

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATALIE SUSAN GENNARDO,
Appellant,
vs.
DOUGLAS ALAN GENNARDO,
Respondent.

No. 85370-COA

FILED

NOV 22 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

Natalie Susan Gennardo appeals from a decree of divorce granting Douglas Alan Gennardo (Doug) primary physical custody of their minor children and permitting him to relocate with the children from Nevada to Texas. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Natalie and Doug married in 2002 and have three children, D.G., G.G., and N.G.¹ D.G. was born in September 2003, G.G. and N.G. were born in August 2007.² In May 2019, Doug filed a complaint for divorce. After Doug moved from the marital home in December 2019, the parties attempted to share joint physical custody but significant conflict continued.

¹At the time the district court granted primary physical custody to Doug in 2021, D.G. was 17, and both G.G. and N.G. were 14. D.G. is now 20. Because D.G. has attained the age of majority, we limit our discussion to the extent it is relevant to the district court's relocation and custody determinations regarding G.G. and N.G. and deem the appeal as to D.G. moot. *See Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015) ("A child custody determination, once made, controls the child's and the parents' lives until the child ages out . . .").

²We recount the facts only as necessary for our disposition.

Natalie struggled with extreme alcohol abuse and sometimes exhibited violent behavior.

In April 2020, police responded to a confrontation that occurred between the parties with each blaming the other. Doug immediately filed an emergency motion seeking primary physical custody of the children. The motion characterized Natalie as mentally ill and in need of mental health and substance abuse treatment. Before the motion was decided, Natalie agreed to attend a treatment program for 30 days in Arizona, with the understanding that she and Doug would exercise joint physical custody of the children upon her return. At the April hearing, the parties notified the district court that the children would temporarily reside with Doug during Natalie's 30-day absence. The court ordered the parties to have joint legal custody with Doug having primary physical custody while Natalie was away but acknowledged that the arrangement was "temporary" and to remain in place only "between now and June" while the parties continued to negotiate a custodial agreement. The district court also ordered that contact between Natalie and the children would be at Doug's discretion until further ordered. If the parties were unable to come to an agreement, the court stated it would hear argument on how to resolve custody at the June hearing.

While Natalie was in Arizona, the parties informally agreed to enlist a therapist, Nicolas Ponzio, to assist in repairing Natalie's relationship with the children, which had seriously deteriorated. He began the reunification process with the children while Natalie was at the rehabilitation center in Arizona. At the June hearing, the parties informed the district court that the children did not want to see Natalie. The court ordered the children to attend therapy sessions with Natalie and ordered the temporary arrangement to stay in place. Because there were difficulties

in the reunification process, and because the district court decided it would not bifurcate custody from the financial issues before trial, the district court determined it would not set a parenting time schedule or an evidentiary hearing on the temporary custody arrangement. As a result, Natalie was able to see the children only under Mr. Ponzo's supervision or at Doug's discretion for approximately one year.

The complexity of the financial issues in this case resulted in a delayed trial, so in February 2021, the district court reversed its prior ruling and decided to determine custody issues before the trial on financial matters. The court then held three custodial evidentiary hearings in April and May, 2021. It heard testimony from the parties and Mr. Ponzo and awarded joint legal custody to both parties with primary physical custody to Doug, subject to Natalie's parenting time on a "week 1, week 2" schedule, in which Natalie had the children on the weekend of "week 1" and from Thursday to Friday on "week 2." The district court then issued its findings of fact, conclusions of law, and order, making specific best interest findings as to each NRS 125C.0035(4) custody factor and concluded that it was in the children's best interest to have the parties share legal custody, with Doug having primary physical custody.

