best interest and that there has been a substantial change in circumstances affecting the welfare of the child. *See Ellis v. Carucci*, 123 Nev. 145, 150-51, 161 P.3d 239, 242-43 (2007).


"[A] district court has the discretion to deny a motion to modify custody without holding a hearing unless the moving party demonstrates adequate cause for holding a hearing." *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993) (internal quotation marks omitted). "Adequate cause arises where the moving party presents a prima facie case for modification." *Id.* at 543, 853 P.2d at 125 (internal quotation marks omitted). "To constitute a prima facie case," the moving party must demonstrate that


³Madeline also argues that the district court violated her constitutional right to parent by reducing her parenting time. However, Madeline does not cogently argue or support her claim and 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) (noting that an appellate court need not consider claims that are not cogently argued or supported by relevant authority).

“(1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching.”
Id.

Here, the district court was not required to conduct an evidentiary hearing as the motion was not verified or supported by an affidavit. *See id.* Further, the district court determined upon rehearing that Madeline failed to demonstrate a substantial change in circumstances existed affecting the welfare of the child. The totality of the record supports that conclusion. Therefore, we conclude the district court did not abuse its discretion by denying Madeline’s motion to modify custody and in denying her motion for reconsideration. Accordingly, we

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Linda Marquis, District Judge, Family Court Division
Hon. Kathy Hardcastle, Senior Judge
Hutchison & Steffen, LLC/Las Vegas
Kilian Lee
Eighth District Court Clerk