Exhibit A

NRS 125.480 Best interests of child; preferences; presumptions when court determines parent or person seeking custody is perpetrator of domestic violence or has committed act of abduction against child or any other child.

1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly.

2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.

3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:

(a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application.

(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

(c) To any person related within the fifth degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

(d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody.

(b) Any nomination by a parent or a guardian for the child.

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.

(f) The mental and physical health of the parents.

(g) The physical, developmental and emotional needs of the child.

(h) The nature of the relationship of the child with each parent.

(i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the child.

(k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

(l) Whether either parent or any other person seeking custody has committed any act of abduction against the child or any other child.

5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

6. If after an evidentiary hearing held pursuant to subsection 5 the court determines that each party has engaged in acts of domestic violence, it shall, if possible, then determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:

(a) All prior acts of domestic violence involving either party;

(b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;

(c) The likelihood of future injury;

(d) Whether, during the prior acts, one of the parties acted in self-defense; and

(e) Any other factors which the court deems relevant to the determination.

➥ In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies to both parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies only to the party determined by the court to be the primary physical aggressor.

7. A determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody has committed any act of abduction against the child or any other child creates a rebuttable presumption that sole or joint custody or unsupervised visitation of the child by the perpetrator of the abduction is not in the best interest of the child. If the parent or other person seeking custody does not rebut the presumption, the court shall not enter an order for sole or joint custody or unsupervised visitation of the child by the perpetrator and the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of abduction occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other person from whom the child was abducted.

8. For purposes of subsection 7, any of the following acts constitute conclusive evidence that an act of abduction occurred:

(a) A conviction of the defendant of any violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct;

(b) A plea of guilty or nolo contendere by the defendant to any violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct; or

(c) An admission by the defendant to the court of the facts contained in the charging document alleging a violation of NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.

9. If, after a court enters a final order concerning custody of the child, a magistrate determines there is probable cause to believe that an act of abduction has been committed against the child or any other child and that a person who has been awarded sole or joint custody or unsupervised visitation of the child has committed the act, the court shall, upon a motion to modify the order concerning custody, reconsider the previous order concerning custody pursuant to subsections 7 and 8.

10. As used in this section:

(a) "Abduction" means the commission of an act described in NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.

(b) "Domestic violence" means the commission of any act described in NRS 33.018.

(Added to NRS by 1981, 283; A 1991, 980, 1175; 1995, 330; 2005, 1678; 2009, 218, 222)

Exhibit B

Cite as: Rivero v. Rivero

125 Nev. Adv. Op. No. 34

August 27, 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 46915

MICHELLE RIVERO,

Appellant,

vs.

ELVIS RIVERO,

Respondent.

Petition for rehearing of Rivero v. Rivero, 124 Nev. Adv. Op. No. 84, 195 P.3d 328 (2008), appeal from a district court post-divorce decree order modifying a joint child custody award. Eighth Judicial District Court, Family Court Division, Clark County; Stefany Miley, Judge.

Rehearing denied; opinion withdrawn; affirmed in part, reversed in part, and remanded.

PICKERING, J., dissented in part.

Steinberg Law Group and Brian J. Steinberg and Jillian M. Tindall, Las Vegas, for Appellant.

Bruce I. Shapiro, Ltd., and Bruce I. Shapiro, Henderson, for Respondent.

Fahrendorf, Viloria, Oliphant & Oster, LLP, and Raymond E. Oster, Reno, for Amicus Curiae State Bar of Nevada, Family Law Section.

BEFORE THE COURT EN BANC.

OPINION

By the Court, GIBBONS, J.:

We previously issued an opinion in this case on October 30, 2008, affirming in part, reversing in part, and remanding. Respondent Elvis Rivero's petition for rehearing followed. We then ordered answers to the petition from appellant Michelle Rivero and amicus curiae, the State Bar of Nevada Family Law Section.

We will consider rehearing when we have overlooked or misapprehended material facts or questions of law or when we have overlooked, misapplied, or failed to consider legal authority directly controlling a dispositive issue in the appeal. NRAP 40(c)(2). Having considered the petition and answers thereto in light of this standard, we conclude that rehearing is not warranted. Therefore, we deny the petition for rehearing. Although we deny rehearing, we withdraw our October 30, 2008, opinion and issue this opinion in its place.

Ms. Rivero and Mr. Rivero stipulated to a divorce decree that provided for "joint physical custody" of their minor child, with Ms. Rivero having the child five days each week and Mr. Rivero having the child two days each week. The decree awarded no child support. Less than two months after entry of the divorce decree, Ms. Rivero brought a motion to modify child support. The district court dismissed the motion. Less than one year later, Ms. Rivero brought a motion to modify child custody and support. The district court ordered that the decree would remain in force, with the parties having joint custody of their child and neither party receiving child support. The district court deferred ruling on the motion to modify custody and ordered the parties to mediation to devise a timeshare plan.

Ms. Rivero then requested that the district court judge recuse herself. When the judge refused to recuse herself, Ms. Rivero moved to disqualify her. The Chief Judge of the Eighth Judicial District Court denied Ms. Rivero's motion for disqualification, concluding that it lacked merit. The district court later awarded Mr. Rivero attorney fees for having to defend Ms. Rivero's disqualification motion.

At the court-ordered mediation, the parties were unable to reach a timeshare agreement. Following mediation, after a hearing, the district court modified the custody arrangement from a five-day, two-day split to an equal timeshare. Ms. Rivero appeals.

We are asked to resolve several custody and support issues on appeal. Preliminarily, the parties dispute the definition of joint physical custody. Additionally, Ms. Rivero challenges the following district court rulings: (1) the court's determination that the parties had joint physical custody, (2) the court's modification of the custody arrangement, (3) the court's denial of her motion for child support, (4) the district court judge's refusal to recuse herself and the chief judge's denial of Ms. Rivero's motion for disqualification, and (5) the court's award of attorney fees to Mr. Rivero for defending against Ms. Rivero's disqualification motion.

Initially, to address the definition of joint physical custody, we define legal custody, including sole legal custody and joint legal custody. We then define physical custody, including joint physical custody and primary physical custody. In defining joint physical custody, we adopt a definition that focuses on minor children having frequent associations and a continuing relationship with both parents and parents sharing the rights and responsibilities of child rearing. Consistent with the recommendation of the Family Law Section, this joint physical custody definition requires that each party have physical custody of the child at least 40 percent of the time. We then address the district court's rulings.

First, we address the district court's finding that the parties had a joint physical custody arrangement. In reaching our conclusion, we clarify that parties may enter into custody agreements and create their own custody terms and definitions. The courts may enforce such agreements as contracts. However, once the parties move the court to modify the custody agreement, the court must use the terms and definitions under Nevada law. In this case, the district court properly disregarded the parties' definition of joint physical custody in the divorce decree and applied Nevada law in determining that an equal timeshare was appropriate. Although it reached the proper conclusion, the district court abused its discretion by failing to set forth specific findings of fact to support its determination.

Second, we conclude that the district court abused its discretion by modifying the custody timeshare arrangement without making specific findings of fact that the modification was in the child's best interest.

Third, we conclude that the district court abused its discretion by denying Ms. Rivero's motion to modify child support without making any factual findings to justify its decision. We also clarify the circumstances under which a district court may modify a child support order. Under NRS Chapter 125B and our caselaw, a court has authority to modify a child support order upon a finding of a change in circumstances since the prior order. Also, in accordance with the Family Law Section's suggestion, we withdraw the Rivero formula for calculating child support.

Fourth, we conclude that the district court judge properly refused to recuse herself, and the chief judge properly denied Ms. Rivero's motion for disqualification. The record contains no evidence that the district court judge had personal bias against either of the parties.

Fifth and finally, we conclude that the district court abused its discretion by awarding Mr. Rivero attorney fees as a sanction for Ms. Rivero's disqualification motion because the district court made no determination whether the motion was frivolous, and no evidence supports the sanction.

FACTS AND PROCEDURAL HISTORY

Ms. Rivero filed a complaint for divorce, and the parties eventually reached a settlement. The district court entered a divorce decree incorporating the parties' agreement. The parties agreed to joint physical custody of the child, with Ms. Rivero having physical custody five days each week and Mr. Rivero having physical custody for the remaining two days. The divorce decree also reflected the parties' agreement that neither party was obligated to pay child support.

Less than two months after entry of the divorce decree, Ms. Rivero moved the court to modify the decree by awarding her child support. The district court dismissed her motion. Less than one year later, Ms. Rivero moved the district court for primary physical custody and child support. She alleged that Mr. Rivero did not spend time with the child, that instead his elderly mother took care of the child, and that he did not have suitable living accommodations for the child. Ms. Rivero also argued that she had de facto primary custody because she cared for the child most of the time. Mr. Rivero countered that Ms. Rivero denied him visitation unless he provided food, clothes, and money and denied him overnight visitation once he became engaged to another woman. Mr. Rivero requested that the district court enforce the 5/2 timeshare in the divorce decree, or, alternatively, order a 50/50 timeshare.

The district court held a custody hearing, during which the parties presented contradictory testimony regarding how much time Mr. Rivero actually spent with the child. The district court ruled that the matter did not warrant an evidentiary hearing. The district court further found that the use of the term joint physical custody in the divorce decree did not accurately reflect the timeshare arrangement that the parties were actually practicing, in which Ms. Rivero seemed to have physical custody most of the time. As a result, the court denied Ms. Rivero's motion for child support, found that the parties had joint physical custody, and ordered the parties to mediation to establish a more equal timeshare plan to reflect a joint physical custody arrangement.

After the mediation, but before the next district court hearing, Ms. Rivero served a subpoena on Mr. Rivero's employer for his employment records. The district court granted Mr. Rivero's motion to quash the subpoena, explaining that under the divorce decree, each party had joint physical custody, neither party owed child support, and the only pending issue was whether the parties could agree on a timeshare plan. Ms. Rivero then argued that the district court should reopen the child support issue and allow relevant discovery.

When the district court refused, Ms. Rivero requested that the district court judge recuse herself. The district court judge denied the request. Ms. Rivero then moved to disqualify the district court judge, alleging that the judge did not seriously consider the facts or the law because she was biased based on the parties' physical appearance. Mr. Rivero opposed the motion and moved for attorney fees. The district court judge submitted an affidavit in which she swore that she was unbiased. After considering Ms. Rivero's motion to disqualify the district court judge, the supporting affidavits, and Mr. Rivero's opposition, the chief judge denied the motion. She did not conduct a hearing, and Ms. Rivero did not file a reply. The chief judge concluded that Ms. Rivero's claims appeared to rely on "prior adverse rulings of the judge" and that "[r]ulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification." Thus, the chief judge found that Ms. Rivero's motion was without merit.

At a subsequent hearing, the district court granted Mr. Rivero's motion for attorney fees, noting that Ms. Rivero's disqualification motion was without merit.

During the same hearing, the district court also addressed the custody timeshare arrangement because the parties had been unable to reach an agreement in mediation. Although the divorce decree provided Ms. Rivero with custody five days each week and Mr. Rivero with custody two days each week, the district court concluded that the parties actually intended an equal timeshare. The district court noted that it was "just trying to find a middle ground" between what the divorce decree provided and what the parties actually wanted regarding a custody timeshare. Further, the court found that the decree's order for joint physical custody was inconsistent with the decree's timeshare arrangement because the decree's five-day, two-day timeshare did not constitute joint physical custody. In its order, the district court concluded that the parties intended joint physical custody and ordered an equal timeshare.

The district court found that Ms. Rivero did not have de facto primary physical custody. Therefore, the court determined that an evidentiary hearing was unnecessary because it was not changing primary custody to joint custody, but was modifying a joint physical custody arrangement.

Ms. Rivero appeals, challenging the district court's order denying her motion for child support, the order denying her motion to disqualify the district court judge, and the order modifying the custody timeshare and awarding Mr. Rivero attorney fees.[1]

DISCUSSION

In order to clarify the definition of joint physical custody, we first address the definition of legal custody. Physical and legal custody involve separate legal rights and control separate factual scenarios. Therefore, we discuss both legal and physical custody to clarify the distinctions.

After defining both joint physical custody and primary physical custody, we apply those definitions to the issues on appeal. These issues include the district court's custody modification and its denial of Ms. Rivero's motion to modify child support.

Finally, we address Ms. Rivero's motions for recusal and disqualification, and the district court's award of attorney fees to Mr.

Rivero arising from those motions.

The Family Law Section requests that this court define all types of legal and physical custody to create a continuum in which it is clear where one type of custody ends and another begins. It argues that such definitions will provide much needed clarity and certainty in child custody law. Our discussion of child custody involves two distinct components of custody: legal custody and physical custody. The term "custody" is often used as a single legal concept, creating ambiguity. NRS 125.460, NRS 125.490 (using the term "joint custody"). To emphasize the distinctions between these two types of custody and to provide clarity, we separately define legal custody, including joint and sole legal custody, and then we define physical custody, including joint physical and primary physical custody.

