

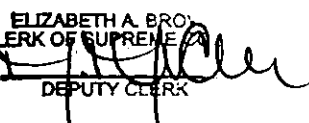
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLAUDIA LOPEZ,
Appellant,
vs.
SERGIO PENALOZA,
Respondent.

No. 88714-COA

FILED

JUN 03 2025

ELIZABETH A. BROOKS
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

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

Claudia Lopez appeals from a district court decree of divorce. Eighth Judicial District Court, Family Division, Clark County; Stephanie Charter, Judge.

Lopez and respondent Sergio Penaloza were married in 2015¹ and share three children, two of whom are currently minors. In 2023, Lopez filed a complaint for divorce requesting sole legal and physical custody, noting there was a history of domestic violence the district court should consider, and requesting alimony, child support, and back child support from February 2022 from Penaloza from a separately-filed child support case.

Penaloza thereafter filed an answer requesting that the parties share joint legal custody, but that Lopez be awarded primary physical custody. He reported that his gross monthly income was \$3,000, but on a separate financial disclosure form stated that he made \$80 per hour, had a gross monthly income of \$0, and paid \$1,160 in court-ordered child support.

¹The divorce decree erroneously states that the parties were married in 2016.

Throughout the proceedings, the parties both changed their requests regarding the custodial designation and weekly parenting time several times, and the district court changed the temporary timeshare several times based on the parties' requests and work schedules.

During the proceedings, Penaloza filed a motion to modify child support arguing that the parties' eldest child turned 18, his income had changed more than 20 percent, and he could not afford his current support obligation. He filed an updated financial disclosure form to reflect a gross monthly income of \$5,000 and court-ordered child support of \$2,550. Lopez opposed the motion, arguing that Penaloza owed her \$7,000 in child support arrears and that their eldest child had turned 18 years old but was still in high school.

The district court thereafter held an evidentiary hearing, where Lopez requested primary physical custody and Penaloza requested joint physical custody. The court asked the parties about the history of domestic violence. After learning that Lopez had a prior order of protection against Penaloza from 2005, but that Penaloza did not have a conviction for domestic violence and that the parties resided together after the fact with no further protection orders, the court stated it would not find there was any recent history of domestic violence and, thus, would not be a consideration regarding child custody. The district court determined there was no reason not to award joint legal and physical custody, which would result in a modification of child support.

With respect to child support, the district court questioned the parties about Penaloza's current income, the amount of child support arrears, and whether Lopez sought a child support order prior to filing for divorce. When asked about his income, Penaloza explained that he

previously made \$80 an hour at a temporary job, but his regular and current pay was \$30 an hour. He also stated that "the previous judge" said he had a gross monthly income of \$12,846.94 because he was temporarily earning \$80 per hour, but he was unable to contest that because he did not receive a summons at his new address and, therefore, did not appear at that hearing. The court determined that it would reduce the \$2,500 child support obligation due to Penaloza's reduction in income. It further ordered that "no more arrears need to be paid" and set the child support amount for \$853 per month until the eldest child graduated from high school and then reduced the amount to \$723. The district court believed Penaloza had satisfied his prior child support obligation because "he's been paying for so long and [the parties] were technically still married."

With respect to alimony, Lopez told the district court she was seeking \$2,000 per month for five years because she did not work while the parties were married. She acknowledged that they had been separated for two years, and she had been supporting herself during that time. The parties both had a high school education and rented their homes. Lopez worked as a receptionist in an office, and Penaloza was an underground operator and foreman in the construction industry. The court stated it would consider the length of the marriage, whether there was a disparity in income, and the parties' education levels in evaluating whether to award alimony. Based on the similar education levels, the relatively short marriage, "somewhat of a disparity in income," and Lopez's ability to find employment, the district court declined to award alimony.

Following the hearing, the district court entered a decree of divorce, which awarded the parties joint legal and physical custody of the children. The decree stated that "any custody and visitation orders made

herein are in the best interest of the children” but did not mention or analyze any of the statutory best interest factors. Although the court discussed domestic violence at the hearing, it did not include any findings related to that factor in the decree. With regard to child support, the district court found that Lopez’s gross monthly income was \$1,733 and Penaloza’s was \$5,000. The court noted that the current support order required Penaloza to pay \$2,515 in child support, but because he experienced more than a 20 percent reduction in income, his obligation would be reduced to \$854 per month until the parties’ eldest child graduated from high school. Following the eldest child’s graduation, the child support amount would be reduced to \$723 per month. The first payment was due on May 1st. The district court ordered that there were no child support arrearages and declined to award Lopez alimony. This appeal followed.²