Early in the pandemic, Doug's employer, Marriott, greatly reduced his salary, and in June 2021, it advised him that his position would be eliminated. In July, Marriott offered him a position in Texas that was comparable to his former position in Las Vegas. Doug accepted the position and filed a motion seeking the children's relocation to Texas. In August, the district court allowed a temporary move in advance of an evidentiary hearing that was meant to permanently resolve relocation. The court, however, never set or held an evidentiary hearing. Instead, after the trial

on the financial matters, the court entered a final decree that concluded that the motion for relocation was granted and relocation would be permanent. Natalie filed a motion requesting that the court reconsider its ruling regarding permanent relocation because the promised evidentiary hearing was not held. She argued that she could challenge Doug's offers of proof from his motion and at the August 2021 hearing and she would present her own evidence at the evidentiary hearing. The district court denied Natalie's request.³

On appeal, Natalie raises numerous issues challenging the district court's physical custody and relocation orders. Natalie argues that the district court erred in (1) failing to acknowledge the custodial preference set forth in NRS 125C.0025 and inappropriately shifted the burden of proof to her in determining the best interest of the children; (2) in recognizing a de facto custodial arrangement as part of the district court's custody determination analysis; (3) in authorizing the minor children's temporary and permanent relocation without holding an evidentiary hearing; and (4), by violating her constitutionally protected due process rights.⁴ We agree in part and disagree in part.

³In denying Natalie's request that the district court reconsider its decision to authorize the permanent relocation without holding an evidentiary hearing, the court told Natalie to save this argument for "the guys with the red drapes behind them" because "the appellate court will determine whether . . . the matter was properly closed."

⁴Natalie also requests that this case be reassigned to a different district court judge on remand because the judge made comments evincing bias during the proceeding. Doug argues that the judge was not biased. We presume judges are unbiased, and Natalie has not shown bias sufficient to warrant disqualification. See *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254, 148 P.3d 694, 701 (2006). The comments Natalie offered

Appellate courts “will not disturb the district court’s custody determinations absent a clear abuse of discretion.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). A district court’s decision regarding relocation is also reviewed for abuse of discretion. *See Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). “An abuse of discretion occurs when a district court’s decision is not supported by substantial evidence or is clearly erroneous.” *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). Moreover, a district court’s factual findings will be upheld so long as “they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment.” *Ellis*, 123 Nev. at 149, 161 P.3d at 242. But “deference is not owed to legal error, or to findings so conclusory they may mask legal error.” *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted).

as examples of the judge’s lack of impartiality, when viewed in full context, do not display bias. Further, the judge’s comments in this case reflected opinions the judge formed during litigation—and did not originate from an extrajudicial source—and Natalie has not demonstrated the “deep-seated favoritism or antagonism” necessary for disqualification. *Canarelli v. Eighth Judicial Dist. Court*, 138 Nev. 104, 105, 109, 506 P.3d 334, 337, 339 (2022) (internal quotation marks omitted) (concluding that the party seeking disqualification must show that the judge’s purported favoritism or antagonism made it impossible for them to make a fair judgment); *see also In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (explaining that “[t]he personal bias necessary to disqualify must ‘stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case’” (quoting *United States v. Beneke*, 449 F.2d 1259, 1260-61 (8th Cir. 1971))); *see also Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998) (noting that generally, a judge’s remarks “made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence”).

This court “must also be satisfied that the district court’s determination was made for appropriate reasons.” *Rico v. Rodriguez*, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005).

The district court erred in its application of NRS 125C.0025’s custodial preference but the error did not affect the result because substantial evidence supports the best interest findings and custody decision

Natalie argues that the district court erroneously assigned her the burden of proof to show that joint physical custody was in the children’s best interest, which is in contrast to Nevada’s statutory preference in favor of joint physical custody. Natalie also argues that NRS 125C.0035(3)(a) required the district court to state the reason for denying Natalie’s request for joint physical custody. Further, that the court did not appropriately consider the best interest of the children. In response, Doug argues that the district court correctly shifted the burden of proof to Natalie because he rebutted the statutory preference by showing that joint physical custody was not in the children’s best interest.