I. Legal custody

Legal custody involves having basic legal responsibility for a child and making major decisions regarding the child, including the child's health, education, and religious upbringing. Mack v. Ashlock, 112 Nev. 1062, 1067, 921 P.2d 1258, 1262 (1996) (Shearing, J., concurring); Hearing on S.B. 188 Before the Senate Judiciary Comm., 61st Leg. (Nev., Feb. 12, 1981). Sole legal custody vests this right with one parent, while joint legal custody vests this right with both parents. Mack, 112 Nev. at 1067, 921 P.2d at 1262 (Shearing, J. concurring); Cal. Fam. Code §§ 3003, 3006 (West 2004)[2] (defining sole and joint legal custody). Joint legal custody requires that the parents be able to cooperate, communicate, and compromise to act in the best interest of the child. See Mosley v. Figliuzzi, 113 Nev. 51, 60-61, 930 P.2d 1110, 1116 (1997) (stating that if disagreement between parents affects the welfare of the child, it could defeat the presumption that joint custody is in the best interest of the child and warrant modifying a joint physical custody order); Hearing on S.B. 188 Before the Assembly Judiciary Comm., 61st Leg. (Nev., Apr. 2, 1981) (discussing that joint legal custody requires agreement between the parents). In a joint legal custody situation, the parents must consult with each other to make major decisions regarding the child's upbringing, while the parent with whom the child is residing at that time usually makes minor day-to-day decisions. See Mack, 112 Nev. at 1067, 921 P.2d at 1262 (Shearing, J., concurring) (discussing that the parents can bring unresolved disputes before the court); Hearing on S.B. 188 Before the Senate Judiciary Comm., 61st Leg. (Nev., Feb. 12, 1981) (comments of Senator Wagner and Senator Ashworth) (discussing that both parents are involved with making major decisions regarding the children, and if they cannot agree, the courts will settle their disputes); Fenwick v. Fenwick, 114 S.W.3d 767, 777-78 (Ky. 2003) (explaining that in a joint legal custody arrangement, the parents confer on all major decisions, but the parent with whom the child is residing makes the minor day-to-day decisions), superseded by statute on other grounds as stated in Fowler v. Sowers, 151 S.W.3d 357, 359 (Ky. Ct. App. 2004), overruled on other grounds by Frances v. Frances, 266 S.W 3d 754, 756-57 (Ky. 2008), and Pennington v. Marcum, 266 S.W.3d 759, 768 (Ky. 2008).

Joint legal custody can exist regardless of the physical custody arrangements of the parties. NRS 125.490(2); Mack, 112 Nev. at 1067, 921 P.2d at 1262 (Shearing, J. concurring). Also, the parents need not have equal decision-making power in a joint legal custody situation. Fenwick, 114 S.W.3d at 776. For example, one parent may have decision-making authority regarding certain areas or activities of the child's life, such as education or healthcare. Id. If the parents in a joint legal custody situation reach an impasse and are unable to agree on a decision, then the parties may appear before the court "on an equal footing" to have the court decide what is in the best interest of the child. Mack, 112 Nev. at 1067, 921 P.2d at 1262 (Shearing, J., concurring); Fenwick, 114 S.W.3d at 777 n.24.

II. Physical custody

Physical custody involves the time that a child physically spends in the care of a parent. During this time, the child resides with the parent and that parent provides supervision for the child and makes the day-to-day decisions regarding the child.[3] Parents can share joint physical custody, or one parent may have primary physical custody while the other parent may have visitation rights. See Ellis v. Carucci, 123 Nev. 145, 147, 161 P.3d 239, 240 (2007) (describing the mother as having primary physical custody and the father as having liberal visitation); Barbagallo v. Barbagallo, 105 Nev. 546, 549, 779 P.2d 532, 534 (1989) (discussing primary and secondary custodians); Cal. Fam. Code §§ 3004, 3007 (West 2004) (defining joint and sole physical custody).

The type of physical custody arrangement is particularly important in three situations. First, it determines the standard for modifying physical custody.[4] Second, it requires a specific procedure if a parent wants to move out of state with the child. Potter v. Potter, 121 Nev. 613, 618, 119 P.3d 1246, 1249 (2005). Third, the type of physical custody arrangement affects the child support award. Barbagallo, 105 Nev. at 549, 779 P.2d at 534. Because the physical custody arrangement is crucial in making these determinations, the district courts need clear custody definitions in order to evaluate the true nature of parties' agreements. Absent direction from the Legislature, we define joint physical custody and primary physical custody in light of existing Nevada law.

A. Joint physical custody

Ms. Rivero and the Family Law Section assert that this court should clarify the definition of joint physical custody to determine whether it requires a specific timeshare agreement. The Family Law Section suggests that we define joint physical custody by requiring that each parent have physical custody of the child at least 40 percent of the time. In accordance with this suggestion, and for the reasons set forth below, we clarify Nevada's definition of joint physical custody pursuant to Nevada statutes and caselaw and create parameters to clarify which timeshare arrangements qualify as joint physical custody.

Although Nevada law suggests that joint physical custody approximates an equal timeshare, to date, neither the Nevada

Legislature nor this court have explicitly defined joint physical custody or specified whether a specific timeshare is required for a joint physical custody arrangement. See Potter, 121 Nev. at 619 n.16, 119 P.3d at 1250 n.16 (declining to address the issue of whether joint physical custody requires a particular timeshare); Barbagallo, 105 Nev. at 548, 779 P.2d at 534 (noting that, in 1987, when it enacted the child support formula, the Legislature declined to define primary physical custody according to a particular timeshare). In fact, even the terminology is inconsistent. This court has used the following phrases to describe situations where both parents have physical custody: shared custodial arrangements, joint physical custody, equal physical custody, shared physical custody, and joint and shared custody. See Wesley v. Foster, 119 Nev. 110, 113, 65 P.3d 251, 253 (2003) (discussing shared custodial arrangements); Wright v. Osburn, 114 Nev. 1367, 1368, 970 P.2d 1071, 1072 (1998) (using the terms joint physical custody, equal physical custody, and shared physical custody); Barbagallo, 105 Nev. at 547-48, 779 P.2d at 533-34 (utilizing the terms joint or shared custody). Given the various terms used to describe joint physical custody and the lack of a precise definition and timeshare requirement, we now define joint physical custody and the timeshare required for such arrangements.

1. Defining joint physical custody

"In determining custody of a minor child . . . the sole consideration of the court is the best interest of the child." NRS 125.480 (1). The Legislature created a presumption that joint legal and joint physical custody are in the best interest of the child if the parents so agree. NRS 125.490(1). The policy of Nevada is to advance the child's best interest by ensuring that after divorce "minor children have frequent associations and a continuing relationship with both parents . . . and [t]o encourage such parents to share the rights and responsibilities of child rearing." NRS 125.460. To further this policy, the Legislature adopted the statutes that now comprise NRS Chapter 125 to educate and encourage parents regarding joint custody arrangements, encourage parents to cooperate and work out a custody arrangement before going to court to finalize the divorce, ensure the healthiest psychological arrangement for children, and minimize the adversarial, winner-take-all approach to custody disputes. Mosley, 113 Nev. at 63-64, 930 P.2d at 1118; Hearing on S.B. 188 Before the Senate Judiciary Comm., 61st Leg. (Nev., Feb. 12, 1981) (Senator Wagner's comments) (discussing parents reaching an agreement before coming to court); Hearing on S.B. 188 Before the Assembly Judiciary Comm., 61st Leg. (Nev., Apr. 2, 1981) (summary of supporting information) (enumerating flaws in the old statute).

Although NRS Chapter 125 does not contain a definition of joint physical custody, the legislative history regarding NRS 125.490 reveals the Legislature's understanding of its meaning. Joint physical custody is "[a]warding custody of the minor child or children to BOTH PARENTS and providing that physical custody shall be shared by the parents in such a way to ensure the child or children of frequent associations and a continuing relationship with both parents."[5] Hearing on S.B. 188 Before the Assembly Judiciary Comm., 61st Leg. (Nev., Apr. 2, 1981) (summary of supporting information). This does not include divided or alternating custody, where each parent acts as a sole custodial parent at different times, or split custody, where one parent is awarded sole custody of one or more of the children and the other parent is awarded sole custody of one or more of the children. Id.

2. The timeshare required for joint physical custody

The question then remains, what constitutes joint physical custody to ensure the child frequent associations and a continuing relationship with both parents? Our law presumes that joint physical custody approximates a 50/50 timeshare. See Wesley, 119 Nev. at 112-13, 65 P.3d at 252-53 (discussing shared custody arrangements and equal timeshare); Wright, 114 Nev. at 1368, 970 P.2d at 1071-72 (discussing joint physical custody and equal timeshare). This court has noted that the public policy, as stated in NRS 125.490, is that joint custody is presumably in the best interest of the child if the parents agree to it and that this policy encourages equally shared parental responsibilities. Mosley, 113 Nev. at 60-61 & n.4, 930 P.2d at 1116 & n.4.

Although joint physical custody must approximate an equal timeshare, given the variations inherent in child rearing, such as school schedules, sports, vacations, and parents' work schedules, to name a few, an exactly equal timeshare is not always possible. Therefore, there must be some flexibility in the timeshare requirement. The question then becomes, when does a timeshare become so unequal that it is no longer joint physical custody? Courts have grappled with this question and come to different conclusions. For example, this court has described a situation where the children live with one parent and the other parent has every- other-weekend visitation as primary physical custody with visitation, even when primary custody was changed for one month out of the year and the other parent would revert back to weekend visitations. Metz v. Metz, 120 Nev. 786, 788-89, 101 P.3d 779, 781 (2004). In Wright, 114 Nev. at 1368, 970 P.2d at 1071, this court described an arrangement where the parents had the children on a rotating weekly basis as joint physical custody.

Similarly, the California Court of Appeal has held that "[physical] custody one day per week and alternate weekends constitutes liberal visitation, not joint [physical] custody." People v. Mehaisin, 124 Cal. Rptr. 2d 683, 687 (Ct. App. 2002). Likewise, when the mother has temporary custody and the father has visitation for a one-month period, the parties do not have joint physical custody. Id. at 685, 687. Rather, the father has a period of visitation, and the mother has sole physical custody thereafter. Id. at 687. Just as Nevada has defined joint physical custody as requiring an equal timeshare, the California Court of Appeal noted that joint physical custody includes situations in which the children split their time living with each parent and spend nearly equal time with each parent. Id. Some jurisdictions have adopted bright-line rules regarding the timeshare requirements for joint physical custody so that anything too far removed from a 50/50 timeshare cannot be considered joint physical custody.[6]

We conclude that, consistent with legislative intent and our caselaw, in joint physical custody arrangements, the timeshare must be approximately 50/50. However, absent legislative direction regarding how far removed from 50/50 a timeshare may be and still

constitute joint physical custody, the law remains unclear. Therefore, to approximate an equal timeshare but allow for necessary flexibility, we hold that each parent must have physical custody of the child at least 40 percent of the time to constitute joint physical custody. We acknowledge that the Legislature is free to alter the timeshare required for joint physical custody, but we adopt this guideline to provide needed clarity for the district courts. This guideline ensures frequent associations and a continuing relationship with both parents. If a parent does not have physical custody of the child at least 40 percent of the time, then the arrangement is one of primary physical custody with visitation. We now address how the courts should calculate the 40-percent timeshare.

We note that our dissenting colleague's reliance on Barbagallo v. Barbagallo, 105 Nev. 546, 779 P.2d 534 (1989), for the proposition that this court should not adopt the 40 percent timeshare requirement, is misplaced. In Barbagallo, this court noted that the Legislature had considered adopting specific timeshare requirements for determining which parent would pay child support in a joint physical custody arrangement but declined to do so. Id. at 548, 779 P.2d at 534. Thus, Barbagallo was declining to mathematically define child custody for the purpose of creating new child support calculations. Notably, this opinion does not alter or adopt any child support formulas, but rather reaffirms the child support calculations in Barbagallo, 105 Nev. 546, 779 P.2d 534, and Wright, 114 Nev. 1367, 970 P.2d 1071, which were in effect before this case. Prior to this opinion, Barbagallo, 105 Nev. at 549, 779 P.2d at 534-35, established how to calculate child support when one parent has primary physical custody, and Wright, 114 Nev. at 1368-69, 970 P.2d at 1072, established the calculation when the parents share joint physical custody. This opinion clarifies what arrangements constitute primary and joint physical custody so that parties, attorneys, and district courts readily know which child support calculation to apply. Thus, this opinion does not adopt new custody definitions for the purpose of formulating new child support calculations. Rather, it is based on this court's precedent and clarifies custody definitions so that courts can fairly and consistently apply the Barbagallo and Wright formulas that predated this opinion.

