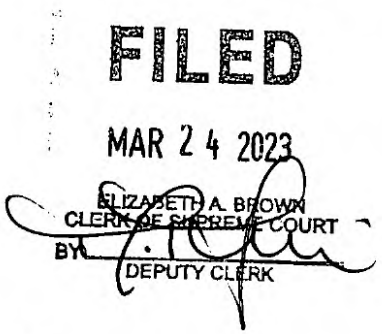
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE MANUEL PAVON,
Appellant,
vs.
ZULLY S. PAVON, N/K/A ZULLY S. WALLACE,
Respondent.

No. 83376-COA



ORDER OF AFFIRMANCE

Jose Manuel Pavon appeals from a district court order denying his motion to modify custody and a post-judgment order awarding attorney fees and costs. Eighth Judicial District Court, Family Court Division, Clark County; Amy Mastin, Judge.

Following Jose and respondent Zully S. Pavon's divorce, the district court entered a divorce decree awarding Zully sole legal and physical custody of the parties' minor children, and also allowed Zully to exercise her own discretion as to whether Jose would be able to exercise any parenting time with the children. As part of the underlying proceedings, Jose filed a "Motion for Visitation with Minor Child, for Joint Legal Custody, and for Measures to Protect Against Flight with the Child," wherein Jose requested additional parenting time with the parties' minor son I.P. Zully opposed the motion. During the evidentiary hearing on Jose's motion, the district court considered evidence that Jose had entered a nolo contendere plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), related to sexual coercion of I.P.'s older sister, who has since emancipated. Ultimately, the district court entered an order finding, among other things, that a change to Jose's parenting time schedule would not be in the best

interest of I.P. In a subsequent order, the court awarded Zully her attorney fees and costs. Jose now appeals both orders.

This court reviews a child custody decision[1] for an abuse of discretion, and we will not disturb the district court's findings if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain the judgment. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022). When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1). Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

On appeal, Jose contends that the district court abused its discretion when it denied his motion to modify the parenting time schedule. Specifically, Jose argues that the district court's findings related to the best interest factors were not supported by substantial evidence. In so doing, Jose correctly notes that Nevada considers pleas entered pursuant to *Alford* as pleas of nolo contendere which should not be used against the party in civil actions. *See State v. Gomes*, 112 Nev. 1473, 1479 n.2, 930 P.2d 701, 705 n.2 (1996) (holding that a plea entered pursuant to *Alford* "constitutes [a plea] of nolo contendere," and recognizing that *Alford* pleas should not be used against the party entering the plea in civil actions). In response, Zully argues that the district court appropriately considered the best interest of

[1]A child custody determination also includes orders that provide "for the legal custody, physical custody or [parenting time] with respect to a child." NRS 125A.045(1).

the child factors and did not abuse its discretion when it denied Jose's request for parenting time with I.P.

Having considered the briefs and the record on appeal, we conclude that the district court's parenting time determination is supported by substantial evidence. Here, the district court's 18-page order addressed each of the best interest of the child factors under NRS 125C.0035, and found, based on its analysis, that it was not in I.P.'s best interest to grant Jose parenting time. In its order, the district court relied on testimony from the parties, including testimony from Zully that indicated that I.P., who is over 12 years old, became frightened, depressed, and anxious when he learned Jose planned to seek parenting time with I.P. and that, as a result, she believed I.P. was reluctant to resume a relationship with his father. *See* NRS 125C.0035(4)(a) (requiring the district court to consider the child's wishes if they are of sufficient age and capacity). Additionally, the court found that Jose and Zully demonstrated a high level of conflict with each other, specifically noting that Jose has made several attempts to have Zully deported, and that "Jose continues to be angry, vengeful, and accusatory" towards Zully. *See* NRS 125C.0035(4)(d) (requiring the district court to consider the level of conflict between the parents); NRS 125C.0035(4)(e) (requiring the district court to consider the ability of the parents to cooperate to meet the needs of the child). The district court also found that Zully had been the sole caretaker of I.P. while Jose was incarcerated, that I.P. had a good relationship with his mother, and that Zully has met all of I.P.'s needs on her own for more than six years. *See* NRS 125C.0035(4)(g) (requiring the district court to consider the physical, developmental, and emotional needs of the child); NRS 125C.0035(4)(h) (requiring the district court to consider the nature of the relationship of the child to each parent).

However, when considering whether there was any history of parental abuse or neglect of I.P.'s siblings, *see* NRS 125C.0035(4)(j), as well as whether either parent engaged in an act of domestic violence, *see* NRS 125C.0035(4)(k), the district court expressly considered evidence of Jose's *Alford* plea, which is impermissible under Nevada law. *Gomes*, 112 Nev. at 1479 n.2, 930 P.2d at 705 n.2; NRS 48.125(2) (stating that "[e]vidence of a plea of nolo contendere or of an offer to plead nolo contendere to the crime charged or any other crime is not admissible in a civil or criminal proceeding involving the person who made the plea or offer"). Nevertheless, although the district court erred by considering the nolo contendere plea, this error is harmless given the district court's findings regarding the other best interest factors outlined above, all of which are supported by substantial evidence and thus support the district court's order denying Jose's request for parenting time.[2] *See McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 495-96 (2016) (providing that reversal is warranted only where an error affects a party's substantial rights such that "a different result might reasonably have been reached" but for the error).

Finally, Jose challenges the district court's award of attorney fees and costs on appeal. However, Jose failed to present cogent argument

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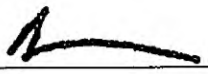
[2]We nonetheless caution the district court that consideration of a nolo contendere plea is inappropriate under NRS 48.125(2). Moreover, to the extent that the district court's order indicates that it considered Jose's failure to pay child support as a basis to deny his request for parenting time, we similarly remind the court that such a determination is inappropriate. *See, e.g., Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993) (noting that the supreme court "has made it clear that a court may not use changes of custody as a sword to punish parental misconduct"). However, because the district court's order was otherwise supported by substantial evidence independent of that consideration, we conclude that this error, if any, was harmless. *McClendon*, 132 Nev. at 333, 372 P.3d at 495-96.

as to that point, and therefore we do not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Amy Mastin, District Judge, Family Court Division
Jose Manuel Pavon
McFarling Law Group
Eighth District Court Clerk

[3]Insofar 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.