“Physical custody involves the time that a child physically spends in the care of a parent.” *Rivero v. Rivero*, 125 Nev. 410, 421, 216 P.3d 213, 222 (2009), *overruled in part on other grounds by Romano v. Romano*, 138 Nev. 1, 5, 501 P.3d 980, 983 (2022), *abrogated in part by Killebrew, Tr. of Killebrew Revocable Tr., 5TH ADM 1978 v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). When a court makes a determination regarding the physical custody of a child, there is a preference that joint custody would be in the best interest of a minor child if a parent has demonstrated an intent to establish a meaningful relationship with the minor child, and his or her efforts were frustrated by the other parent. NRS 125C.0025(1)(b). “Joint physical custody is the first alternative a court should consider when deciding custody. If such an

arrangement is not in the best interest of the child, the court may then order primary physical custody.” *Roe v. Roe*, 139 Nev., Adv. Op. 21, 535 P.3d 274, 286 (Ct. App. 2023); see also NRS 125C.003(1)(a)-(c). “In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things [the best interest custody factors].” 125C.0035(4). “Crucially, the decree or order must tie the child’s best interest, as informed by specific, relevant findings respecting the NRS [125C.0035(4)] factors and any other relevant factors, to the custody determination made.” *Davis*, 131 Nev. at 451, 352 P.3d at 1143.

When Natalie demonstrated an intent to have a meaningful relationship with the minor children, and that Doug had frustrated it, the district court was required to apply the joint custody preference and determine if Doug had overcome it. NRS 125C.0025(1)(b). Then, under NRS 125C.0035(3)(a), the court must “state in its decision the reason” for denying a parent’s request for joint physical custody. Here, the district court did not strictly follow this process and that was error. See *Roe*, 139 Nev., Adv. Op. 21, 535 P.3d at 286 (explaining that joint physical custody is the preferred arrangement and that a district court should make findings when imposing an alternative arrangement).

Nevertheless, with its broad fact-finding authority, the district court found that “the evidence didn’t support a finding that joint physical custody was in the best interest of the children at this time [and] it[] supported a finding that [Doug] should have primary physical custody.” The court then issued an order laying out its findings and conclusions. Although Natalie challenges several of the court’s specific factual findings, at its core, her argument is essentially that she presented sufficient evidence to demonstrate that Doug did not meet his burden to show that

primary physical custody in his favor was in the children's best interest, and the court ruled against her because it improperly weighed or misinterpreted the evidence. The flaw in this argument is that Doug presented extensive evidence at the evidentiary hearings that conflicted with Natalie's evidence, which the court considered in resolving the parties' custodial dispute. While Natalie is dissatisfied with the way in which the district court weighed the parties' conflicting evidence, this court will not reweigh the evidence or reevaluate witness credibility on appeal. See *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh the evidence on appeal); see also *Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal). Instead, we deferentially review the district court's custody determination, focusing on whether it "reached its conclusions for the appropriate [legal] reasons" and whether its factual findings were "supported by substantial evidence." *Ellis*, 123 Nev. at 149, 161 P.3d at 241-42.

Here, the findings in the custody order and transcripts from the evidentiary hearings demonstrate that the district court gave due consideration to the issues and evidence before it and awarded Doug primary physical custody for appropriate reasons—specifically, its determination that doing so was in the children's best interest. See NRS 125C.0035(1); see also *Davis*, 131 Nev. at 451, 352 P.3d at 1143. That determination was based on an evaluation of the best interest factors, which was supported by substantial evidence, and provided an adequate explanation for its decision that, at that time, joint physical custody was not in the best interest of the children. The court found that (1) the children preferred to live primarily with Doug; (2) although G.G. was open to having a relationship with Natalie, N.G. had a conflicted relationship with her,

albeit an improving relationship; (3) it was in the children's best interest to remain together; and (4) Doug was more likely to allow the children to have a frequent and continuing relationship with Natalie. The court also found that even though the children's relationship with Natalie was conflicted, G.G. was comfortable with her, and that N.G.'s emotional needs required efforts to ensure N.G. had meaningful custodial time with Natalie; that Natalie's negative conduct and mental health had improved; and, that she was committed to sobriety. The district court concluded that both parents were physically and mentally fit to care for the children and ultimately decided that it was in the children's best interest that the parties share joint legal custody, with Doug having primary physical custody subject to Natalie's parenting time.

