

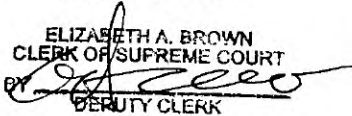
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KILIAN LEE, N/K/A HAKEEM THE
MAGNIFICENTLY FEARLESS
KHALIFA,
Appellant,
vs.
MONIQUE HOLLINGS,
Respondent.

No. 84096-COA

FILED

JUL 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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

Kilian Lee, n/k/a Hakeem The Magnificently Fearless Khalifa, appeals from a district court post-custody decree order in a family matter. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

Khalifa and respondent Monique Hollings were never married but have one minor child together. In the proceedings below, the parties executed a parenting agreement, and the district court subsequently entered a stipulated custody decree based on that agreement, which awarded them joint legal and physical custody of the child. After issues arose with Khalifa's housing situation, Hollings filed a motion to modify custody to primary physical custody in her favor, which the district court granted on a temporary basis.

Khalifa later filed a motion in which he sought various forms of relief, including, as relevant here, restoration of the parties' custodial arrangement to joint physical custody and modification of their timeshare under that arrangement to a week-on-week-off schedule, which Khalifa asserted was appropriate since he had resolved the issues with his housing

situation and because a week-on-week-off schedule would allow the child to spend more time with her sibling, who was Khalifa's child from a prior relationship. In his motion, Khalifa also indicated that he was in the process of legally changing his surname from Lee to Khalifa and was seeking an order in the underlying proceeding effecting a corresponding change to the child's surname.¹ Hollings opposed the foregoing requests for relief. Following a hearing, the district court entered an order in August 2021 in which it reinstated the parties' joint physical custody arrangement but denied Khalifa's request for a week-on-week-off schedule, finding that there had not been a substantial change in circumstances affecting the welfare of the child and that a week-on-week-off schedule was not appropriate for the child since she was only three years old. The district court also summarily denied Khalifa's request to change the child's surname.

Khalifa then filed another motion in which he, among other things, reiterated his prior requests to modify the parties' timeshare to a week-on-week-off schedule and to change the child's surname. Shortly thereafter, Khalifa filed an amended motion that expanded on his prior motion by adding a request to obtain a passport for the child, which was based on his assertion that he desired to travel internationally with the child in the future. Hollings, in turn, opposed Khalifa's original motion, but did not address the passport issue that he presented in his amended motion. In December 2021, the district court entered an order in which it denied

¹On October 12, 2022, Khalifa submitted an order to the clerk of the court, for notice purposes, that was entered in a separate district court proceeding during the pendency of this appeal. That order changed his name from Kilian Kerry Lee to Hakeem the Magnificently Fearless Khalifa, which is reflected in the caption and text of this order.

Khalifa's second requests to modify the parties' timeshare and change the child's surname on the basis that it had addressed those issues in its August 2021 order, and summarily denied Khalifa's request to obtain a passport for the child. This appeal followed.

Beginning with Khalifa's second request to modify the parties' timeshare, he reiterates his argument from below that a week-on-week-off schedule would allow the child to spend more time with her sibling.² This court reviews the district court's child custody determinations for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). To establish that a custodial modification is appropriate, the moving party must show that "(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." *Romano v. Romano*, 138 Nev. 1, 5, 501 P.3d 980, 983 (2022) (internal quotation marks omitted). The changed-circumstances prong of the foregoing test "is based on the principle of *res judicata* and prevents persons dissatisfied with custody decrees [from filing] immediate, repetitive, serial motions until the right circumstances or the right judge allows them to achieve a different result, based on essentially the same facts." *Ellis*, 123 Nev. at 151, 161 P.3d at 243 (alteration in original) (internal quotation marks omitted). Thus, in seeking to modify custody, the

²Khalifa also asserts that Hollings was impeding the child's participation in certain extracurricular activities and that a week-on-week-off schedule would better facilitate the child's participation in those activities. However, Khalifa did not raise this issue as a basis for modifying the parties' timeshare below, and it is therefore waived on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

moving party must generally establish a change in circumstances that occurred since the district court's last custody determination. *Id.*

Here, Khalifa did exactly what the changed-circumstances prong is designed to prevent. In particular, he moved to modify the parties' timeshare to a week-on-week-off schedule to allow the child to spend more time with her sibling, and approximately three weeks after the district court's August 2021 denial of that motion, he presented a substantively identical motion, which the district court denied in December 2021. Given that Khalifa's second motion did not identify any circumstances that had changed since the district court entered its August 2021 order, the motion did not establish a substantial change in circumstances affecting the welfare of the child. *See Romano*, 138 Nev. at 5, 501 P.3d at 983; *see also Ellis*, 123 Nev. at 151, 161 P.3d at 243. Thus, insofar as the district court denied Khalifa's second motion to modify the parties' timeshare in December 2021 because it had previously addressed that issue in August 2021, we discern no abuse of discretion.³ *See Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Turning to the district court's denial of Khalifa's second request to change the child's name, he essentially argues that the district court should have granted his request to foster the child's bond with him and development in life. As discussed above, this is another issue that Khalifa successively presented below, which resulted in the district court denying

³To the extent that Khalifa's challenge is directed at the August 2021 order, it is not properly before us. The portion of the August 2021 order that denied Khalifa's motion to modify the parties' timeshare was independently appealable as a special order entered after final judgment, *see* NRAP 3A(b)(8) (providing for appeals from special orders entered after a final judgment), and Khalifa did not file a notice of appeal from that decision.