Our dissenting colleague also argues that the Legislature should be creating the custody definitions set out in this opinion. The issues in this case and the Family Law Section's amicus curiae brief demonstrate that there are gaps in the law. However, despite these gaps, attorneys must still advise their clients, public policy still favors settlement, and parties are still entitled to consistent and fair resolution of their disputes. To resolve the issues on appeal and ensure consistent and fair application of the law by district courts, this court has attempted to fill some of these gaps by defining the various types of child custody.

This court has previously created predictability for litigants to fill such a gap in the law in Malmquist v. Malmquist, 106 Nev. 231, 792 P.2d 372 (1990). In Malmquist, this court adopted a standard formula for district courts to apply "to apportion the community and separate property shares in the appreciation of a separate property residence obtained with a separate property loan prior to marriage." Id. at 238, 792 P.2d at 376. This court noted that although the district courts can make equitable determinations in individual cases, "the aggregate result becomes unfair when similarly situated persons receive disparate returns on their home investments." Id. The same reasoning applies here. District courts can use their discretion to make fair determinations in individual child custody cases. However, this becomes unfair when different parties similarly situated obtain different results. Such unreliable outcomes also make it difficult for attorneys to advise their clients and for parties to settle their disputes. Therefore, the timeshare requirement that this opinion establishes is both necessary to ensure consistent and fair application of the law and proper under this court's precedent.

3. Calculating the timeshare

The district court should calculate the time during which a party has physical custody of a child over one calendar year. Each parent must have physical custody of the child at least 40 percent of the time, which is 146 days per year. Calculating the timeshare over a one-year period allows the court to consider weekly arrangements as well as any deviations from those arrangements such as emergencies, holidays, and summer vacation. In calculating the time during which a party has physical custody of the child, the district court should look at the number of days during which a party provided supervision of the child, the child resided with the party, and during which the party made the day-to-day decisions regarding the child. The district court should not focus on, for example, the exact number of hours the child was in the care of the parent, whether the child was sleeping, or whether the child was in the care of a third-party caregiver or spent time with a friend or relative during the period of time in question.

Therefore, absent evidence that joint physical custody is not in the best interest of the child, if each parent has physical custody of the child at least 40 percent of the time, then the arrangement is one of joint physical custody.

B. Defining primary physical custody

We now discuss primary physical custody to contrast it with joint physical custody and to clarify its definition. A parent has primary physical custody when he or she has physical custody of the child subject to the district court's power to award the other parent visitation rights. See, e.g., Ellis, 123 Nev. at 147, 161 P.3d at 240. The focus of primary physical custody is the child's residence. The party with primary physical custody is the party that has the primary responsibility for maintaining a home for the child and providing for the child's basic needs. See Barbagallo, 105 Nev. at 549, 779 P.2d at 534 (discussing primary custodians and custodial parents in the context of child support); see Tenn. Code Ann. § 36-6-402(4) (2005) (defining "primary residential parent" as the parent with whom the child resides for more than 50 percent of the time). This focus on residency is consistent with NRS 125C.010, which requires that a court, when ordering visitation, specify the "habitual residence" of the child. Thus, the determination of who has primary physical custody revolves around where the child resides.

Primary physical custody arrangements may encompass a wide array of circumstances. As discussed above, if a parent has physical custody less than 40 percent of the time, then that parent has visitation rights and the other parent has primary physical custody. Likewise, a primary physical custody arrangement could also encompass a situation where one party has primary physical custody and the other party has limited or no visitation. See Metz, 120 Nev. at 788-89, 101 P.3d at 781 (describing a primary physical custody situation where the nonprimary physical custodian had visitation every other weekend).

III. Custody modification

Having determined what constitutes joint physical custody and primary physical custody, we now consider whether the district court abused its discretion in determining that the parties had joint physical custody when their divorce decree described a 5/2 custodial timeshare but labeled the arrangement as joint physical custody.

This court reviews the district court's decisions regarding custody, including visitation schedules, for an abuse of discretion. Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). District courts have broad discretion in child custody matters, but substantial evidence must support the court's findings. Ellis, 123 Nev. at 149, 161 P.3d at 241-42. Substantial evidence "is evidence that a reasonable person may accept as adequate to sustain a judgment." Id. at 149, 161 P.3d at 242.

Ms. Rivero contends that the district court abused its discretion by construing the term "joint physical custody" in the divorce decree to mean an equal timeshare, when the parties defined joint physical custody in the divorce decree as a 5/2 timeshare. She also argues that the district court abused its discretion in finding that she and Mr. Rivero had joint physical custody of their child because she asserts that she had de facto primary physical custody of the child.

We conclude that the district court properly disregarded the parties' definition of joint physical custody because the district court must apply Nevada's physical custody definition—not the parties' definition. We also conclude that the district court abused its discretion by not making specific findings of fact to support its decision that the custody arrangement constituted joint physical custody and that modification of the divorce decree was in the best interest of the child.

A. Custody agreements

We now address the modification of custody agreements. We conclude that the terms of the parties' custody agreement will control except when the parties move the court to modify the custody arrangement. In custody modification cases, the court must use the terms and definitions provided under Nevada law.[7]

Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy. See D.R. Horton, Inc. v. Green, 120 Nev. 549, 558, 96 P.3d 1159, 1165 (2004) (citing unconscionability as a limitation on enforceability of a contract); NAD, Inc. v. Dist. Ct., 115 Nev. 71, 77, 976 P.2d 994, 997 (1999) (stating "parties are free to contract in any lawful matter"); Miller v. A & R Joint Venture, 97 Nev. 580, 582, 636 P.2d 277, 278 (1981) (discussing public policy as a limitation on enforceability of a contract). Therefore, parties are free to agree to child custody arrangements and those agreements are enforceable if they are not unconscionable, illegal, or in violation of public policy. However, when modifying child custody, the district courts must apply Nevada child custody law, including NRS Chapter 125C and caselaw. NRS 125.510(2) (discussing modification of a joint physical custody order); Ellis, 123 Nev. at 150, 161 P.3d at 242 (discussing modification of a primary physical custody order). Therefore, once parties move the court to modify an existing child custody agreement, the court must use the terms and definitions provided under Nevada law, and the parties' definitions no longer control. In this case, Ms. Rivero moved the district court to modify the decree. Therefore, the district court properly disregarded the parties' definition of joint physical custody.

B. The district court's determination that the parties' custody arrangement was joint physical custody and its modification of the custody arrangement

When considering whether to modify a physical custody agreement, the district court must first determine what type of physical custody arrangement exists because different tests apply depending on the district court's determination. A modification to a joint physical custody arrangement is appropriate if it is in the child's best interest. NRS 125.510(2). In contrast, a modification to a primary physical custody arrangement is appropriate when there is a substantial change in the circumstances affecting the child and the modification serves the child's best interest. Ellis, 123 Nev. at 150, 161 P.3d at 242.

Under the definition of joint physical custody discussed above, each parent must have physical custody of the child at least 40 percent of the time. This would be approximately three days each week. Therefore, the district court properly found that the 5/2 timeshare included in the parties' divorce decree does not constitute joint physical custody. The district court must then look at the actual physical custody timeshare that the parties were exercising to determine what custody arrangement is in effect.

The district court summarily determined that Mr. and Ms. Rivero shared custody on approximately an equal time basis. Based on this finding, the district court determined that it was modifying a joint physical custody arrangement, and therefore, Ms. Rivero, as the moving party, had the burden to show that modifying the custody arrangement was in the child's best interest. NRS 125.510(2);

Truax v. Truax, 110 Nev. 437, 438-39, 874 P.2d 10, 11 (1994). However, the district court did not make findings of fact supported by substantial evidence to support its determination that the custody arrangement was, in fact, joint physical custody. Ellis, 123 Nev. at 149, 161 P.3d at 241-42. Therefore, this decision was an abuse of discretion.

Moreover, the district court abused its discretion by modifying the custody agreement to reflect a 50/50 timeshare without making specific findings of fact demonstrating that the modification was in the best interest of the child.

Specific factual findings are crucial to enforce or modify a custody order and for appellate review. Accordingly, on remand, the district court must evaluate the true nature of the custodial arrangement, pursuant to the definition of joint physical custody described above, by evaluating the arrangement the parties are exercising in practice, regardless of any contrary language in the divorce decree. The district court shall then apply the appropriate test for determining whether to modify the custody arrangement and make express findings supporting its determination

IV. Child support

Ms. Rivero argues that the district court erred in denying her motion for child support by not reviewing the parties' affidavits of financial condition and noting the discrepancies in the parties' incomes.[8] We conclude that the district court abused its discretion in denying Ms. Rivero's motion for child support because it did not make specific findings of fact supported by substantial evidence. In reaching our conclusion, we first address the circumstances under which the district court may modify a child support order and discuss the calculation of child support in primary physical custody and joint physical custody arrangements.

A. Modifying a child support order

An ambiguity has arisen in our caselaw regarding when the district court has the authority to modify a child support order. Therefore, we take this opportunity to clarify that the district court only has authority to modify a child support order upon finding that there has been a change in circumstances since the entry of the order and the modification is in the best interest of the child. In so doing, we look to NRS Chapter 125B and our caselaw.

1. Modification of a child support order requires a change in circumstances

As with custody cases, the requirement of changed circumstances in child support cases prevents parties "[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 (internal quotations omitted). Therefore, a court cannot modify a child support order if the predicate facts upon which the court issued the order are substantially unchanged. Mosley v. Figliuzzi, 113 Nev. 51, 58-59, 930 P.2d 1110, 1114-15 (1997) (discussing custody orders). Also, the modification must be in the best interest of the child. NRS 125B.145(2)(b).

The Legislature has specified when a court will review a child support order. A court must review a support order, if requested by a party or legal guardian, every three years. NRS 125B.145(1)(b). The court may also review a support order upon a showing of changed circumstances. NRS 125B.145. Because the term "may" is discretionary, the district court has discretion to review a support order based on changed circumstances but is not required to do so. Fourchier v. McNeil Const. Co., 68 Nev. 109, 122, 227 P.2d 429, 435 (1951). However, a change of 20 percent or more in the obligor parent's gross monthly income requires the court to review the support order. NRS 125B.145(4). Although these provisions indicate when the review of a support order is mandatory or discretionary, they do not require the court to modify the order upon the basis of these mandatory or discretionary reviews.

The district court has authority to modify a support order if there has been a factual or legal change in circumstances since it entered the order. Since its enactment of the statutes that today comprise NRS Chapter 125B, the Legislature has allowed modification of child support orders upon changed circumstances. 1987 Nev. Stat., ch. 813, § 3, at 2267. Nevada law also requires the district court, when adjusting the child support amount, to consider the factors in NRS 125B.070 and NRS 125B.080(9). 1987 Nev. Stat., ch. 813, § 3, at 2268. We have specified that even equitable adjustments to support awards must be based on the NRS 125B.080(9) factors. Khaldy v. Khaldy, 111 Nev. 374, 376-77, 892 P.2d 584, 585 (1995). Therefore, when considering a modification motion, the district court will always consider the same factual circumstances—those specified in NRS 125B.070 and 125B.080(9). In evaluating whether the factual circumstances have changed, the district court may consider facts that were previously unknown to the court or a party, even if the facts predate the support order at issue. See Castle v. Simmons, 120 Nev. 98, 103-06, 86 P.3d 1042, 1046-48 (2004) (holding that a parent may present evidence of child abuse that occurred before the entry of the last child custody order because of the presumption that physical custody with an abusive parent is not in the best interest of the child). Thus, modification is not warranted unless a change has occurred regarding the factual considerations under NRS 125B.070 or 125B.080(9). See Mosley, 113 Nev. at 58, 930 P.2d at 1114 (requiring a substantial change in circumstances to modify a joint custody order).

The Legislature has specified other scenarios under which a court may modify a support order. These scenarios are examples of changes in circumstances that warrant modification of a support order. For example, inaccurate or falsified financial information that results in an inappropriate support award is a ground for modification of the award. NRS 125B.080(2). After a child support order has

been entered, any subsequent modification must be based on changed circumstances except (1) pursuant to a three-year review under NRS 125B.145(1), (2) pursuant to mandatory annual adjustments of the statutory maximums under NRS 125B.070(3), or (3) pursuant to adjustments by the Division of Welfare and Supportive Services under NRS 425.450. NRS 125B.080(3).

Under NRS 125B.145(1), the district court must review the support order if three years have passed since its entry. The district court must then consider the best interests of the child and determine whether it is appropriate to modify the order. NRS 125B.145(2)(b). Modification is appropriate if there has been a factual or legal change in circumstances since the district court entered the support order. Upon a finding of such a change, the district court can then modify the order consistent with NRS 125B.070 and 125B.080. Id. Therefore, although a party need not show changed circumstances for the district court to review a support order after three years, changed circumstances are still required for the district court to modify the order.

Each of these three situations, which the Legislature has specified as warranting modification of a support order, is grounded in a change in a party's factual circumstances. NRS 125B.145(4) expressly states that the district court may review a child support order "at any time on the basis of changed circumstances." Specifically, the new child support order must be supported by factual findings that a change in support is in the child's best interest and the modification or adjustment of the award must comply with the requirements of NRS 125B.070 and NRS 125B.080. See NRS 125B.145(2)(b). Moreover, under NRS 125B.080(9), the court is mandated to consider 12 different factors when considering whether to adjust a child support award, thereby requiring the moving party to show a change in factual circumstances that may justify a modification or adjustment to an existing child support order.