Because this court does not reweigh credibility on appeal, *see Ellis*, 123 Nev. at 152, 161 P.3d at 244, and because each side presented evidence "which a sensible person may accept as adequate to sustain [the district court's] judgment," *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004), we conclude that while the district court may have failed to adequately acknowledge the custodial preference set forth in NRS 125C.0025, and may have indirectly shifted the burden of proof to Natalie, it nevertheless explained why it did not award joint physical custody and that decision is supported by substantial evidence. Further, the district court appropriately considered the best interest of the children. Therefore, we see no basis for reversal of the physical custody award because the district court did not abuse its discretion in awarding primary physical custody to Doug.

The district court abused its discretion in relying on the de facto sole physical custody arrangement

Natalie argues that the district court's custody determination placed unwarranted weight on Doug's de facto physical custody status at the time of the evidentiary hearings—which she argues existed only because Doug unreasonably restricted her time with the children and because of the court's refusal to enter a timeshare schedule for almost a year. Natalie also argues that the district court disregarded Natalie's years of historical care while stating in its findings that G.G. had “settled into the routine of the physical custody schedule.”

Doug argues that the district court's recognition of the de facto custodial arrangement was caused by Natalie's erratic, offensive, and aggressive behavior and mental instability, which the court properly considered in its analysis of the best interest factors while the evidentiary hearings were pending.

A district court abuses its discretion when it “improperly characterize[s] its custodial award as primary physical custody when it [is] in actuality sole physical custody.” *Roe*, 139 Nev., Adv. Op. 21, 535 P.3d at 281. “[S]ole physical custody is a custodial arrangement where the child resides with only one parent and the noncustodial parent's parenting time is restricted to no significant in-person parenting time.” *Id.* at 287. “[A] sole physical custody order [results in] the severe restriction on the noncustodial parent's care, custody, and control of their child [and] requires additional findings and procedure as compared to entry of a joint or primary physical custody order.” *Id.*

In determining temporary physical custody, the district court gave Doug total discretion to determine Natalie's time with the children, which resulted in a de facto sole physical custody order that restricted

Natalie's parenting time to the time she spent with the children under Mr. Ponzo's supervision. *See id.* at 286 (explaining that when a primary physical custody order restricts the noncustodial parent's parenting time to no significant in-person time, it effectively awards sole physical custody to the custodial parent). The court compounded the problem by refusing to set an evidentiary hearing or to enter any timeshare schedule.⁵ The court explained during the first evidentiary hearing on custody that it had made a mistake in not granting Natalie any parenting time. Nevertheless, when it finally made its custody determination, it assigned more weight to Doug's one-year period of sole physical custody than to Natalie's 16 years of being the children's caretaker due to Natalie's recent relationship issues with the children. However, the court never made findings throughout the one-year period that justified its sole physical custody order. *See id.* at 295 (explaining that before awarding sole physical custody, a district court "must make specific findings and provide an adequate explanation as to the reasons why primary physical custody is not in the best interest of the child"). Therefore, the district court's reliance on the admittedly improper *de facto* sole physical custody order, and the disregard of Natalie's 16 years of primary caretaking, were clearly erroneous.

