

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMIAN SPIROPOULOS,  
Appellant,  
vs.  
CHRYSTAL MARTIN,  
Respondent.

No. 79419-COA

**FILED**

AUG 26 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Damian Spiropoulos appeals from a district court order in a child custody matter. Eighth Judicial District Court, Family Court Division, Clark County; Rebecca Burton, Judge.

Spiropoulos and Chrystal Martin were never married but share one minor child, born in December 2010.<sup>1</sup> Martin previously resided in Las Vegas and currently resides in Texas with the child, who she has primary physical custody of. Spiropoulos has never been a Nevada resident and resides in Wisconsin. He maintains summer and winter break parenting time with the child, and prior district court orders require the non-custodial parent be allowed weekly Skype parenting calls. The parties share joint legal custody.

In 2018, Martin received a job offer from Comeback Coordinating, LLC, a company located in Texas involved in hydraulic fracturing. The job paid more than her existing employment, was located close to her mother who also resides in Texas, and would place her and the child geographically closer to Spiropoulos. After receiving the offer, Martin wrote Spiropoulos requesting his permission to

---

<sup>1</sup>We do not recount the facts except as necessary to our disposition.

relocate from Nevada to Texas. In response, Spiropoulos moved to modify custody, relocate the child to Wisconsin, change the child's name, and for an order to show cause why Martin should not be held in contempt for denying him court-ordered Skype parenting time. Martin filed an opposition and countermotion requesting the court permit her to relocate to Texas with the minor child.

The district court held several hearings, including an evidentiary hearing on the pending motions. In support of modification, Spiropoulos testified that: Martin's housing situation was continuously unstable; she had failed to comply with court-ordered parenting time; the child's school attendance, grades, and mental health had suffered while in Martin's custody; and relocating to Wisconsin would allow the child to bond with his paternal sibling. Spiropoulos further alleged that Martin failed to provide a "sensible, good faith reason" for relocating to Texas because her supposed job offer was fake and a fraud upon the court. Spiropoulos provided evidence showing that Comeback Coordinating was owned by Martin's mother and its address was also Martin's mother's address. Evidence also showed Comeback Coordinating had been organized after Spiropoulos filed his motion to modify custody, and that Martin's job offer letter was written by a family friend.

Martin, who also testified, contradicted much of Spiropoulos' testimony. Martin recognized that she had moved a lot, but provided reasonable explanations for each move. She also stated that, although their child's grades and attendance were poor when he was younger, he had improved significantly. Further, his mental health was now stable, as verified by a therapist. Moreover, Martin admitted that

Comeback Coordinating was owned by her mother and operated by her brother and a family friend, but stated that she did not know all of the specific company details. She also stated that this was the second oil fracking company her family had started in Texas.

The district court denied Spiropoulos' motions to modify custody and relocate, concluding that modifying custody was not in the child's best interest and that, although Martin's move was a substantial change in circumstances, it was within the child's best interest and proper under NRS 125C.007(1). The district court granted Martin's countermotion, holding that Martin had established a "sensible, good faith reason" for moving and that Spiropoulos' fraud claims were not proven persuasive. Lastly, the district court did not find Spiropoulos' motives for opposing relocation compelling because Martin was attempting to move closer to Spiropoulos. As a result, the parties would be in the same time zone, which would improve coordination for the court-ordered Skype calls.

On appeal, Spiropoulos argues that the district court erred by misinterpreting the burden shifting and burden of proof requirements at contempt hearings and by permitting Martin to testify without filing an opposition. Spiropoulos also challenges the district court's order denying his motion to modify physical custody and relocate the child to Wisconsin and granting Martin's countermotion to relocate to Texas.

We review a district court's decision regarding child custody and relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). We conduct a de novo review of the district court's conclusions of law. *Id.* The district court's factual

findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). “Substantial evidence ‘is evidence that a reasonable person may accept as adequate to sustain a judgment.’” *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009) (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007)).