2. Scott v. Scott

Ms. Rivero cites to Scott v. Scott, 107 Nev. 837, 840, 822 P.2d 654, 656 (1991), for the proposition that a court can modify a child support order according to the statutory formula without a finding of changed circumstances. In Scott, this court stated that "[a] child support award can be modified in accordance with the statutory formula, regardless of a finding of changed circumstances." 107 Nev. at 840, 822 P.2d at 656 (relying on Parkinson v. Parkinson, 106 Nev. 481, 483 & n.1, 796 P.2d 229, 231 & n.1 (1990)). As shown above, a change in circumstances is required to modify an existing child support order. Thus, the statement made in Scott, that changed circumstances is not required, is incorrect. Therefore, to the extent that Scott conflicts with this clarification, we disaffirm that case on that point for two reasons.

First, Scott's holding was based on changed factual circumstances. In Scott, the custodial parent moved the district court for modification of the child support order in accordance with NRS 125B.070, seeking the statutory maximum of the noncustodial parent's gross monthly income, including any overtime pay. 107 Nev. at 839, 822 P.2d at 655. Six months later, the district court modified the child support order, finding that the custodial parent's loss of a roommate constituted a "substantial change of circumstances." Id. The district court, however, deviated down from the statutory maximum based on the fact that the noncustodial parent had remarried and was responsible for two additional children. Id. at 840, 822 P.2d at 656. The noncustodial parent appealed on the basis that there was not a "substantial change of circumstances justifying modification of the child support award." Id. at 840, 822 P.2d at 656.

Without explaining that a custodial parent has the right to obtain child support in accordance with the statutory formula, as noted in footnote 1 in Parkinson, 106 Nev. at 483, 796 P.2d at 231, the Scott court expanded this rule to suggest that any child support award can be modified regardless of a change in circumstances. 107 Nev. at 840, 822 P.2d at 656. The Scott court, however, went on to consider whether the district court abused its discretion when it deviated from the statutory formula when it considered several factors enumerated in NRS 125B.080(9) to reduce the noncustodial parent's support obligation. Id. at 840-41, 822 P.2d at 656. The Scott court concluded that the district court did not abuse its discretion, but the rationale is unclear. Id. It is unclear whether the Scott court determined that the district court properly found a change in circumstances or properly determined child support under NRS 125B.070 and NRS 125B.080(9). However, regardless of the rationale, to the extent that Scott suggests that changed circumstances are not necessary to modify a support order, it misstates the law.

Second, in relying on Parkinson, the Scott court erroneously expanded the comment made in footnote 1 in Parkinson, 106 Nev. at 483 & n.1, 796 P.2d at 231 & n.1. In that footnote, the Parkinson court mischaracterized the holding in Perri v. Gubler, 105 Nev. 687, 782 P.2d 1312 (1989). Parkinson, 106 Nev. at 483 & n.1, 796 P.2d at 231 & n.1. In Perri, the father had custody of the children and the parties agreed that the mother would not pay child support to the father. 105 Nev. at 688, 782 P.2d 1313. Upon the father's motion, the district court modified the decree to require the mother to pay child support to the father. Id. The Perri court reversed, concluding that because the father provided inaccurate financial information to the district court, the district court would be unable to find that the father's circumstances had changed to warrant a modification of the support order. Id. This court's decision was correct under Nevada caselaw and under the newly amended NRS 125B.080(3), requiring changed circumstances to modify a support order when the parties did not stipulate to the support. 1989 Nev. Stat., ch. 405, § 14, at 859; see Harris v. Harris, 95 Nev. 214, 216 & n.2, 591 P.2d 1147, 1148 & n.2 (1979) (interpreting former NRS 125.140(2) as allowing courts to modify child custody and support awards to accommodate changes in circumstances after entry of the order). Although the Perri court did not cite to NRS 125B.080(3), it properly reasoned that because the father had provided inaccurate financial information, he had not adequately proven any changed circumstances warranting modification of the support decree. Perri, 105 Nev. at 688, 782 P.2d at 1313.

However, the Parkinson court disavowed Perri insofar as it required a showing of changed circumstances to modify a support order. Parkinson, 106 Nev. at 483 & n.1, 796 P.2d at 231 & n.1. The Parkinson court cited to NRS 125B.080(1)(b) and (3) to support this proposition. Id. We conclude that the Parkinson court misread NRS 125B.080(1)(b) and (3). At the time of the Parkinson decision,

as it does now, NRS 125B.080(1)(b) required courts to apply the statutory formula regarding any motion to modify child support filed after July 1, 1987. 1989 Nev. Stat., ch. 405, § 14, at 859. NRS 125B.080(3) stated that once a court had established a support order pursuant to the statutory formula, "any subsequent modification of that support must be based upon changed circumstances." 1989 Nev. Stat., ch. 405, § 14, at 859. The plain language of the statute at the time required changed circumstances to modify an existing support order that was properly ordered pursuant to the statutory formula. Thus, we now disaffirm the footnote in Parkinson, 106 Nev. at 483 & n.1, 796 P.2d at 231 & n.1, which states a party may seek modification of a support order without changed circumstances. Accordingly, Scott's reliance on this proposition is also erroneous. 107 Nev. at 840, 822 P.2d at 656.

In conclusion, we retreat from Parkinson and Scott to the extent that they may be read to allow a court to modify an existing child support order without a change in circumstances since the court issued the order.

Having clarified the circumstances under which a district court may modify a child support order, we note that this case is an example of the immediate and repetitive motions that can plague the district court, even after the parties have stipulated to child support. Less than two months after the district court entered the parties' divorce decree, in which they agreed that neither party would receive child support, Ms. Rivero moved the court for child support. Then she did so again, 11 months later. Such constant relitigation of a court order, especially one to which the parties stipulate, is pointless absent a change in the circumstances underlying the initial order.

B. Calculating child support

The Family Law Section suggests that we reformulate the Rivero child support formula set forth in our prior opinion in this case. It notes that the formula assumes a parent contributes to the financial support of the child by merely spending time with the child and shifts the focus of custody disputes to child support rather than the best interest of the child. Consistent with these points, we withdraw the Rivero formula and reaffirm the statutory formulas and the formulas under Barbagallo and Wright. Because joint physical custody requires a near-equal timeshare, we conclude it is unnecessary to utilize a third formula for cases of joint physical custody with an unequal timeshare.

1. Calculating child support in cases of primary physical custody

In cases where one party has primary physical custody and the other has visitation rights, Barbagallo v. Barbagallo, 105 Nev. 546, 779 P.2d 532 (1989), controls. Under these circumstances, the court applies the statutory formulas and the noncustodial parent pays the custodial parent support. Id. at 548, 779 P.2d at 534. The court may use the factors under NRS 125B.080(9) to deviate from the formulas. The Barbagallo court cited "standard of living and circumstances of the parents" and the "earning capacity of the parents" as the most important of these factors.[9] Id. at 551, 779 P.2d at 536. Under the current version of NRS 125B.080, this focus on the financial circumstances of the parties is reflected in several factors, including: "the relative income of both parents," the cost of health care and child care, "[a]ny public assistance paid to support the child," "expenses related to the mother's pregnancy and confinement," visitation transportation costs in some circumstances, and "[a]ny other necessary expenses for the benefit of the child." NRS 125B.080 (9). All the other statutory factors, such as the amount of time a parent spends with a child, are of lesser weight. Barbagallo, 105 Nev. at 551, 779 P.2d at 536.

We have noted that joint physical custody increases the total cost of raising the child. Id. at 549-50, 779 P.2d at 535. As the Family Law Section notes, the amount of time that a parent spends with a child might, but does not necessarily, reduce the cost of raising the child to the custodial parent. Id. The amount of time spent with the child, along with the other lesser-weighted factors in 125B.080(9), can serve as a basis for the district court to modify a support award, upon a showing by the secondary custodian that payment of the statutory formula amount would be unfair or unjust given his or her "substantial contributions of a financial or equivalent nature to the support of the child." Id. at 552, 779 P.2d at 536. This approach remains unchanged by the adoption of the new definition of joint physical custody because it only applies to situations in which one party has primary physical custody and the other has visitation rights.

2. Calculating child support in cases of joint physical custody

In cases where the parties have joint physical custody, the Wright v. Osburn formula determines which parent should receive child support. 114 Nev. 1367, 1368-69, 970 P.2d 1071, 1072 (1998). We take this opportunity to note that Wright overrules Barbagallo's application of the statutory child support formulas in joint physical custody cases. Barbagallo directs the court to identify a primary and secondary custodian and order the secondary custodian to pay the primary custodian child support in accordance with the appropriate formula. 105 Nev. at 549, 779 P.2d at 534-35. This is no longer the law.

Rather, under Wright, child support in joint physical custody arrangements is calculated based on the parents' gross incomes. Id. at 1368-69, 970 P.2d at 1072. Each parent is obligated to pay a percentage of their income, according to the number of children, as determined by NRS 125B.070(1)(b). The difference between the two support amounts is calculated, and the higher-income parent is obligated to pay the lower-income parent the difference. Id. The district court may adjust the resulting amount of child support using the NRS 125B.080(9) factors. Id. The purposes of the Wright formula are to adjust child support to equalize the child's standard of living between parents and to provide a formula for consistent decisions in similar cases. Id.

The Wright formula also remains unchanged by the new definition of joint physical custody. When the parties have joint physical custody, as defined above, the Wright formula applies, subject to adjustments pursuant to the statutory factors in NRS 125B.080(9). Under the new definition of joint physical custody, there could be a slight disparity in the timeshare. The biggest disparity would be a case in which one party has physical custody of the child 60 percent of the time and the other has physical custody of the child 40 percent of the time. Still, maintaining the lifestyle of the child between the parties' households is the goal of the Wright formula, and the financial circumstances of the parties remain the most important factors under NRS 125B.080(9). Wright, 114 Nev. at 1368, 970 P.2d at 1072· Wesley v. Foster, 119 Nev. 110, 113, 65 P.3d 251, 253 (2003); Barbagallo, 105 Nev. at 551, 779 P.2d at 536. Thus, in a joint physical custody situation, if a party seeks a reduction in child support based on the amount of time spent with the child, the party must prove that payment of the full statutory amount of child support is unfair or unjust, given that party's substantial contributions to the child's support. Barbagallo, 105 Nev. at 552, 779 P.2d at 536.

C. The district court's denial of Ms. Rivero's motion for child support

Here, in denying Ms. Rivero child support, the district court relied on the divorce decree, in which the parties agreed that neither would receive child support.

This court reviews the district court's decisions regarding child support for an abuse of discretion. Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996). Parents have a duty to support their children. NRS 125B.020. When a district court deviates from the statutory child support formula, it must set forth specific findings of fact stating the basis for the deviation and what the support would have been absent the deviation. NRS 125B.080(6). Even if the record reveals the district court's reasoning for the deviation, the court must expressly set forth its findings of fact to support its decision. Jackson v. Jackson, 111 Nev. 1551, 1553, 907 P.2d 990, 992 (1995).

In this case, the district court erred by not making specific findings of fact regarding whether Ms. Rivero was entitled to receive child support under NRS Chapter 125B and explaining any deviations from the statutory formulas. Therefore, we reverse the district court's denial of Ms. Rivero's motion for child support. On remand, as discussed above, the district court may only modify the divorce decree upon finding a change in circumstances since the entry of the decree, and must calculate child support pursuant to either Barbagallo or Wright, as appropriate.

V. Ms. Rivero's motions for recusal and disqualification

Ms. Rivero asserts that the district court abused its discretion when the district court judge refused to recuse herself and when the chief judge denied Ms. Rivero's motion to disqualify the judge. According to Ms. Rivero, the district court abused its discretion in not allowing her to file a reply to Mr. Rivero's opposition to the motion to disqualify and by not permitting her to argue the merits at a hearing. We disagree because Ms. Rivero did not prove legally cognizable grounds supporting an inference of bias, and therefore, summary dismissal of the motion was proper.

This court gives substantial weight to a judge's decision not to recuse herself and will not overturn such a decision absent a clear abuse of discretion. Goldman v. Bryan, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988), abrogated on other grounds by Halverson v. Hardcastle, 123 Nev. 245, 266, 163 P.3d 428, 443 (2007). A judge is presumed to be unbiased, and "the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification." Id. at 649, 764 P.2d at 1299. A judge cannot preside over an action or proceeding if he or she is biased or prejudiced against one of the parties to the action. NRS 1.230(1). To disqualify a judge based on personal bias, the moving party must allege bias that "'stem[s] from an extrajudicial source and result[s] in an opinion on the merits on some basis other than what the judge learned from his participation in the case.'" In re Petition to Recall Dunleavy, 104 Nev. 784, 790, 769 P.2d 1271, 1275 (1988) (quoting United States v. Beneke, 449 F.2d 1259, 1260-61 (8th Cir. 1971)). "[W]here the challenge fails to allege legally cognizable grounds supporting a reasonable inference of bias or prejudice," a court should summarily dismiss a motion to disqualify a judge. Id. at 789, 769 P.2d at 1274.