⁵"District and appellate courts are to expedite decisions affecting the custody of minor children, meaning resolutions must be reached in district court within six months of custody or parenting time being contested absent unforeseeable circumstances with specific findings justifying exceeding that time period." *Roe*, 139 Nev., Adv. Op. 21, 535 P.3d at 283 n.6; *see* SCR 251. The temporary custody order in this case was in effect for one year and contained no findings. In ignoring Natalie's multiple requests to set a hearing or enter a timeshare order pending the full custodial evidentiary hearing, the district court did not make any findings justifying the lengthy delays.

Nevertheless, Natalie has not shown that the result of the hearing would have been different in the absence of the district court's errors. *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); *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached."). The district court made numerous best interest findings in favor of Doug that were supported by substantial evidence. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242 (concluding that factual findings are upheld on appeal so long as "they are supported by substantial evidence"). Therefore, we conclude that the district court's abuse of discretion, while distressing, *see SCR 251; Roe*, 139 Nev., Adv. Op. 21, 535 P.3d at 287 (explaining that restricting the noncustodial parent's care, custody, and control of their child can implicate a parent's fundamental rights), does not undermine the custody determination.

The district court did not abuse its discretion when it verbally permitted the children to temporarily relocate with Doug prior to conducting an evidentiary hearing

Natalie argues that Nevada law does not vest district courts with the power to grant temporary relocation orders prior to the submission of evidence that would demonstrate a basis for a move under the statute's requirements. Doug argues that it was within the district court's discretion to allow the temporary relocation. We agree with Doug.

NRS 125C.0045(1)(a) provides that a district court may, "at any time during the minority of the child, make such an order for the custody,

care, education, maintenance and support of the minor child as appears in his or her best interest.” See *In re Temporary Custody of Five Minor Children*, 105 Nev. 441, 443, 777 P.2d 901, 902 (1989) (recognizing that the district court has authority to enter a temporary order regarding custody); see also *Richmond v. Russell*, No. 64397, 2015 WL 9596960 (Nev. Dec. 30, 2015) (Order of Affirmance) (concluding that a temporary relocation is within a district court’s “sound discretion,” especially “under circumstances . . . where the parent with primary physical custody is starting a job in another state before the court would have time to conduct an evidentiary hearing”); *Shahrokhi v. Eighth Judicial Dist. Court*, No. 79336-COA, 2019 WL 5823131 (Nev. Ct. App. Nov. 6, 2019) (Order Granting Petition for Writ of Mandamus in Part and Denying Petition in Part) (recognizing that while district courts typically must hold a full adversarial hearing on temporary custody and relocation issues, the district court may grant a temporary relocation order under “exigent circumstances”). In removing the child from the jurisdiction where the child currently lives, the best interests of the child should be the paramount judicial concern. *Schwartz v. Schwartz*, 107 Nev. 378, 382, 812 P.2d 1268, 1271 (1991). The district court has “broad discretionary powers to determine child custody matters,” which this court will not disturb “absent a clear abuse of discretion.” *Ellis*, 123 Nev. at 149, 161 P.3d at 241.

Because Doug was the sole provider for the Gennardo family, he was under significant financial pressure when his employer notified him that it was eliminating his position in Las Vegas. Further, Doug had primary physical custody and was immediately starting a job in another state. Based on the offers of proof, the district court concluded that it was in the children’s best interests for Doug to maintain stable employment.

Natalie does not cogently argue why the district court would not have authority to enter a temporary relocation order under the circumstances. *See 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 an appellant's argument that is not cogently argued or lacks the support of relevant authority). Therefore, given the exigent circumstances at the time, the district court did not abuse its discretion when it permitted the temporary relocation before holding an evidentiary hearing.⁶

The district court abused its discretion in permitting the permanent relocation of the children to Texas without conducting an evidentiary hearing

Natalie argues that the district court erred when it summarily granted the relocation of the two children outside of Nevada without making the required statutory findings under NRS 125C.007, despite entering a written order stating that Doug would be required to prove his case for relocation at an evidentiary hearing.

