

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

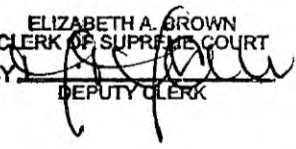
KATHRYN MEAD,
Appellant,
vs.
BRIAN MEAD,
Respondent.

No. 84843-COA

KATHRYN MEAD,
Appellant,
vs.
BRIAN MEAD,
Respondent.

No. 84878-COA
FILED

DEC 20 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER DISMISSING APPEAL IN DOCKET NO. 84843-COA, AND
REVERSING AND REMANDING IN DOCKET NO. 84878-COA*

Kathryn Mead appeals, in consolidated cases, from district court orders regarding child custody and support. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Kathryn and respondent Brian Mead were divorced in 2007 and shared joint physical and legal custody of their three children following entry of the divorce decree.¹ The parties have a contentious relationship

¹Because the parties' older children have turned 18, we limit our discussion of the physical custody issue to the parties' younger child and deem the appeal moot as to the parties' older children with respect to physical custody. *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"); *see also* NRS 129.010 (providing that "[a]ll persons of the age of 18 years who are under no legal disability . . . are, to all intents and purposes, held and considered to be of lawful age").

and have frequently litigated matters related to custody and support of the children since entry of the decree. As relevant here, after significant motion practice regarding Brian purportedly refusing to allow Kathryn to exercise her parenting time (which was split equally between the parties), the district court eventually directed the parties to attend mediation and ordered interviews of the children. After discussing the results of the mediation and the content of the child interviews with the parties, the district court entered a temporary custody order, awarding Brian primary physical custody, and scheduled an evidentiary hearing on the issue of custody modification. The district court held the evidentiary hearing on March 24 and April 28, 2022.

After considering the briefing of the parties and the testimony of Kathryn and the youngest minor child at the evidentiary hearing, the district court entered another temporary order awarding Brian primary physical custody of the parties' children, which Kathryn appealed in Docket No. 84843-COA. Following another hearing on May 9, 2022, the court entered a permanent order awarding Brian primary physical custody of the parties' children and directing Kathryn to pay Brian \$260 per month in adjusted child support. Kathryn appeals that determination in Docket No. 84878-COA.

As an initial matter, our review of the documents submitted to this court in Docket No. 84843-COA reveals a jurisdictional defect, as the order challenged in that appeal does not "finally establish[] or alter[] the custody of minor children" as required under NRAP 3A(b)(7). Instead, it is the May 2022 order that finally resolves the underlying custody dispute. Accordingly, we dismiss the appeal from the temporary custody determination challenged in Docket No. 84843-COA. However, because the

order challenged in Docket No. 84878-COA is appealable as a final custody determination under NRAP 3A(b)(7), we address Kathryn's challenges to the district court's modification of custody in that appeal.

On appeal, Kathryn argues that the district court abused its discretion when it awarded primary physical custody to Brian without finding that a substantial change in circumstances warranted modification of the current joint custody arrangement, and without considering the best interest of the child factors under NRS 125C.0035(4). She further argues that the district court's custody decision is not supported by substantial evidence.

We review a district court's custody determinations for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled in part on other grounds by Romano v. Romano*, 138 Nev. 1, 3, 501 P.3d 980, 982 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). A court may modify a physical custody arrangement only when a party demonstrates 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*, 138 Nev. at 5, 501 P.3d at 983 (quoting *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007)). Moreover, the district court's "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). Without specific findings and an adequate explanation for the custody determination, this court cannot determine with assurance whether the custody determination was appropriate. *Id.* at 452, 352 P.3d at 1143.

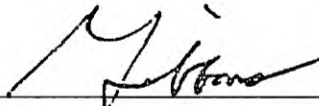
Having reviewed the briefs of the parties and the record on appeal, we conclude that the district court's order is facially insufficient to support its custody determination, or to allow meaningful appellate review of the court's reasons for modifying custody. In its order, the district court not only failed to address whether there had been a substantial change in circumstances affecting the welfare of the children under *Romano*—which is a condition precedent to modifying a joint physical custody arrangement—it also awarded primary physical custody to Brian without discussion or analysis of the best interest of the child factors as required by NRS 125C.0035(4) and *Davis*. Indeed, the district court's summary findings on the matter only indicated that it “reviewed the [b]est [i]nterest[] considerations under the law” and considered the preference of the parties' youngest child under NRS 125C.0035(4)(a).² Because the district court failed to apply the appropriate legal standard and make the required best interest findings, we conclude that the district court abused its discretion in awarding primary physical custody to Brian. *Davis*, 131 Nev. at 452, 352 P.3d at 1143.

For these reasons, we reverse the district court's order and remand this matter for further proceedings. On remand, we direct the district court to fully and properly address whether modification of the physical custody arrangement is warranted under the framework outlined in *Romano*, including addressing whether a substantial change in circumstances occurred that warranted modification and, if so, set forth the


²Although specific written findings regarding the best interest factors are required, our review of the transcript from the evidentiary hearing in this matter similarly reveals that the district court did not make oral findings as to all of the best interest factors during the evidentiary hearing.

required best interest findings and tie the ultimate custody determination to the child's best interest.³ *Romano*, 138 Nev. at 5, 501 P.3d at 983; *Davis*, 131 Nev. at 451, 352 P.3d at 1143. And in light of our reversal of the district court's custody determination, we also reverse the district court's child support determination and remand that issue for further consideration following the custody proceedings on remand.⁴

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Pending further proceedings on remand, we leave in place the current custody arrangement, subject to modification by the district court to comport with the current circumstances. *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).

⁴Although the physical custody issue is moot as to the parties' children who have reached the age of majority, nothing in this order shall be construed to prohibit Kathryn from challenging the district court's child support determination as to those children in the proceedings on remand.

⁵Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Division
Kathryn Mead
Brian Mead
Eighth District Court Clerk