First, we consider whether the district court erred in how it applied the burden shifting requirements and burden of proof as to the contempt motions. We also consider whether the district court erred by hearing Martin’s testimony, despite her failure to file another opposition to Spiropoulos’ amended motion.

Spiropoulos argues that the district court erred by forcing him to satisfy the burden of proof to establish contempt at the evidentiary hearing. Spiropoulos also avers that under *In re Battaglia*, 653 F.2d 419, 422 (9th Cir. 1981), once the order to show cause is issued, the burden then shifts to Martin to prove why she should not be held in contempt. Spiropoulos further contends that EDCR 2.20(e) barred the district court from considering Martin’s testimony because she failed to oppose his motion for an order to show cause.<sup>2</sup> In response, Martin argues that, under *Bohannon v. Eighth Judicial District Court*, Docket No. 69719 (Order Granting Petition in Part, Mar. 21, 2017), once the district court issues an order to show cause, Spiropoulos must prove contempt by clear and convincing evidence. Martin also responds that

---

<sup>2</sup>We note that the applicable local rule pertaining to Family Division Matters is EDCR 5.502(d), which contains substantively the same language as EDCR 2.20(e).



her opposition to Spiropoulos' first motion was sufficient to satisfy EDCR 2.20(e) because his second motion was merely procedural in nature and did not warrant refiling her opposition.

NRS 22.030(2) states that "[i]f a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the court or judge of the facts constituting the contempt." *See Awad v. Wright*, 106 Nev. 407, 409-10, 794 P.2d 713, 715 (1990) (concluding that to be sufficient, the affidavit is required to demonstrate a prima facie case of contempt against the opposing party), *abrogated on other grounds by Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000). The opposing party must respond within ten days or the district court "may" construe the failure "as an admission that the motion . . . is meritorious and a consent to granting the same." EDCR 2.20(e). Moreover, "when a contempt proceeding is civil in nature, any allegations need only be proven by clear and convincing evidence." *See Bohannon v. Eighth Judicial Dist. Ct.*, Docket No. 69719 at \*6 (Order Granting Petition in Part, Mar. 21, 2017) (distinguishing between the burden of proof required at criminal and civil contempt hearings); *see also Battaglia*, 653 F.2d at 422 (holding that civil contempt "must be proved by clear and convincing evidence" by the charging party and noting that the burden of proof always lies with the charging party).

Both *Bohannon* and *Battaglia* expressly required Spiropoulos to prove Martin's contempt at the evidentiary hearing by clear and convincing evidence. *Battaglia* expressly states that the burden of proof always lies with the charging party. *See Battaglia*, 653 F.2d at 422. *Battaglia's* burden-shifting analysis applies only when the

party being accused of contempt is alleging memory loss, which is not the case here. *Id.* Thus, the district court did not err by requiring Spiropoulos to prove Martin's contempt by clear and convincing evidence.

Next, we conclude that EDCR 2.20(e) does not bar the district court from hearing Martin's testimony, despite her failure to file an opposition to a motion for an order to show cause. Indeed, EDCR 2.20(e) expressly states that the district court, in its discretion, "may" construe the responding party's failure to file an opposition as an admission. In this instance, Martin did file an opposition addressing the claims in Spiropoulos' original motion. When Spiropoulos amended his motion to include an affidavit to comply with procedural requirements, Martin did not refile her opposition motion. Finally, the order to show cause only directed Martin to appear and give an explanation at that time of the hearing, not to file a written response. As such, the district court did not err by allowing Martin to testify.

Next, we consider whether the district court abused its discretion by denying Spiropoulos' motion to modify physical custody and relocate the child to Wisconsin. Spiropoulos argues that the district court erred by finding that he failed to establish a substantial change in circumstances and that modification would be in the best interests of the child. We disagree.