In evaluating relocation requests, district courts are required to conduct a complex, multi-pronged analysis that entails making an initial determination as to whether the moving party satisfied all three subparts of NRS 125C.007(1)'s threshold test, and, if so, to proceed to consider whether the relocation factors set forth in NRS 125C.007(2) support the moving party's request to relocate. *See Monahan v. Hogan*, 138 Nev. 58, 59, 507 P.3d 588, 589-90 (Ct. App. 2022) (explaining that the district court must make specific findings regarding whether relocation would be in the best interests of the child, including the appropriate custody best-interest

⁶Nevertheless, as previously noted, the district court's failure to hold timely evidentiary hearings is extremely concerning considering the lack of written justification for the delays. *See SCR 251.*

factors, and must tie those findings to its conclusion); *see also Davis*, 131 Nev. at 451, 352 P.3d at 1143 (holding that the district court must issue specific findings when making a best interest custody determination and tie them to its conclusion).

The proper place to present evidence for a district court's consideration is at an evidentiary hearing. *See Arcella v. Arcella*, 133 Nev. 868, 872, 407 P.3d 341, 346 (2017) (noting that, in the *Rooney* context, a district court may not decide a motion to modify custody "upon contradictory sworn pleadings [and] arguments of counsel" (alteration in original) (quoting *Mizrachi v. Mizrachi*, 132 Nev. 666, 678, 385 P.3d 982, 990 (Ct. App. 2016))). Indeed, evidentiary hearings are designed with this purpose in mind: to resolve disputed questions of fact. *See DCR 13(6)* (recognizing that disputed factual points may be resolved at evidentiary hearings); *EDCR 5.506(g)* (providing that exhibits attached to motions "shall not be considered substantive evidence until admitted").

Here, as Doug was the party moving for relocation to Texas, he held the burden of proof to demonstrate each requirement under NRS 125C.007. *See Monahan*, 138 Nev. at 70, 507 P.3d at 597; *see also NRS 125C.007(3); Potter v. Potter*, 121 Nev. 613, 618, 119 P.3d 1246, 1250 (2005) ("The moving party has the burden of establishing that it is in the child's best interest to reside outside of Nevada with the moving parent as the primary physical custodian."). In their pleadings, both Doug and Natalie analyzed the best interest and relocation factors. Doug argued that the factors weighed in favor of relocation and Natalie argued that the factors weighed against it. In its temporary relocation order, the district court repeatedly stated it needed to conduct an evidentiary hearing before it could permanently authorize relocation. But without taking any evidence in an

evidentiary proceeding, the district court sided with Doug by incorporating its child custody and temporary relocation orders into the final decree.⁷

Here, the district court failed to conduct an evidentiary hearing prior to making its findings of fact related to the NRS 125C.007(1) factors, therefore, no actual evidence was presented to demonstrate that Doug had a sensible, good-faith reason for the move; that the move was not intended to deprive Natalie of her parenting time; that the move would serve the children's best interests; or that Doug and the children would benefit from an actual advantage as a result of the relocation. Likewise, the court did not apply the NRS 125C.007(2) factors. The "findings" the court laid out in its relocation order were based on arguments of counsel and motion exhibits; consequently, such findings were insufficient. *See Arcella*, 133 Nev. at 872, 407 P.3d at 346; *see also Myers v. Haskins*, 138 Nev., Adv. Op. 51, 513 P.3d 527, 532 (Ct. App. 2022) (explaining that "[d]istrict courts should not weigh the evidence or make credibility determinations before holding an evidentiary hearing"). The failure to conduct a hearing was particularly egregious given that Doug had the burden of proof under NRS 125C.007(3), Natalie represented that she could efficaciously challenge Doug's evidence and disprove it, and she would present her own evidence about the prior and current situation following the temporary relocation and how the statutory factors were not met. Accordingly, the