In this case, Ms. Rivero alleged that the district court judge was biased in favor of Mr. Rivero because he is an attractive man and was biased against Ms. Rivero because she is an attractive woman. Ms. Rivero also alleged that the judge was determined to rule only for Mr. Rivero and that the judge was not interested in hearing the case on the merits. The only evidence of these allegations are statements in Ms. Rivero's motion to disqualify and her attorney's affidavit. The hearing transcripts do not reveal any bias on the district court judge's part. Thus, Ms. Rivero has not established legally cognizable grounds for disqualification. Id. Accordingly, we conclude that the district court judge did not abuse her discretion when she refused to recuse herself. We also conclude that the chief judge properly denied Ms. Rivero's motion to disqualify the district court judge without considering a reply from Ms. Rivero or holding a hearing on the motion because Ms. Rivero did not establish legally cognizable grounds for an inference of bias. Therefore, summary dismissal of the motion was proper.[10] Id.

VI. The district court's award of attorney fees to Mr. Rivero

In addition to denying Ms. Rivero's disqualification motion, the district court awarded Mr. Rivero attorney fees arising from defending against the motion. Ms. Rivero argues that the district court abused its discretion when it awarded Mr. Rivero attorney fees because Ms. Rivero had a reasonable basis to move for the district court judge's disqualification. Ms. Rivero also contends that NRS

1.230, which prohibits punishment for contempt if a party alleges that a judge should be disqualified, prohibits an award of attorney fees under NRS 18.010 and sanctions under EDCR 7.60 and NRCP 11. We disagree that the contempt prohibition of NRS 1.230(4) prohibits attorney fees as a sanction for filing a frivolous motion to disqualify a judge. However, we conclude that the district court abused its discretion in awarding attorney fees because substantial evidence does not support the sanction.

A. Contempt prohibition of NRS 1.230(4)

Under NRS 1.230(4), "[a] judge or court shall not punish for contempt any person who proceeds under the provisions of this chapter for a change of judge in a case." Contempt preserves the authority of the court, punishes, enforces parties' rights, and coerces. Warner v. District Court, 111 Nev. 1379, 1382-83, 906 P.2d 707, 709 (1995). On the other hand, the district court's discretion to award attorney fees as a sanction under NRS 18.010(2)(b), for bringing a frivolous motion, promotes the efficient administration of justice without undue delay and compensates a party for having to defend a frivolous motion.

In this case, the district court did not state the basis for the attorney fees sanction but found that Ms. Rivero's motion to disqualify was meritless. It appears that the district court sanctioned Ms. Rivero to compensate Mr. Rivero for having to defend a frivolous motion, which is explicitly allowed under NRS 18.010(2)(b). This is not akin to the district court holding Ms. Rivero in contempt for simply requesting a change of judge, which is prohibited under NRS 1.230(4). Therefore, the contempt prohibition of NRS 1.230(4) does not apply. Although the contempt provision of NRS 1.230(4) does not prevent the district court from awarding attorney fees as a sanction pursuant to NRS 18.010(2)(b), we conclude that the district court abused its discretion in awarding attorney fees in this case for the reasons discussed below.

B. Attorney fees sanction for filing a frivolous motion

This court reviews the district court's award of attorney fees for an abuse of discretion. Miller v. Wilfong, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). The district court may award attorney fees as a sanction under NRS 18.010(2)(b), NRCP 11, and EDCR 7.60 (b) if it concludes that a party brought a frivolous claim. The district court must determine if there was any credible evidence or reasonable basis for the claim at the time of filing. Semenza v. Caughlin Crafted Homes, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995) (discussing NRS 18.010(2)(b)). Although a district court has discretion to award attorney fees as a sanction, there must be evidence supporting the district court's finding that the claim or defense was unreasonable or brought to harass. Id.

Here, the district court did not explain in its order the basis for awarding Mr. Rivero attorney fees and only noted in its summary order that Ms. Rivero's motion to disqualify the district court judge was without merit. Although Ms. Rivero did not prevail on the motion, and it may have been without merit, that alone is insufficient for a determination that the motion was frivolous, warranting sanctions. Nothing in the record indicates that the district court attempted to determine if there was any credible evidence or a reasonable basis for Ms. Rivero's motion to disqualify. Because the chief judge did not hold a hearing or make findings of fact, no evidence demonstrates that Ms. Rivero's motion was unreasonable or brought to harass. Therefore, we conclude that the district court abused its discretion in sanctioning Ms. Rivero with attorney fees for her motion to disqualify. Thus, we reverse and remand the district court's order granting an award of attorney fees to Mr. Rivero to the district court for further proceedings consistent with this opinion.

CONCLUSION

We conclude that the district court abused its discretion when it determined, without making specific findings of fact, that the parties had joint physical custody and when it modified the custody arrangement set forth in the divorce decree. We therefore reverse and remand this matter to the district court for further proceedings, including a new custody determination pursuant to the definition of joint physical custody clarified in this opinion.

We further conclude that the district court abused its discretion in denying Ms. Rivero's motion to modify child support because it did not set forth specific findings of fact to justify deviating from the statutory child support formulas. We therefore reverse and remand this matter to the district court for further proceedings to calculate child support and modify the decree if modification is proper under the standard set forth in this opinion.

We further conclude that the district court judge properly refused to recuse herself, and the chief judge properly denied Ms. Rivero's motion for disqualification. We therefore affirm the district court's orders regarding the recusal and disqualification.

Finally, we conclude that the district court abused its discretion when it awarded Mr. Rivero attorney fees in relation to Ms. Rivero's motion to disqualify the district court judge. We therefore reverse and remand this matter to the district court for further proceedings consistent with this opinion.

HARDESTY, C.J., PARRAGUIRRE, DOUGLAS, CHERRY, and SAITTA, JJ., concur.

**********FOOTNOTES**********

[1] Given the importance of the definition of joint physical custody, this court invited the Family Law Section of the Nevada State Bar (Family Law Section) to file an amicus curiae brief regarding the issue.

[2] The Nevada Legislature relied on California family law statutes in adopting NRS 125.460 and 125.490, regarding joint custody. Hearing on S.B. 188 Before the Senate Judiciary Comm., 61st Leg. (Nev., Feb. 12, 1981). Although out-of-state law is not controlling, we look to it as instructive and persuasive. As always, even if this court relies on out-of-state law, Nevada law still controls in interpreting the decisions of this court.

[3] See Idaho Code Ann. § 32-717B(2) (2006) (discussing joint physical custody regarding the "time in which a child resides with or is under the care and supervision of" the parties); Iowa Code Ann. § 598.1(4) (West 2001) (discussing joint physical custody as involving shared parenting time, maintaining a home for the child, and physical care rights); Taylor v. Taylor, 508 A.2d 964, 967 (Md. 1986) (defining physical custody as involving providing a home and making day-to-day decisions regarding the child); Mass. Ann. Laws ch. 208 § 31 (LexisNexis 2003) (describing shared physical custody as involving the child residing with and being under the supervision of each parent); Mo. Ann. Stat. § 452.375(1)(3) (West 2003) (discussing residence and supervision in the context of joint legal custody); 23 Pa. Cons. Stat. Ann. § 5302 (West 2001) (defining physical custody as "[t]he actual physical possession and control of a child").

[4] The court may modify joint physical custody if it is in the best interest of the child. NRS 125.510(2); Potter v. Potter, 121 Nev. 613, 618, 119 P.3d 1246, 1249 (2005). However, to modify a primary physical custody arrangement, the court must find that it is in the best interest of the child and that there has been a substantial change in circumstances affecting the welfare of the child. Ellis, 123 Nev. at 150, 161 P.3d at 242.

[5] Other states define joint physical custody similarly, focusing on the child's continuing contact and relationship with both parents. Cal. Fam. Code § 3004 (West 2004); Haw. Rev. Stat. § 571-46.1 (2006); Idaho Code Ann. § 32-717B(2) (2006); Mass. Ann. Laws ch. 208, § 31 (LexisNexis 2003); Miss. Code Ann. § 93-5-24(5)(c) (2004); Mo. Ann. Stat. § 452.375(1)(3) (West 2003); 23 Pa. Cons. Stat. Ann § 5302 (West 2001); Mamolen v. Mamolen, 788 A.2d 795, 799 (N.J. Super. Ct. App. Div. 2002).

[6] See, e.g., Okla. Stat. Ann. tit. 43, § 118(10) (West 2001) (requiring each parent to have physical custody for more than 120 nights each year for shared physical custody); Tenn. Code Ann. § 36-6-402(4) (2005) (defining "primary residential parent" as "the parent with whom the child resides more than 50 percent (50%) of the time"); Miller v. Miller, 568 S.E.2d 914, 918 (N.C. Ct. App. 2002) (explaining that joint physical custody requires that each parent have custody for at least one-third of the year).

[7] Ms. Rivero also challenges the district court's decision not to hold an evidentiary hearing regarding child custody. Because we reverse and remand on the custody issue on other grounds, we do not reach this argument.

[8] Ms. Rivero also challenges the district court's denial of her discovery of Mr. Rivero's employment records for purposes of calculating child support. Because we reverse and remand on the support issue on other grounds, we do not reach this argument.

[9] While the Barbagallo court cited to the NRS 125B.080(8) factors, NRS 125B.080 has since been renumbered such that these factors are now located in NRS 125B.080(9). 1989 Nev. Stat., ch. 405, § 14, at 860.

[10] Ms. Rivero argues that the chief judge abused her discretion because she prevented her from filing a reply brief. However, Ms. Rivero provides no citations to the record indicating that the chief judge refused to allow Ms. Rivero to file a reply brief, nor does Ms. Rivero cite to any authority requiring the chief judge to allow her to file a reply brief. NRAP 28(a)(8)(A); NRAP 28(e)(1).

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PICKERING, J., concurring in part and dissenting in part:

I respectfully dissent. While I agree that this case presents an opportunity to establish helpful precedent, I disagree with the majority's assessment of the record facts and the law that should apply to them.

This appeal grows out of a stipulated divorce decree. Two family court judges upheld the decree's stipulation for joint physical custody. The only modification either judge made was to adjust the child's residential timeshare arrangement slightly. After taking testimony from the parents, both of whom work, the second judge determined that the parents' days off differed perfectly. Thus, each parent could have the child while the other was at work, minimizing the time the child had to spend in day care, if a one-day adjustment to the residential timeshare was made.

I do not find in the original stipulated decree the inflexible 5/2 timeshare the majority does. After providing for "joint legal custody and joint physical care, custody and control" of the parties' daughter, the original decree provided for the father to have the child "each Sunday at 7 p.m. until Tuesday at 9:00 p.m. in addition to any time agreed on by the Parties." (Emphasis added.) The residential timeshare, as adjusted, provided for the father to have the child from "Sunday at 1 p.m. until Wednesday at 2 p.m."—thus adding a day

to the father's allotted two days and two hours per week but deleting the provision giving him such additional "time agreed on by the Parties" (who were having trouble agreeing to anything). The second family court judge made an express, on-the-record finding that, as adjusted, the residential timeshare arrangement was consistent with the stipulated decree's provision for joint physical custody—and in the child's best interest. The timeshare adjustment also obviated the mother's argument that the court should not have approved the stipulated decree's provision for a Wright-based offset, by which the parties had voluntarily agreed neither would pay child support to the other.

This strikes me as a sensible, maybe even Solomon-like solution. Instead of upholding the family court's exercise of sound discretion, however, the majority reverses and remands these parents to the family court for more litigation. On remand, the family court is directed to establish the exact percentage of time the child has spent with each parent over the course of the past year;[1] to then apply a newly announced 40-percent formula on which joint physical custody and future child support will depend; and thereafter to enter formal findings, beyond those stated in the decree and in open court, respecting these and other matters.

I submit that this result and the underlying formula the majority adopts are contrary to statute and case precedent. The family court interpreted its decree in a way that was fair, supported by the record, and consistent with applicable law. A sounder result would be to recognize the distinction other courts have drawn between true custody modification and residential timeshare adjustments and support the family court's sound exercise of discretion as to the latter in this case.

DISCUSSION

The formulaic approach is inconsistent with Nevada law

I have a threshold concern with court-mandated formulas, in general, and with the 40-percent joint physical custody formula the majority adopts in this case, in particular, to determine child support and relocation disputes. A legislature has the capacity to debate social policy and to enact, amend, and repeal laws as experience and society dictate. Courts do not. The law courts apply is precedent-driven, or has its origin in statute or constitutional mandate. It is not only that judges tend to be innumerate, or that court-adopted formulas are of suspect provenance—though both are so—it is that laws adopted by judges are difficult to change if they do not work out. Because courts decide individual questions in individual cases, a bad rule of law can take a long time to return to a court; meanwhile, reliance interests counseling against changing that law are built. As the controversy over the original opinion and its withdrawal and replacement in this case suggest, establishing formulas is ordinarily best left to the Legislature.

