

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JANA M. MOYES,
Appellant,
vs.
DAMON THOMAS MOYES,
Respondent.

No. 77484-COA

FILED

OCT 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jana M. Moyes appeals from a district court order modifying child custody. Eleventh Judicial District Court, Lander County; Jim C. Shirley, Judge.

Following their divorce, the district court awarded Jana and Damon Moyes joint legal and physical custody of their minor children. The parties later stipulated that they would continue exercising joint legal custody, but that Jana would have primary physical custody. A few years later, Jana was convicted on two counts of felony embezzlement and incarcerated, at which point Damon became the de facto primary custodian of their children. Accordingly, Damon filed a motion to modify the underlying custody order, which the district court initially granted. However, Jana successfully moved to set the district court's order aside, and she opposed Damon's motion to modify. Following an evidentiary hearing, the district court awarded Damon primary physical custody and ordered Jana to pay child support, concluding that there was a substantial change in circumstances affecting the children and that it was in their best interest to modify custody. Jana now appeals.

We review a district court's decisions on child custody for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009). The district court's decision must be supported by substantial evidence, which "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* (internal quotation marks omitted). To modify a primary physical custody arrangement, the district court must find that there has been a substantial change in circumstances affecting the child's welfare and that modification is in the child's best interest. *Id.* at 422 n.4, 216 P.3d at 222 n.4. In making a best-interest determination, the district court must "consider and set forth its specific findings concerning, among other things," the factors provided in NRS 125C.0035(4)(a)-(l). "Crucially, the decree or order must tie the child's best interest, as informed by specific, relevant findings respecting the [best-interest factors] and any other relevant factors, to the custody determination made." *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

On appeal, Jana does not dispute that there was a substantial change in circumstances; rather, she primarily contends that the district court did not appropriately weigh the statutory best-interest factors in light of the evidence presented below. However, this court will affirm the district court's order where its findings are supported by substantial evidence in the record, and Jana largely fails to contend that the district court's findings were not so supported.¹ Instead, she merely requests that we reweigh the

¹To the extent Jana identifies particular factual findings that are not supported by substantial evidence in the record (such as the district court's finding that the children had never attended school in Spring Creek where Jana lives), she fails to demonstrate how such isolated errors impacted the district court's ultimate custody determination in light of all of its other

evidence and the credibility of the witness testimony presented below, which we will not do on appeal. See *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). Moreover, to the extent Jana's arguments rely on specific factual developments that were not first considered by the district court, she must present those arguments to the district court in the first instance.² See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (noting that issues not raised in the

findings. See *Abid v. Abid*, 133 Nev. 770, 776, 406 P.3d 476, 481 (2017) (concluding error was harmless and reversal was not warranted where the error did not affect the district court's custody decision). Similarly, with respect to Jana's argument that the district court mischaracterized certain instances of her behavior as constituting abuse or neglect under NRS 125C.0035(4)(j), even assuming that the district court's findings were erroneous, they were harmless in light of the court's conclusion that every other statutory best-interest factor favored granting primary custody to Damon or was neutral. *Id.*


²We note that Jana asserts on appeal that circumstances have changed such that she could seek modification of custody in the district court. However, she contends that Judge Shirley is biased against her because he also presided over her criminal case, which she claims she is currently challenging in post-conviction proceedings. Jana further argues that those proceedings may be adversely impacted if she seeks further relief from the district court in this case. But she does not point to any evidence of bias in the record apart from her convictions and the adverse ruling below, and "rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification [on grounds of personal bias]." *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). Accordingly, we reject Jana's argument on this point.

trial court will not be considered on appeal); *see also Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (noting that "[a]n appellate court is not particularly well-suited to make factual determinations in the first instance"). Because the district court made extensive written findings on all of the statutory best-interest factors and tied those findings to its ultimate custody determination, we conclude that it did not abuse its discretion in modifying custody. *See Davis*, 131 Nev. at 451, 352 P.3d at 1143; *Rivero*, 125 Nev. at 428, 216 P.3d at 226. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Amens Law, LLC
Kyle B. Swanson
Lander County Clerk

³Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.