his second request to change the child's surname in December 2021 since it had previously denied his first request in August 2021. Although we recognize that the district court was not required to consider whether there had been a substantial change in circumstances affecting the welfare of the child in evaluating Khalifa's second request to change the child's surname, *see Petit v. Adrianzen*, 133 Nev. 91, 94-95, 392 P.3d 630, 632-33 (2017) (explaining that the child's best interest is the sole consideration when evaluating requests to change a child's surname and setting forth a non-exhaustive list of factors for the district court to consider to determine the child's best interest), serial motions such as those that were presented here are nevertheless disfavored. *Cf. Ellis*, 123 Nev. at 151, 161 P.3d at 243; *Brandon v. West*, 29 Nev. 135, 142, 88 P. 140, 141 (1906) (stating that "[a] second application for the rehearing of a cause by the same party, after his petition for rehearing has been denied, will not be entertained"). Given that Khalifa filed his second request to modify the child's surname approximately three weeks after the district court denied his first request and did not present any new facts for the court's consideration, we cannot conclude that the district court improperly denied the second request based on its prior resolution of the name-change issue.⁴

⁴Insofar as Khalifa's challenge is directed at the relevant portion of the August 2021 order, his challenge is not properly before this court for the same reason as stated at note 3, *supra*. Nevertheless, some clarification is warranted. In particular, it appears that the district court may have denied Khalifa's first name-change request in August 2021 on ripeness grounds since Khalifa requested to change the child's surname based on a change that he was seeking to his own surname but had not yet obtained. *See Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988) (explaining that an actual justiciable controversy is a predicate to

Lastly, Khalifa challenges the denial of his request to obtain a passport for the child, arguing that the ability to travel internationally will foster the child's development and that the district court improperly failed to make any findings to support its decision. Hollings counters with what is essentially a ripeness argument, asserting that the district court properly denied Khalifa's request because he did not indicate that he had any concrete travel plans that would warrant a passport for the child.⁵ See *Resnick*, 104 Nev. at 65-66, 752 P.2d at 233. As briefly discussed above, an issue must present an existing controversy to be ripe for judicial review. *Id.* The factors that courts consider in evaluating whether an issue is ripe for judicial review include: "(1) the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for review." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006) (internal quotation marks omitted). And in this respect, a critical

judicial relief, meaning that "litigated matters must present an existing controversy, not merely the prospect of a future problem").

As discussed at note 1, *supra*, Khalifa's factual circumstances changed during the pendency of this appeal, as he successfully obtained a name change for himself. Nothing precludes Khalifa from filing a motion on remand to change the child's surname given that he has new facts to present to the district court, unlike when he filed his second request to change the child's surname. This court expresses no opinion with respect to the merits of any such motion.

⁵Although Hollings did not oppose Khalifa's request to obtain a passport for the child during the underlying proceeding, the issue of ripeness goes to the district court's subject matter jurisdiction, and, therefore, may be raised at any time. See *Duke City Lumber Co. v. Butz*, 539 F.2d 220, 221 n.2 (D.C. Cir. 1976) (explaining the same); *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) (providing that the parties may raise subject matter jurisdiction at any time and that the issue may be raised sua sponte by an appellate court).

consideration is whether the party seeking review has alleged a “sufficiently concrete” harm, as opposed to a harm that is “remote or hypothetical,” to demonstrate the existence of a justiciable controversy. *Id.* (explaining that, although it is not necessary for a party to have already suffered a harm, an issue is not ripe for judicial review unless a harm is at least probable).

Here, Khalifa is unable to obtain a passport for the child unless Hollings signs the passport application, which she has apparently been unwilling to do to date, or the district court intervenes. *See* 22 C.F.R. § 51.28(a)(2), (3) (2019) (generally requiring both parents of a minor child under age 16 to execute a passport application for the child, but permitting the issuance of a passport for such a child where only one parent signs the application if, as relevant here, a court enters an order specifically authorizing the parent to obtain a passport for the child). Given that the process of obtaining a passport is typically lengthy—particularly when a parent must seek a court order to do so—and that a parent’s inability to obtain a passport for a child will often forestall international travel plans, the harm to Khalifa arising from his inability to secure Hollings’ cooperation with respect to a passport for the child was sufficiently concrete to present an existing controversy that was ripe for judicial review. *See Herbst Gaming*, 122 Nev. at 887, 141 P.3d at 1231; *Resnick*, 104 Nev. at 65-66, 752 P.2d at 233.

As a result, the district court was required to evaluate Khalifa’s motion to obtain a passport for the child by considering whether it was in the child’s best interest to permit Khalifa to do so. *See* NRS 125C.0045(1)(a) (stating that the district court may make any “order for the custody, care, education, maintenance and support of the minor child as appears in his or her best interest” during any stage of the proceeding); *Davis v. Ewalefo*, 131

Nev. 445, 451, 352 P.3d 1139, 1143 (2015) (providing that the district court's sole consideration when making a child custody determination is the child's best interest). However, the district court summarily denied Khalifa's request to obtain a passport for the child, notwithstanding that Hollings did not oppose it below, rather than making any written findings with respect to the child's best interest. As a result, we cannot say with assurance that the district court's resolution of the passport issue was made for the correct legal reasons. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142 (explaining that, although the district court's discretion in determining child custody is broad, "deference is not owed to legal error or to findings so conclusory they may mask legal error" (internal citations omitted)); *Williams v. Waldman*, 108 Nev. 466, 471, 836 P.2d 614, 617-18 (1992) (providing that the district court must apply the correct legal standard in reaching a determination). Consequently, further proceedings are required with respect to the passport issue.

Thus, given the foregoing, we affirm the portions of the December 2021 order that denied Khalifa's second requests to modify the parties' timeshare and change the child's surname, but reverse the portion of the order that denied his request to obtain a passport and remand that issue for further proceedings.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Stacy Michelle Rocheleau, District Judge, Family Division
Hakeem The Magnificently Fearless Khalifa
The Grigsby Law Group
Eighth District Court Clerk