More specifically troubling, the formulaic approach the majority adopts in this case is inconsistent with the approach the Nevada Legislature in fact chose to take. Thus, in 1987 the Nevada Legislature considered and rejected a proposal that would have established a 40-percent "joint physical custody" timeshare test and tied it to a corollary child support formula. A.B. 424, 64th Leg. (Nev. 1987), discussed in Barbagallo v. Barbagallo, 105 Nev. 546, 548, 779 P.2d 532, 534 (1989). Instead of a mathematical formula, the 1987 Legislature adopted the multifactored approach to determining support found in today's NRS 125B.080. Id. Based on this history, in 1989 this court held that it is "inappropriate for the courts to adopt their own formulas when the mathematical approach to adjusting the formula in joint custody cases has been considered and rejected by the legislature." Barbagallo, 105 Nev. at 550 n.2, 779 P.2d at 535 n.2 (as amended by 786 P.2d 673 (1990)).

The point is not whether a formulaic approach is good policy, providing helpful bright-line rules; or bad policy, creating a hostile "on the clock" mentality inconsistent with truly cooperative joint parenting. On this, reasonable policymakers differ, as the foreign state statutes catalogued, ante at p. 14 n.5 and p. 16 n.6, reflect. The point is that percentage time/support formulas are for the Legislature to evaluate, not for the court to establish by fiat.

The 40-percent joint physical custody test the majority adopts today, when tied, as intended, to eligibility for a child support offset under Wright v. Osburn, 114 Nev. 1367, 970 P.2d 1071 (1998), creates law indistinguishable from that Barbagallo says courts should abjure.[2] As a near-contemporaneous judicial interpretation of a controlling statutory scheme, Barbagallo should control. See Neal v. United States, 516 U.S. 284, 294-95 (1996) (giving "great weight to stare decisis in the area of statutory construction" because the legislature "is free to change this Court's interpretation of its legislation"; the Legislature, not the courts, "has the responsibility for revising its statutes"; and "[w]ere we to alter our statutory interpretations from case to case, [the Legislature] would have less reason to exercise its responsibility to correct statutes that are thought to be unwise or unfair") (internal quotation omitted).

The family court's interpretation of its decree was sound

The stipulated decree was not irreconcilably inconsistent with joint physical custody

At its heart, this case asks how we should interpret the parties' stipulated divorce decree. Historically, this court defers to a trial court's interpretation of its own decrees. "It is the province of the trial court to construe its judgments and decrees." Grenz v. Grenz, 78 Nev. 394, 401, 374 P.2d 891, 895 (1962). Further, "[w]here a judgment is susceptible of two interpretations, that one will be adopted which renders it the more reasonable, effective and conclusive, and which makes the judgment harmonize with the facts and law of the case and be such as ought to have been rendered." Aseltine v. District Court, 57 Nev. 269, 273, 62 P.2d 701, 702 (1936) (internal

quotation omitted).

Both family court judges acknowledged the tension between the stipulated decree's joint physical custody provision and its original residential timeshare provision. They resolved the tension by giving priority to the parties' overarching agreement to share joint legal and physical custody. The elasticity in the original timeshare provision, which gave the father such additional time "as agreed to by the Parties" beyond his specifically allotted time, makes this reading fair. It gives effect to all of the stipulated decree's provisions, and it is consistent with the parties' apparent intent and their frank, on-the-record admissions that neither believed the other was a bad parent, their dispute being mainly over money and scheduling.

The family court judges' reading of the stipulated decree also comports with NRS 125.490, which states: "There is a presumption, affecting the burden of proof, that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody." See NRS 125.480(1) and (3)(a) (stating preference for orders awarding joint custody and providing that "[i]f it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly"; statement of reasons required only if joint custody denied). The parents here "agreed to an award of joint custody" and the family court judge specifically stated on the record that she found that the timeshare, as adjusted, was in the child's best interest because it maximized the child's time with each parent instead of at day care. Remanding for further findings regarding custody thus seems unnecessary.

The mother did not establish a basis to modify child support

Nor do I find a basis in the record to remand for further findings as to support. While not elaborate, the decree specified the applicable statutory percentage and stipulated that the parties were agreeing to a downward deviation and the basis therefor. It read:

> The parties' respective obligation of child support for the parties' said minor child should are [sic] hereby offset and neither party is ordered to pay to the other child support; that this represents a deviation from the statutory child support formula as set forth in NRS 125B.070 (which states that child support for one child shall be eighteen percent (18%) of the non custodial parent's income), based on the parties' joint legal and physical custody arrangement, pursuant to NRS 125B.080, subsection (9)(j). Each party shall jointly pay for the support and care of the parties' minor child.

In addition, the stipulated decree obligated the father to pay for the child's health insurance at a cost of $80 per month and to contribute $50 per month to an education fund for her, controlled by the child's mother.

As the majority notes, the mother filed successive motions to modify support. In connection with the first motion to modify support, the court minutes reflect that the mother reaffirmed what was represented in the stipulated decree—that "the parties [stipulated to] share joint custody," and that "the parties' incomes are similar." Both motions to modify relied on the alleged inconsistency between the agreement for joint physical custody and the timeshare provision. But read in conformity with the presumption in NRS 125.490, the stipulated decree was not irreconcilably inconsistent with joint physical custody. Further, any theoretical inconsistency was eliminated when the second judge modified the residential timeshare by substituting "Wednesday" for such additional time "as agreed on by the Parties," establishing a 4/3 timeshare that falls within the majority's 40-percent rule. Because neither of the underlying motions in this case identified a basis for modifying support besides the asserted lack of true joint physical custody timeshare agreement, further proceedings and findings, beyond those the original decree stated to justify its downward deviation, are unwarranted.[3]

Adjusting a residential timeshare in a joint physical custody arrangement is appropriate when in the child's best interest

An agreement to share joint physical custody, interpreted in light of the child's best interest, should determine the appropriate residential timeshare, not the reverse. Citing Wright, 114 Nev. at 1368, 970 P.2d at 1071-72, and Wesley v. Foster, 119 Nev. 110, 112-13, 65 P.3d 251, 252-53 (2003), the majority states that "[o]ur law presumes that joint physical custody approximates a 50/50 timeshare." I do not read these cases as that definitive—much less as supporting the majority's holding that a residential timeshare arrangement that works out to a child spending less than 40 percent of his or her time with one parent over the course of a year automatically invalidates a presumptively valid agreement for joint physical custody. As we recognized in Mosley, 113 Nev. at 54, 930 P.2d at 1112, a decree can validly establish joint physical custody even though the timeshare contemplated at the outset is not a 50/50 (or even a 60/40) arrangement, but one that will require fine-tuning over time.

Joint physical custody may ideally signify something approaching a 50/50 timeshare. However, I am concerned that our judicially mandated 40-percent formula will prove unsatisfactory, especially when used, as intended, to determine support and relocation disputes. Lives change and a child's time is divided, not just between his or her parents, but among friends, school or day care, extended family, sports, and other pursuits. Practical questions seem certain to scuff the bright-line rule—questions like how to count hours the child spends with people besides either parent, or which parent to credit for time the child spends pursuing activities both parents support. Of greater concern, making child support, relocation, and custody determinations depend on parents keeping logs of the number of hours each year a child spends with one parent or the other (leaving aside the calculation and credit questions) detracts from the type of true co-parenting our statutes try to promote. See NRS 125.460; NRS 125.490; see also In re Marriage of Birnbaum, 260 Cal. Rptr. 210, 214-15 (Ct. App. 1989) (dismissing as a "popular misconception" the idea "that joint physical custody means the children spend exactly one-half their time with each parent"; noting that "[p]arents' demands for equal amounts of a child's time [can] constitute a disservice to the child"; and that, while "[i]n some cases the nature of the relationship between the parents may necessitate

this kind of inflexibility[o]ften it is temporary, and when the former spouses have adjusted to their new and limited relationship . . . mathematical exactitude of time is no longer necessary"); Rutter's, California Practice Guide to Family Law, § 7:358 (2009) (noting that "[a] joint custody order does not mean the child must equally split all of his or her time between the parents"); see also Mosley, 113 Nev. at 60, 930 P.2d at 1116 (noting that "NRS 125.460 dictates the public policy of this state in child custody matters [which is] that the best interests of children are served by frequent associations and a continuing relationship with both parents and by a sharing of parental rights and responsibilities of child rearing") (internal citations omitted).

This case invites us to distinguish between adjusting parents' residential timeshare and formal proceedings to modify custody in the stipulated joint physical custody setting. California Family Code section 3011, like NRS 125.490(1), states a "presumption affecting the burden of proof" that agreements providing for joint custody are in a child's best interest. Addressing joint physical custody agreements, several intermediate California courts have exhorted "parents [to] understand that successful joint physical custody depends upon the quality of the parenting relationship, not the allocation of time." In re Marriage of Birnbaum, 260 Cal. Rptr. 210, 216 (Ct. App. 1989); see Enrique M. v. Angelina V., 18 Cal. Rptr. 3d 306, 313 (Ct. App. 2004) (citation omitted).

Both Birnbaum and Enrique M. recognize that disputes over the details of residential timeshare arrangements in cases involving joint physical custody are best settled by the parents, not the courts. Enrique M., 18 Cal. Rptr. 3d at 314 (noting that such adjustments are "not on a par with a request to change physical custody from sole to joint custody, or vice versa"). Thus, they refuse to fuel these disputes by expanding them into full blown custody proceedings, or reviewing them on appeal as if that is what they involve. If the parents cannot agree on the child's schedule, the family court should be held to "possess[ ] the broadest possible discretion in adjusting co-parenting residential arrangements involved in joint physical custody." Birnbaum, 260 Cal. Rptr. at 216. This rule fosters the policy presuming joint custody to be in a child's best interests and may even "obviate the need for costly and time-consuming litigation to change custody, which may itself be detrimental to the welfare of minor children because of the uncertainty, stress, and even ill will that such litigation tends to generate." Enrique M., 18 Cal. Rptr. 3d at 313 (internal quotation omitted).

The dispute underlying this case is not identical to those presented in Birnbaum and Enrique M., since it concerned time spent in day care, and child support, not school choice and residence during the school year. But the underlying principle is similar: When parties have agreed to joint physical custody, absent a showing that some other arrangement is in the child's best interest, courts should try to make that agreement succeed. In my estimation, we do the parties and their child a disservice by remanding this case for more litigation, instead of affirming the family court.

CONCLUSION

In sum, I would uphold the district court's order as consistent with Nevada statutes that presumptively favor joint custody, especially agreed-upon joint custody, and require that before a joint custody decree is modified, it must be shown that the child's best interest requires the modification. As district courts have broad discretion in deciding custody and support, so long as the policies set by statute are applied, the district court properly adjusted the parties' timeshare agreement and declined to modify the child support obligation to which the parties agreed.

With the exception of the portion of the opinion affirming the order denying disqualification of the family court judge, therefore, I respectfully dissent.

**********FOOTNOTES**********

[1] The formulaic approach is especially problematic where, as here, the family court directs a highly specific timeshare. If the parties have abided by the timeshare directed, they will meet the court's formula and joint physical custody will be established under the formula. If they haven't, we will be incentivizing disregard of a court order and argument over whose fault the departure was. The family court's approach seems preferable, in that it encourages self-determination by enforcing the parties' agreed-upon decree and attempting to interpret it consistently with applicable law and the child's best interest.

[2] The majority justifies its adoption of a 40-percent test for joint physical custody as providing needed clarity in parental relocation as well as child support offset cases. Ante at p. 12, citing Potter v. Potter, 121 Nev. 613, 618, 119 P.3d 1246, 1249 (2005). Relocation is not an issue here because the stipulated decree provided that if either party moved away from Las Vegas, joint legal custody would continue but primary physical custody would shift to the mother, with liberal visitation, including full summers, for the father. If anything, the decree's relocation provision shows that the parties knew how to distinguish between joint and primary physical custody and meant what they said—an assumption that finds further support in the fact that each had experienced counsel in fashioning the stipulated decree.

[3] In her reply in support of the motion to disqualify, the mother argued that the father had enjoyed an increase in income that independently justified modifying child support. While this would have been a proper basis to modify support, NRS 125B.145(4), the family court could not consider it since this basis was not raised in either motion to modify, both of which predated the motion to

disqualify and the reply in support thereof, where these arguments first emerged. Cf. Mosley v. Figliuzzi, 113 Nev. 51, 61, 930 P.2d 1110, 1116 (1997) (holding parties entitled to a written motion and advance notice of the alleged grounds before a custody modification order is entered). Now that the original decree is more than three years old, the mother is entitled to have its provisions respecting child support reviewed in any event, NRS 125B.145(1), but that is not the basis for reversal and remand.

