

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES R. BRYANT,  
Appellant,  
vs.  
KRISTEN A. BRYANT,  
Respondent.

No. 76480

**FILED**

OCT 16 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

James R. Bryant appeals from a post-divorce decree order modifying child custody. Second Judicial District Court, Family Court Division, Washoe County; David Humke, Judge.

James and respondent Kristen A. Bryant were divorced, and following various post-divorce decree proceedings, the district court awarded James sole legal and primary physical custody of their minor child, subject to Kristen's unsupervised parenting time rights. For support, the district court found that Kristen refused to co-parent with James, had been held in contempt for violating court orders and James' custodial rights, had put the parties' child in harm's way, was unable to put the child's needs first, and was not a fit and proper person to have legal or physical custody of the child. Shortly thereafter, the district court modified the order by awarding the parties joint legal custody while reaffirming its prior decision with respect to physical custody.

Less than half a year later, Kristen effectively moved for sole legal and primary physical custody of the child, presenting extensive argument with respect to various conflicts between the parties, and James opposed that motion. The district court denied Kristen's request for sole legal and physical custody, finding that the parties' relationship continued

to be characterized by a high level of conflict and inability to cooperate and that she therefore failed to establish a substantial change in circumstances that warranted modification of the parties' custodial arrangement. Nevertheless, because Kristen expressed an interest in working with James toward a joint physical custody arrangement, the court elected to schedule the matter for an evidentiary hearing to further evaluate whether such a modification was appropriate. Although not raised as a basis for modification by Kristen, the district court also noted that she worked for a new employer in Reno and that the change was significant because she now worked close to the child's school. But because Kristen still lived in Dayton, Nevada, and did not provide any evidence as to whether her new employer permitted a flexible schedule, the district court indicated that it was unclear whether the change was substantial and invited the parties to present argument on the issue at the evidentiary hearing.

At the resulting three days of evidentiary hearings, which focused on the continuing conflicts between the parties, Kristen presented evidence that her employer permitted a flexible work schedule and further testified that she moved from Dayton to Fernley, Nevada, which reduced her commute time to the child's school from 50 minutes to 37 minutes. The district court found that there had been a change in circumstances because Kristen had a flexible schedule with her new employer and had moved to Fernley, thereby reducing her commute to the child's school to approximately 35 minutes. And because the district court also found that a modification would be in the child's best interest, it modified the parties' custodial arrangement to joint physical custody. This appeal followed.<sup>1</sup>

---

<sup>1</sup>This matter was submitted for decision based on James' fast track statement and appendix after Kristen failed to file a fast track response.

On appeal, James initially argues that, because Kristen did not specifically move for joint physical custody, the district court lacked jurisdiction to consider whether such relief was warranted under NRS 125C.0045(1), which provides that the district court may “[a]t any time modify or vacate [a custody order]” upon “the application of one of the parties.” Kristen did move to modify custody, however, although she effectively sought primary physical custody in so doing. But regardless, nothing in NRS 125C.0045(1) expressly prohibits the district court from considering forms of relief other than the one expressly requested in a motion to modify custody, and James has not cited any relevant legal authority to demonstrate otherwise. *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider arguments that are not supported by relevant legal authority). As a result, James failed to demonstrate that relief is warranted on this basis.

James similarly argues that, under *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007), the district court could not properly conduct an evidentiary hearing as to the modification issue since it concluded that Kristen failed to establish a substantial change in circumstances in her underlying motion. But *Ellis* sets forth the standard for modifying primary physical custody arrangements, 123 Nev. at 150, 161 P.3d at 242, not the standard for evaluating when an evidentiary hearing is warranted. That issue is addressed instead in *Rooney v. Rooney*, 109 Nev. 540, 542–43, 853 P.2d 123, 124–25 (1993), which explains that an evidentiary hearing on a motion to modify custody is required when a party establishes adequate cause, which is defined as a prima facie case for modification. But while the district court essentially concluded that Kristen did not establish a prima facie case for modification, nothing in *Rooney* prohibits the district court from still conducting an evidentiary hearing where, as here, the court



believes that facts that were not fully developed in the moving party's motion may warrant a custodial modification. Because James does not otherwise cite any relevant legal authority to show that the district court acted improperly, *Edwards* 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38, he has failed to demonstrate a basis for relief in this regard.