On appeal, Lopez first argues the district court abused its discretion by denying her request for primary physical custody because it failed to analyze the statutory best interest factors and erroneously disregarded the 2005 instance of domestic violence.³

This court reviews a custody determination for an abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). While this court gives deference to a district court’s discretionary

²While this appeal was pending, Lopez sought and was granted a limited remand for the district court to modify the parties’ custodial timeshare schedule pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978), and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453 (2010). The district court thereafter entered a written order modifying the parties’ timeshare, but we do not address that order as neither party filed a notice of appeal challenging that order.

³Lopez does not challenge the joint legal custody designation.

determinations, deference is not owed to legal error or to findings that are so conclusory as to mask legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015). The district court's sole consideration when determining custody is the best interest of the child. NRS 125C.0035(1); *Ellis*, 123 Nev. at 149, 161 P.3d at 242. When evaluating a child's best interest, the district court must consider all twelve factors set forth in NRS 125C.0035(4), and a written custody decree must contain findings regarding those factors and tie the findings to the ultimate custody determination. *Davis*, 131 Nev. at 450-51, 352 P.3d at 1143 ("Crucially, the decree or order must tie the child's best interest, as informed by specific, relevant findings respecting [the statutory factors] and any other relevant factors, to the custody determination made."). There is a preference that joint physical custody is in a child's best interest if certain conditions are met. NRS 125C.0025(1).

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 decision to award joint physical custody. The divorce decree contained no findings regarding the children's best interest and neither addressed nor analyzed any of the best interest factors under NRS 125C.0035(4). Because the court did not examine the best interest factors, it likewise failed to tie the ultimate custody determination to the children's best interest. As a result, the district court abused its discretion in awarding joint physical custody without performing the required best interest analysis. *See Davis*, 131 Nev. at 450, 352 P.3d at 1142.

Moreover, although the district court inquired about the prior alleged instance of domestic violence at the hearing, it did not make any

findings as to that incident in the decree or otherwise address that issue in making its joint physical custody determination. Indeed, the domestic violence allegation is not mentioned in the divorce decree. Instead, the court simply stated at the hearing that domestic violence would not be a consideration in making the custody determination as there were no current instances of domestic violence. By failing to properly consider and make written findings regarding the alleged domestic violence, the district court further abused its discretion in making its custody determination. See NRS 125C.0035(4)(k) (one of the best interest factors that district courts are required to consider is whether either parent “has engaged in an act of domestic violence”); *Castle v. Simmons*, 120 Nev. 98, 105, 86 P.3d 1042, 1047 (2004) (providing that a district court “must hear *all* information regarding domestic violence in order to determine the child’s best interests” (emphasis in original)).

Accordingly, for the reasons set forth above, we reverse the district court’s award of joint physical custody and remand that issue for further proceedings consistent with this order.⁴ On remand, the district court must make express written findings regarding the best interest factors and tie those findings to the ultimate custody determination as required by *Davis*. 131 Nev. at 450-51, 352 P.3d at 1143. Additionally, the district court must consider the domestic violence incident in the context of the best interest factors and make the required findings regarding this issue. See *Soldo-Allesio v. Ferguson*, 141 Nev., Adv. Op. 9, 565 P.3d 842 849

⁴Pending 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).

(Ct. App. 2025) (providing that the district court must consider whether domestic violence has been proven by a preponderance of the evidence in determining which custody arrangement is in a child's best interest).

Turning to the issue of child support, in light of our reversal of the district court's custody determination, we likewise reverse the court's child support determination and remand that issue for further consideration once the issue of child custody is resolved. While Lopez argues the court should have utilized the low-income schedule in calculating child support, we need not address this issue since she failed to raise that issue in the district court in the first instance.⁵ *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that we need not address arguments raised for the first time on appeal). However, because Penaloza's income is relevant to the monthly child support payments that have accrued since the entry of the decree, we address Lopez's challenge to the district court's calculation of Penaloza's gross monthly income, and we conclude substantial evidence supports that determination.

This court reviews a district court's factual findings, including those regarding a party's income, for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by

⁵We note, however, that the district court is not precluded from considering the low-income schedule in any future recalculations of the parties' child support obligations.