Exhibit C

Ellis v. Carucci
123 Nev ___, 161 P.3d 239 (Adv. Opn. No. 18, June 28, 2007).

A modification of primary physical custody is warranted only when the party seeking a modification proves there has been a substantial change in circumstances affecting the welfare of the child and the child's best interest is served by the modification (overruling *Murphy v. Murphy*, 84 Nev. 710, 447 P.2d 664).

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 43925

MELINDA ELLIS,
Appellant,
vs.
RODERIC A. CARUCCI,
Respondent.

Appeal from a district court order modifying child custody. Second Judicial District Court, Family Court Division, Washoe County; Deborah Schumacher, Judge.

Affirmed.

Karla K. Butko, Verdi, for Appellant.
Jack Sullivan Greilman, Reno, for Respondent.

BEFORE THE COURT EN BANC.

OPINION

By the Court, PARRAGUIRRE, J.:

In this appeal, we consider the circumstances under which a district court may modify primary physical custody of a minor child. In the past, this court has applied the two-prong test established in Murphy v. Murphy to determine when a modification of primary physical custody is appropriate.[1] Under the Murphy test, a modification is "warranted only when: (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change."[2] After Murphy was decided in 1968, however, the Legislature overhauled Nevada's child custody laws to focus solely on the best interest of the child.[3] In light of this legislative shift, we take this opportunity to revisit the Murphy test and now conclude that a modification of primary physical custody is warranted only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the modification serves the best interest of the child. Applying the revised standard to this case, we perceive no abuse of discretion on the part of the district court in its decision to modify primary physical custody. Accordingly, we affirm the district court's order.

FACTS AND PROCEDURAL HISTORY

In December 2000, respondent Roderic Carucci and appellant Melinda Ellis stipulated to a decree of divorce. This decree incorporated a paternity and child custody agreement between the parties and provided that Carucci and Ellis would share joint legal custody of their daughter, Geena, with Ellis having primary physical custody and Carucci having liberal visitation.

Carucci files a motion to modify custody

In March 2004, Carucci filed a motion to modify primary physical custody, arguing that the circumstances warranted a change in custody because, among other things, Geena's school performance was in decline. After Carucci filed a second emergency motion to modify custody, the district court set the matter for a hearing.

At the hearing, Bridgett Banta, Geena's elementary school teacher, testified that Geena, an exceptionally bright student, performed very well during the first two quarters of the school year but had struggled during the third and fourth quarters. Banta explained, for example, that Geena's weekly progress reports between December 2003 and March 2004 included several notations indicating that Geena had failed to turn in homework and had been talking in class. Banta also testified that Geena's school performance had dropped significantly because she was not applying herself as she had in the past. According to Banta, Geena did not complete her assignments and refused to revise her work when Banta requested that Geena do so.

Banta further testified that she often discussed Geena's academic performance with Carucci because he regularly inquired about her progress, but, by contrast, Banta had very little contact with Ellis. In summary, Banta concluded that Geena's school performance had deteriorated and that she needed more encouragement from both parents.

Following Banta's testimony, the district court noted that it had concerns about Geena's school performance but

concluded that the circumstances did not justify an emergency change in custody. As a result, the district court scheduled the matter for an evidentiary hearing. The parties agreed to perpetuate Banta's testimony so that she would not need to testify again. In addition, the parties stipulated that Dr. Joann Lippert would conduct a family evaluation and submit a report to the district court.

The evidentiary hearing on Carucci's motion took place in July 2004, with Dr. Lippert, Carucci, and Ellis testifying.[4] Dr. Lippert testified regarding Geena's strong attachment to both of her parents and her desire to maintain a relationship with each of them. She also recommended that Carucci and Ellis share physical custody of Geena. In making her recommendation, Dr. Lippert noted that Geena's best interest would be served if both of her parents were actively involved in their daughter's education and were able to provide Geena with assistance and guidance.

Carucci testified that he met with Banta at least once every two weeks to discuss Geena's progress in school and frequently communicated with Banta through e-mail. Separately, Carucci asserted that because he and his new wife emphasize education, he believed they could best assist Geena in her studies.

Similarly, Ellis testified that she and her new husband often assisted Geena with her homework. Ellis also claimed that Geena's mood and academic performance had begun to decline in January 2004, and Ellis believed this decline was due to increased stress from her parents' ongoing custody disputes.

The district court grants Carucci's motion to modify custody

Following the evidentiary hearing, the district court entered a written order granting Carucci's motion to modify primary physical custody. In its order, the court determined that joint physical custody was in Geena's best interest and thus modified the custody arrangement so that Carucci and Ellis would alternate week-long custody of their daughter. The district court stated that Geena's school performance was the key substantial issue litigated and concluded that Banta's testimony that Geena's academic achievement had significantly slipped constituted sufficient evidence of changed circumstances to warrant a modification. The district court further concluded that Carucci was the parent most involved in Geena's education and, as a result, a modified arrangement allowing Carucci to become her joint physical custodian would serve Geena's best interest. In reaching its conclusion, the district court felt constrained by the Murphy test and found that, in this instance, the child's best interest was paramount. Ellis appealed the court's order.

DISCUSSION

On appeal, Ellis contends that the district court abused its discretion by granting Carucci's motion to modify primary physical custody of their daughter because the evidence does not demonstrate a change in circumstances or that the modification would be in their daughter's best interest. We disagree.

Standard of review

We have repeatedly recognized the district court's broad discretionary powers to determine child custody matters, and we will not disturb the district court's custody determinations absent a clear abuse of discretion.[5] However, the district court must have reached its conclusions for the appropriate reasons.[6] In reviewing child custody determinations, we will not set aside the district court's factual findings if they are supported by substantial evidence,[7] which is evidence that a reasonable person may accept as adequate to sustain a judgment.[8]

Modification of child custody

In Nevada, when a district court determines the custody of a minor child, "the sole consideration of the court is the best interest of the child."[9] Under NRS 125.480(4), "[i]n determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things . . . (g) The physical, developmental and emotional needs of the child." Although "the court may . . . [a]t any time modify or vacate its order" upon "the application of one of the parties,"[10] because numerous courts have documented the importance of custodial stability in promoting the developmental and emotional needs of children,[11] we acknowledge that courts should not lightly grant applications to modify child custody.

We first recognized the importance of custodial stability in Murphy v. Murphy, where we concluded that "change of custody is warranted only when: (1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change."[12] Since then, this court has consistently applied the Murphy test in determining whether the district court has properly granted a motion to modify primary physical custody. While the underlying premise behind the Murphy standard, which aims to promote stability by discouraging the frequent relitigation of custody disputes, still applies today, we conclude that the Murphy standard unduly limits courts in their determination of whether a custody modification is in the best interest of the child.[13] This is so, at least in part, because Murphy was decided in 1968, more than a decade before the Nevada Legislature amended NRS 125.480 and 125.510 to identify the "best interest of the child" as the primary concern in custody determinations. Accordingly, we take this opportunity to revisit the Murphy standard and now conclude that a modification of primary physical custody is warranted only when (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.[14] Under this revised test, the party seeking a modification of custody bears the burden of satisfying both prongs.[15]

In reaching our conclusion, we overrule Murphy to the extent that it required a change in "the circumstances of the parents" alone, without regard to a change in the circumstances of the child or the family unit as a whole. We note, however, that under the revised test, there must still be a finding of a substantial change in circumstances. While the Murphy test is too restrictive because it improperly focuses on the circumstances of the parents and not the child, custodial stability is still of significant concern when considering a child's best interest. The "changed circumstances" prong of the revised test serves the important purpose of guaranteeing stability unless circumstances have changed to such an extent that a modification is appropriate. In determining whether the facts warrant a custody modification, courts should not take the "changed

circumstances" prong lightly. Moreover, any change in circumstances must generally have occurred since the last custody determination because the "changed circumstances" prong "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.'"[16]

The second prong of the revised test acknowledges the legislative mandate that when making a child custody determination, "the sole consideration of the court is the best interest of the child,"[17] and not whether "the child's welfare would be substantially enhanced"[18] by the modification. This revision is significant because a modification of custody may serve a child's best interest even if the modification does not substantially enhance the child's welfare. In making a determination as to whether a modification of custody would satisfy the "best interest" prong of the revised test, courts should look to the factors set forth in NRS 125.480(4) as well as any other relevant considerations.

Ellis's arguments against modification

On appeal, Ellis contends that substantial evidence does not support the district court's decision to modify custody. The district court concluded that the testimony of Geena's second-grade teacher, Bridgett Banta, demonstrated a sufficient decline in Geena's academic performance to constitute a substantial change in circumstances affecting her welfare. In addition, the district court found that the modification serves Geena's best interest by allowing her father more time to be involved in her education.

Substantial change in circumstances

At the hearing on Carucci's emergency motion to modify custody, Banta testified that Geena's academic preparation and performance had slipped while in Ellis's primary care. Banta based her opinion of Geena's academic performance on a daily in-class observation of Geena's declining effort and preparation. Although the evidence concerning the seriousness of Geena's academic problems was conflicting, we leave witness credibility determinations to the district court and will not reweigh credibility on appeal.[19]

While this case presents a close question, Banta's testimony constitutes substantial evidence in support of the district court's finding that a change in circumstances affecting Geena's welfare warranted a modification of child custody. We perceive no abuse of discretion on the district court's part in determining that Geena's documented 4-month slide in academic performance constituted a substantial change in circumstances.

Child's best interest

Ellis also argues that Carucci presented no evidence demonstrating that a modification of custody was in Geena's best interest. Ellis's argument, however, disregards Banta's and Carucci's testimony regarding Carucci's involvement with Geena's education. As the district court acknowledged, "the evidence clearly portrayed Mr. Carucci as the parent most connected to and involved with Geena's school, even as the non-custodial parent." Moreover, Dr. Lippert testified that Geena's best interest would be served if both of her parents were actively involved in their daughter's education and were able to provide Geena with assistance and guidance. Because parental involvement in a child's education is certainly in the child's best interest, we conclude that substantial evidence supports the district court's finding that a modification granting Geena's father joint physical custody served her best interest.

CONCLUSION

A modification of primary physical custody is warranted only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the modification would serve the child's best interest. In this case, the testimony before the district court regarding Geena's decline in school performance supports the court's conclusion that both of these elements were satisfied. Thus, the district court did not abuse its discretion when it determined that a modification of custody was warranted. Accordingly, we affirm the judgment of the district court.[20]

MAUPIN, C.J., GIBBONS, HARDESTY, DOUGLAS, CHERRY and SAITTA, JJ., concur.

**********FOOTNOTES**********

[1] 84 Nev. 710, 711, 447 P.2d 664, 665 (1968).

[2] Id.

[3] See, e.g., NRS 125.480(1).

[4] Dr. Lippert testified telephonically over Ellis's objection.

[5] Rico v. Rodriguez, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005) (quoting Primm v. Lopes, 109 Nev. 502, 504, 853 P.2d 103, 104 (1993)).

[6] Id.; Sims v. Sims, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

[7] Rico, 121 Nev. at 701, 120 P.3d at 816.

[8] Williams v. Williams, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004).

[9] NRS 125.480(1).

[10] NRS 125.510(1)(b).

[11] See, e.g., In re Stephanie M., 867 P.2d 706, 718 (Cal. 1994) ("In any custody determination, a primary consideration in determining the child's best interest is the goal of assuring stability and continuity."); Delzer v. Winn, 491 N.W.2d 741, 744 (N.D. 1992) ("Maintaining stability and continuity in the child's life is a very compelling consideration when determining child custody . . . . This is especially true when modification of custody is sought."); Westphal v. Westphal, 457 N.W.2d 226, 229 (Minn. Ct. App. 1990) (Minnesota law reflects "a settled policy view that stability of custody is usually in the child's best interest"); Everett v. Everett, 433 So. 2d 705, 708 (La. 1983) ("Stability and continuity must be considered in determining

what is in the best interest of the child."); see also Guardianship of N.S., 122 Nev. 305, 313, 130 P.3d 657, 662 (2006) (concluding that the district court's analysis in the placement of a child should focus on whether the proposed plan will provide a stable, safe and healthy environment for the child).

[12] 84 Nev. 710, 711, 447 P.2d 664, 665 (1968).

[13] See NRS 125.480.