A court may modify a primary physical custody arrangement "only when (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." *Ellis v. Carucci*, 123 Nev. 145,

150, 161 P.3d 239, 242 (2007). The burden lies with the parent seeking to modify custody. *Id.* at 150-51, 161 P.3d at 242-43.

Spiropoulos argues that substantial changes had occurred since the time of the last order. Spiropoulos further argues it would be in the best interest of the child to relocate to Wisconsin because Spiropoulos would: (1) allow the child to have regular contact with Martin; (2) place the child in an academically excellent school; and (3) provide the child with a stable home in Wisconsin.

The district court made detailed best interest findings including that there was insufficient evidence that Spiropoulos would provide better contact between the child and Martin, if the child relocated to Wisconsin. In addition, there was little evidence the child would have better academic performance in the school Spiropoulos proposed. In fact, the child's attendance and grades improved to an acceptable level once the child relocated to Texas with Martin. Lastly, in regard to providing a stable home for the child, Spiropoulos noted he would have to move and find a new place to live if the child relocated to Wisconsin. Thus, because substantial evidence supported these findings, we conclude that the district court did not abuse its discretion in determining that the best interest factors for granting a modification of physical custody and relocation to Wisconsin were not met, and denying both of Spiropoulos' motions.

Finally, we analyze whether substantial evidence supports the district court's order granting Martin's countermotion to relocate the child to Texas. Spiropoulos argues that Martin failed to satisfy NRS 125C.007(1)'s "sensible, good faith reason" requirement because her job opportunity in Texas was fraudulent. Spiropoulos also argues

substantial evidence did not support the district court's finding that his motives in resisting relocation were dishonorable.

Under NRS 125C.007(1), a parent seeking to relocate with a child must first demonstrate to the district court: (a) "[t]here exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent . . . of parenting time," (b) "[t]he best interests of the child are served by allowing the relocating parent to relocate with the child," and (c) "[t]he child and the relocating parent will benefit from an actual advantage as a result of relocation." If the initial three factors of NRS 125C.007(1) are met, the district court must then weigh the additional factors listed in NRS 125C.007(2), including "whether the motives of the non-relocating parent are honorable."


Here, the district court found that several "sensible, good-faith reasons" existed, including Martin's better job opportunity, family support in Texas, and allowing the child to be geographically closer to Spiropoulos. While conflicting evidence was presented concerning the legitimacy of Martin's job offer, the district court found Martin more credible, and substantial evidence supports its finding, thus we will not disturb that conclusion on appeal. *See Fletcher v. Fletcher*, 89 Nev. 540, 542, 516 P.2d 103, 104 (1973) ("Where a trial court, sitting without a jury, has made a determination upon the basis of conflicting evidence, that determination should not be disturbed on appeal if it is supported by substantial evidence."). Further, Martin's move could not reasonably have been intended to deprive Spiropoulos of parenting time because Martin was attempting to move closer to Wisconsin. Martin's relocation to Texas would likely resolve some of the parties' previous Skype parenting time issues because Texas and Wisconsin share a time zone.




This evidence also supports the district court's finding that Spiropoulos' motives in resisting Martin's relocation were dishonorable, and overall, it was in the child's interest to relocate with Martin. See NRS 125C.007(3). Thus, we conclude that the district court did not abuse its discretion by granting Martin's motion to relocate because its decision was supported by substantial evidence.<sup>3</sup>

Based on the foregoing, we conclude that the district court did not abuse its discretion and affirm the district court's order denying Spiropoulos' motion to modify custody and relocate and granting Martin's counter-motion to relocate. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

---

<sup>3</sup>Spiropoulos also alleges that his Due Process rights and Equal Protection rights were violated when the district court permitted Martin to argue additional "sensible, good faith reasons" and present post-filing evidence at the hearing. However, after carefully reviewing the record we also consider these claims meritless.

cc: Hon. Rebecca Burton, District Judge, Family Court Division  
Michael J. Warhola, LLC  
Nevada Family Law Group  
Eighth District Court Clerk