As to the district court's custody determination, James disputes whether Kristen established that a modification was warranted under the first prong of *Ellis'* standard for modifying primary physical custody arrangements, which requires that the moving party establish "a substantial change in circumstances affecting the welfare of the child." 123 Nev. at 150, 161 P.3d at 242. Initially, insofar as the district court based its decision on a finding that Kristen established a "change of circumstance" rather than a "substantial change in circumstances," it is unclear whether the court applied the correct legal standard.<sup>2</sup> But setting that issue aside, we agree with James that Kristen failed to establish a substantial change in circumstances warranting modification.

Indeed, when the district court initially awarded James primary physical custody of the child, it did so based on findings that, among other things, Kristen refused to co-parent, that she repeatedly violated court orders and James' custodial rights, that she put the child in harm's way and could not put his needs first, and that she was "not a fit and

---

<sup>2</sup>This lack of clarity is compounded by the district court's prior findings in this matter. Indeed, in the district court's written order denying Kristen's request for primary physical custody, it described her new employment as a significant change and vaguely distinguished between a significant and substantial change. And later, at the conclusion of the first evidentiary hearing on the modification issue, the district court tentatively determined that Kristen's new employment and residence were both significant changes without addressing how a significant change related to a substantial change.

proper person to have legal or physical custody.” Yet, although the district court heard extensive testimony from the parties about their continuing conflicts, it did not make any findings with respect to whether any of the circumstances identified in the prior order awarding James primary physical custody had changed.<sup>3</sup> *Id.* at 151, 161 P.3d at 243 (explaining that the purpose of requiring a substantial change in circumstances since the last custody determination is to prevent a party from filing serial modification requests in an effort to achieve a different result based on essentially the same facts).

Of course, we recognize that Kristen obtained new employment; that she moved and thereby reduced her somewhat lengthy commute by approximately 30 percent; and that, under the right circumstances, such changes could be relevant in evaluating whether to modify a primary physical custody arrangement. But given the seriousness of the findings in the district court’s initial order awarding James primary physical custody and the parties’ testimony with respect to their continuing conflicts, the evidence showing that Kristen moved and obtained new employment, standing alone, does not establish the substantial change in circumstances

---

<sup>3</sup>Some of the conclusions in the challenged order’s best interest factors analysis seemingly contradicted some of the harsher findings from the prior order awarding James primary physical custody. But the district court generally failed to support those conclusions with specific findings or an explanation for its decision. *Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015). (“Specific findings and an adequate explanation of the reasons for the custody determination are crucial to enforce or modify a custody order and for appellate review.” (internal quotation marks omitted)). And more importantly for purposes of the present analysis, the district court made no attempt to link those findings to its changed circumstances analysis, such that we cannot ascertain with any assurance whether, among other things, the district concluded that Kristen was no longer putting the child in harm’s way or unfit for physical custody.

required by *Ellis* to modify a primary physical custody relationship. Thus, given the foregoing, we conclude that the district court abused its discretion in modifying the parties' custodial arrangement to joint physical custody. *Id.* at 149, 161 P.3d at 241 (reviewing a district court order modifying custody for an abuse of discretion). Accordingly, we reverse that decision and remand this matter with instructions for the district court to reevaluate whether modification is warranted under the standard set forth in *Ellis*.<sup>4</sup>

It is so ORDERED.<sup>5</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, Second Judicial District Court  
Presiding Judge, Second Judicial District Court, Family Division  
Department 14, Second Judicial District Court, Family Division  
Shawn B. Meador, Settlement Judge  
Fennemore Craig P.C./Reno  
Blanchard, Krasner & French  
Kristen A. Bryant  
Washoe District Court Clerk

---

<sup>4</sup>Given our disposition of this appeal, we need not address James' remaining arguments.

<sup>5</sup>Pending further proceedings on remand consistent with this order, we leave in place the custody arrangement set forth in the challenged order. *See Davis v. Ewalefo*, 131 P.3d 445, 455, 352 P.3d 1139, 1146 (2015) (leaving certain provisions of a custody order in place pending further proceedings on remand). This directive does not, however, restrict the district court's ability to make temporary changes, pending a hearing, if the circumstances require.