⁷While the district court can consider its best interest findings from a prior order, *see Monahan*, 138 Nev. at 65, 507 P.3d at 594, the decree also states that the district court "received documentary proof and had hearings that were specifically related to physical custody matters on October 6, 2021, December 7, 2021, and June 1, 2022" before concluding to permit the permanent relocation. However, those were motion hearings where the court heard argument from counsel and admitted no evidence. *See Mizrachi*, 132 Nev. at 678, 385 P.3d at 990.

district court abused its discretion in permitting Doug to relocate to Texas with the children permanently without conducting an evidentiary hearing. *The district court violated Natalie's constitutionally protected due process rights*

Natalie argues that the district court violated her due process rights when it granted a permanent relocation of her children without conducting an evidentiary hearing because she did not have an opportunity to challenge Doug's allegation that relocation would serve the children's best interests. Specifically, Natalie argues that the district court violated her due process rights by considering the unauthenticated exhibits attached to Doug's untimely reply in support of his motion to relocate without affording her the opportunity to meaningfully investigate and disprove the same in an evidentiary proceeding. Doug responds that the district court did not violate Natalie's due process rights because she had an opportunity to be heard at numerous motion hearings while this case was litigated. However, we reiterate that the proper place to present evidence for a district court's consideration is at an evidentiary hearing. *See Arcella*, 133 Nev. at 872, 407 P.3d at 346.

"[D]ue process of law [is] guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 8(5) . . . of the Nevada Constitution." *Rico v. Rodriguez*, 121 Nev. 695, 702-03, 120 P.3d 812, 817 (2005). Due process protects certain substantial and fundamental rights, including the interest parents have in the custody of their children. *Id.* at 704, 120 P.3d at 818; *Blanco v. Blanco*, 129 Nev. 723, 731, 311 P.3d 1170, 1175 (2013) ("[C]hild custody decisions implicate due process rights because parents have a fundamental liberty interest in the care, custody, and control of their children."). Further, due process demands notice before such a right is affected. *Wiese v. Granata*, 110 Nev.

1410, 1412, 887 P.2d 744, 745 (1994). Accordingly, a “party threatened with loss of parental rights must be given opportunity to disprove evidence presented.” *Gordon v. Geiger*, 133 Nev. 542, 546, 402 P.3d 671, 674 (2017) (quoting *Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996)).

Here, a permanent relocation affects Natalie’s fundamental right concerning the custody of her children because it significantly burdens her ability to spend meaningful custodial time with them. *See Schwartz*, 107 Nev. at 382, 812 P.2d at 1270 (explaining that the purpose of Nevada’s relocation laws is in part to preserve the rights and familial relationship of the noncustodial parent with respect to his or her child). The district court granted a temporary relocation of the children but reopened discovery and repeatedly reassured Natalie that it would give her an opportunity to scrutinize and rebut Doug’s assertions in his motion to relocate after the trial on the non-custody aspects of the divorce. Nevertheless, the district court adjudicated the relocation motion and closed the case without receiving evidence that it had previously stated was necessary to make the relocation permanent. In doing so, the district court seemingly acted in a precipitous manner because it believed it had heard enough from these parties at other hearings. However, by doing so, it deprived Natalie of an opportunity to challenge Doug’s claims and present her own evidence, thus violating her constitutionally protected due process rights. *See Gordon*, 133 Nev. at 546, 402 P.3d at 674.

Accordingly, we

AFFIRM the district court's judgment as to child custody, REVERSE as to the permanent relocation of the children, and REMAND the case for expeditious proceedings consistent with this order.⁸


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Division
Carman & Price
Pecos Law Group
Eighth District Court Clerk

⁸The relocation order may remain in effect pending an expedited hearing to resolve Doug's relocation motion; however, the district court may make any necessary adjustments as needed pending the hearing. *See Davis*, 131 Nev. at 455, 352 P.3d at 1146 (leaving certain provisions of a custody order in place pending further proceedings on remand). Insofar as the parties have raised 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.