Further, to the extent Lopez argues that Penaloza was required to pay child support for all three children in May 2024 and a reduced payment in June 2024 after their eldest child graduated high school, we note that the decree reflects the higher payment obligation until that child's graduation. However, because the decree is silent as to what month the support payment would change, the district court is directed to clarify when the lower support payment should have started.

substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Under NAC 425.120(1)(b), the monthly gross income of each obligor must be determined by “[t]he court after considering all financial or other information relevant to the earning capacity of the obligor.”

The district court determined Penaloza’s gross monthly income was \$5,000 after Penaloza testified at the hearing that he had earned a higher wage previously, but that this higher wage was for a temporary job. That testimony was corroborated by Penaloza’s paycheck stubs reflecting his wages and a letter from Penaloza’s employer stating he was no longer earning a “prevailing wage” and had returned to his regular rate of pay. While Lopez contends that the court did not consider Penaloza’s historical income, the hearing transcript shows that the court questioned him about his prior higher income and was apparently satisfied by his documentation and testimony that the previous higher wage was temporary. *See, e.g., Ellis*, 123 Nev. at 152, 161 P.3d at 244 (providing that this court will not second guess a district court’s resolution of factual issues involving conflicting evidence or reconsider its credibility findings). Accordingly, we discern no abuse of discretion in the district court’s determination of Penaloza’s gross monthly income and we therefore affirm that decision.

Next, Lopez contends that the district court erroneously waived Penaloza’s child support arrears in contravention of Nevada law. This court reviews a child support order for an abuse of discretion. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Under NRS 125B.140(1)(a), child support stemming from a court order is “a judgment by operation of law on or after the date a payment is due.” “Such a judgment may not be retroactively modified or adjusted and may be enforced in the same manner as other judgments of this State.” *Id.*

At the time the district court entered the decree, Penalzoa owed Lopez \$5,388.48 in child support arrears, according to a family support division arrears balance history log. Despite this, the court ordered that Penalzoa would not have to pay arrears as it believed that he had satisfied his prior obligation because “he’s been paying for so long and [the parties] were technically still married.” Contrary to the court’s ruling, child support arrears are not subject to retroactive modification by the court. NRS 125B.140(1)(a). Thus, we conclude that the district court abused its discretion by waiving Penalzoa’s child support arrears, and we reverse that determination. *See Day v. Day*, 82 Nev. 317, 320-21, 417 P.2d 914, 916 (1966) (“Payments once accrued for . . . support of children become vested rights and cannot thereafter be modified or voided.”).

Finally, Lopez argues that the district court abused its discretion by failing to award her alimony because it failed to consider the statutory factors set forth in NRS 125.150(9).


A district court has broad discretion in deciding whether to award alimony. *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 66, 439 P.3d 397, 400 (2019). Under NRS 125.150, a court may award alimony “as appears just and equitable.” NRS 125.150(1)(a). But, when considering whether to award alimony, the district court “shall” consider the factors enumerated in NRS 125.150(9) in addition to any other factors the district court considers relevant. NRS 125.150(9); *Kogod*, 125 Nev. at 66-67, 439 P.3d at 400-01.


In this case, while the district court referenced some of the statutory factors in denying Lopez’s request for alimony, it failed to consider all of the factors required by NRS 125.150(9), such as the financial conditions of the parties, the parties’ respective earning capacities, the standard of living during the marriage, Lopez’s career before the marriage,


and her contribution as a homemaker. Given the court's failure to meaningfully address the statutory factors, we cannot say that the court adequately exercised its discretion in denying Lopez alimony. *See Kogod*, 135 Nev. at 66, 439 P.3d at 400; *see also Davis*, 131 Nev. at 450, 352 P.3d at 1142 (noting that, although we deferentially review the district court's discretionary determinations, "deference is not owed to legal error, or to findings so conclusory they may mask legal error" (internal citations omitted)). Consequently, we reverse the district court's denial of alimony and remand for the court to reconsider this issue by examining all of the requisite factors in making its alimony determination. *See Forrest v. Forrest*, 99 Nev. 602, 606, 668 P.2d 275, 278 (1983) (explaining that, where the district court does not indicate in its decree that it gave adequate consideration to the alimony factors in failing to award any alimony to the appellant, this court must remand for reconsideration of the issue).

Based on the foregoing, we affirm the district court's calculation of Penaloza's gross monthly income; however, we reverse and remand as to all other issues.

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Presiding Judge, Family Division, Eighth Judicial District Court
Department Y, Family Division, Eighth Judicial District Court
Law Offices of F. Peter James, Esq.
Sergio Penaloza
Eighth District Court Clerk