[14] See id.; Selvey v. Selvey, 102 P.3d 210, 214 (Wyo. 2004) ("A party seeking modification of the custody provision of a divorce decree bears the burden of demonstrating that: (1) a material and substantial change of circumstances affecting the child's welfare has occurred since the entry of the initial divorce decree, and (2) a modification is in the child's best interests."); Evans v. Evans, 530 S.E.2d 576, 578-79 (N.C. Ct. App. 2000) ("Once the custody of a minor child is determined by a court, that order cannot be altered until it is determined (1) that there has been a substantial change in circumstances affecting the welfare of the child; and (2) a change in custody is in the best interest of the child." (citations omitted)); accord Walker v. Walker, 184 S.W.3d 629, 632 (Mo. Ct. App. 2006) (discussing Mo. Ann. Stat. § 452.410.1 and concluding that in proceedings to modify child custody "[t]he burden is on the moving party to prove a substantial change has occurred and that a modification of custody is in the best interests of the minor children"); Collins and Collins, 51 P.3d 691, 693 (Or. Ct. App. 2002) (recognizing that because modifications of custody are disruptive to a child's life, "the party moving for the change [must] demonstrate that (1) a change in circumstances has occurred since the most recent custodial order, and that (2) the modification will serve the best interests of the child"); McKinnie v. McKinnie, 472 N.W.2d 243, 244 (S.D. 1991) ("As a general rule, a parent seeking a change of custody must show 1) a substantial change of circumstances, and 2) that the welfare and best interests of the child require modification."); see also Pecore v. Pecore, 824 N.Y.S.2d 690, 692 (App. Div. 2006) ("It is well settled that '[a] modification of an established custodial arrangement will be granted only after a showing of a substantial change in circumstances warranting a change in order to [safeguard] the best interests of the child'" (internal quotation marks omitted)).

[15] See 2 Jeff Atkinson, Modern Child Custody Practice § 10-3 (2d ed. 2006); Larson v. Larson, 350 N.W.2d 62, 63 (S.D. 1984).

[16] Castle v. Simmons, 120 Nev. 98, 103-04, 86 P.3d 1042, 1046 (2004) (quoting Mosley v. Figliuzzi, 113 Nev. 51, 58, 930 P.2d 1110, 1114 (1997)). We note that there is at least one set of facts under which the "changed circumstances" prong does not apply: as we recently explained in Castle v. Simmons, a district court may consider evidence of domestic abuse that occurred before a previous custody determination, but which was unknown to the moving party or the court at the time of the prior determination. Id. at 105, 86 P.3d at 1047. Our decision today does not affect this exception to the "changed circumstances" prong of the custody modification test.

The parties do not raise, and we do not address, whether a party seeking modification of child custody must satisfy the "changed circumstances" prong when the original arrangement was based on an agreement of the parties. See Larson, 350 N.W.2d at 63.

[17] NRS 125.480(1).

[18] Murphy, 84 Nev. at 711, 447 P.2d at 665.

[19] Castle, 120 Nev. at 103, 86 P.3d at 1046.

[20] We have considered Ellis's remaining arguments and we conclude that they are without merit.

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Exhibit D

Cite as Truax v. Truax, 110 Nev. 437, 874 P.2d 10 (1994)

John Thomas TRUAX, Appellant,
v.
Rita TRUAX, Now Known as Rita Briley, Respondent.

No. 24176.

Supreme Court of Nevada.

May 19, 1994.

Carol Menninger, Las Vegas, for appellant.

Dickerson, Dickerson, Lieberman & Consul, Las Vegas, for respondent.

OPINION

PER CURIAM:[1]

The litigants have been fighting over the custody of their three children for the past several years. This fight has been the stage for a myriad of allegations, formal charges, and official court battles. As of 1991, the parents were subject to a "shared" or joint physical custody order of the district court.

In December 1991, Rita petitioned the domestic relations referee to commission a court-appointed special advocate ("CASA") to investigate evidence of child abuse. Rita claimed that her son was being physically abused by John Thomas Truax's (Thomas) daughter from a prior marriage. A CASA was assigned and conducted an examination of all three children.

To the agreement of both parties, the referee held an evidentiary hearing to consider the CASA's evaluations and other expert testimony. At that hearing, three experts presented exhaustive testimony regarding their respective examinations of the "familial" relationship

The referee found that the best interests of the children would be served by vesting Rita with primary physical custody and affording Thomas visitation rights. The referee agreed with the testimony and recommendations of the CASA; the joint custody order was working to the detriment of the children, and there was evidence that the litigant's son was being mistreated while at Thomas' home. After considering Thomas' objections, the district court adopted the referee's findings.

Thomas appeals, claiming that the child custody referee applied the wrong legal standard when

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[1]This appeal was previously dismissed in an unpublished order of this court. Pursuant to a request from Judge Marren of the Family Court, we issue this opinion in place of our order dismissing appeal filed December 22, 1993.

considering a modification of joint custody. He also argues that the district court abused its discretion by adopting the referee's findings and recommendations. We disagree with both contentions and affirm the district court's order.

NRS 125.510(2) specifically describes when a joint custody arrangement may be revisited and modified by the court:

2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reasons for the order of modification or termination if either parent opposes it.

(Emphasis added.) Thomas disregards this language and mistakenly cites Murphy v. Murphy, 84 Nev. 710, 447 P.2d 664 (1968), for the proposition that the court can only modify custody where circumstances are materially altered and a change would substantially enhance the children's welfare.

This argument fails for two reasons. First, Thomas did not preserve this argument for appeal. Failing to object in the district court level, we cannot consider the merits of Thomas' contentions. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983-84 (1981) (aside from general jurisdiction, issues not objected to at trial court are waived for appeal). Second, Murphy is inapplicable to the instant case. The decision was handed down in 1968, well before NRS 125.510(2) was enacted by the Nevada Legislature in 1981. See 1981 Nev.Stat., ch. 148 at 283-84. Moreover, Murphy only describes when a modification to a primary custody agreement is warranted. In view of these simple facts and the plain language of NRS 125.510(2), we conclude that the referee properly applied the best interests of the child standard in the instant case.

Thomas' second claim of error does not fare any better than his first. Consistent with Nevada statutes and pertinent case law, trial courts are vested with broad discretion concerning child custody matters. NRS 125.510; Rooney v. Rooney, 109 Nev. 540, 853 P.2d 123 (1993). This court will not disturb a lower court's findings absent a clear abuse of that discretion. Gilbert v. Warren, 95 Nev. 296, 594 P.2d 696 (1979); Culbertson v. Culbertson, 91 Nev. 230, 533 P.2d 768 (1975).

Thomas asserts that the district court abused its discretion by improperly discounting the testimony of Dr. Elizabeth Richitt. He points out that Dr. Richitt had spent far more time interviewing and dealing with the three children than did the CASA. He then asserts that Dr. Richitt's opinions about "coaching" and "parental alienation syndrome" should not have been disregarded by the referee. In other words, Thomas is claiming that the CASA was duped by the three children, and thus, the CASA's testimony was skewed in favor of Rita.

Thomas is simply rehashing trial court argument. It is the referee's prerogative, as the arbiter of fact, to decide which testimony is most credible. Roggen v. Roggen, 96 Nev. 687, 615 P.2d 250 (1980). There is nothing in the record that indicates that the referee abused its discretion in exercising this prerogative.

The CASA reported that each child claimed they were being left unsupervised with Thomas'

daughter from a prior marriage, in clear violation of a prior court order. Each child also claimed that this same individual was physically abusive on several occasions. This testimony is corroborated by the severe bite mark inflicted on the litigants' son. In addition, the CASA opined that the joint custody arrangement was detrimental to the children's well-being and required some type of modification. Finally, all these findings were consistent with Dr. Lewis Etcoff's evaluations (a third testifying expert). Dr. Etcoff agreed with the CASA's testimony and determined that there was no evidence of parental alienation syndrome.

Considering all the evidence and testimony contained in the record, we conclude that the trial court did not abuse its discretion by adopting the referee's findings.

Therefore, we affirm the order of the district court.

Exhibit E

NRS 125.460 State policy. The Legislature declares that it is the policy of this State:

1. To ensure that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage; and

2. To encourage such parents to share the rights and responsibilities of child rearing.

(Added to NRS by 1981, 283)—(Substituted in revision for NRS 125.132)

EXHIBIT F

NRS 125.465 Married parents have joint custody until otherwise ordered by court. If a court has not made a determination regarding the custody of a child and the parents of the child are married to each other, each parent has joint legal custody of the child until otherwise ordered by a court of competent jurisdiction.

(Added to NRS by 1993, 1425)

Exhibit G

SUSAN L. MCMONIGLE, Appellant, vs. ROBERT M. MCMONIGLE, Respondent.
110 Nev. 1407; 887 P.2d 742; 1994 Nev. LEXIS 168
No. 25296
December 22, 1994, FILED
SUPREME COURT OF NEVADA
Rose, C.J. Steffen, J. Young, J. Springer, J. Shearing, J.

1. Disposition
Reversed and remanded.

Counsel Marshal S. Willick, Las Vegas, for Appellant.
Woodburn & Wedge and James W. Erbeck, Las Vegas, for Respondent.

Opinion

Editorial Information: Prior History

Appeal from a district court order changing child custody. Eighth Judicial District Court, Clark County; Frances-Ann Fine, Judge.

{110 Nev. 1408} {887 P.2d 743} *OPINION*

PER CURIAM:

On March 2, 1992, appellant Susan Grandgeorge (Susan), then Susan McMonigle, and respondent Robert McMonigle (Robert) were divorced. The district court ordered primary custody of their one child, Mari, to Susan.

On March 17, 1993, Robert filed a motion to modify custody. The same day an ex parte restraining order gave him custody of Mari pending a hearing. On March 23, 1993, an initial hearing left the restraining order unchanged. In June, 1993, the district court gave Robert temporary custody. After a seven-day hearing which stretched from September 7 to October 6, 1993, the court awarded Robert permanent custody of Mari. Susan appealed.

We now reverse the order changing custody because the district judge improperly based her decision in large part on irrelevant evidence.

Once primary custody has been established, a court can consider changing custody only if "(1) the circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change." Murphy v. Murphy, 84 Nev. 710, 711, 447 P.2d 664, 665 (1968). "The moving party in a custody proceeding must show that circumstances . . . have substantially changed *since* the most recent custodial order. . . . Events that took place before that proceeding [are] inadmissible to establish a change of circumstances." Stevens v. Stevens, 107 Ore. App. 137, 810 P.2d 1334, 1336 (Or. Ct. App. 1991) (citations omitted).

The district court set forth the *Murphy* standard in its final order, but did not explicitly specify the circumstances it found altered. However, it is clear that some of the circumstances it considered were not appropriate under *Murphy*.

During the long evidentiary hearing in this case, the district court received extensive testimony and numerous exhibits relating to the period before March 2, 1992, the date of the divorce judgment and thus the last custody order prior to Robert's motion to modify custody. The court apparently realized this evidence was not relevant and stated in its final order that it had not addressed matters prior to the last custody order. Nevertheless, it expressly based its decision in large part on some of this evidence.

First, and most important, the district court improperly considered Susan's move to Kansas City and continued residence there. The court stated in its order that "any activities with respect to {110 Nev. 1409} [Susan] which occurred prior to [her] move to Kansas City were disregarded." Thus, the court considered the move itself to be within its purview. However, Susan moved to Kansas City in November, 1991, before the final divorce judgment. In fact, that judgment noted that she had already moved and therefore ordered her to share Robert's travel expenses for visitation. Accordingly, consideration of Susan's relocation was improper under *Murphy*.

Second, the district court found it improper that Susan did not provide Robert with "certain reports" concerning Mari. This finding apparently refers to reports generated in Santa Barbara in 1990, about which extensive testimony and argument were {887 P.2d 744} heard. Again, consideration of this evidence was improper under *Murphy*.

It is harmless error if a court incorrectly admits evidence which does not affect the substantial rights of the parties. NRCP 61. Also, this court has held that "where inadmissible evidence has been received by the court, sitting without a jury, and there is other substantial evidence upon which the court based its findings, the court will be presumed to have disregarded the improper evidence." Dep't of Highways v. Campbell, 80 Nev. 23, 33, 388 P.2d 733, 738 (1964).

Whether there was other substantial evidence in this case is arguable but need not be decided because the court below, instead of disregarding inadmissible evidence, expressly relied on it in reaching its decision. Susan's substantial rights were adversely affected most notably by the court's preoccupation throughout the proceedings with her living in Kansas City. In fact, the court would have allowed Susan to retain shared primary custody *but for* the fact she lived out of state. The court stated in its temporary order of June 28, 1993: "If [Susan] moves to Las Vegas, there could be shared primary physical custody." In its final order it stated: "If both parents had resided in Clark County, Nevada, this decision would be an easy one. An award of joint legal and joint physical custody to both parents would permit a check and balance system to insure the needs of this magical child are met."

Since the district court considered Susan fit, absent the irrelevant fact that she lived outside Nevada, to share primary custody of Mari, we reverse and remand with instructions that primary custody be restored to Susan.

Rose, C.J.

Steffen, J.

Young, J.

Springer, J.

Shearing, J.

Exhibit H

5.22 Rule .Domestic violence; protection orders.

This rule governs all requests for temporary and extended protection orders against domestic violence under (a) NRS 33.017 et seq.

The standard of proof for the issuance of a temporary (TPO) or extended protection order pursuant to (b) NRS 33.020(1) is "to the satisfaction of the court." This contemplates a lesser standard than a preponderance of the evidence and is equivalent to a reasonable cause or probable cause standard.

Due to the exigent nature of the TPO, the application and order for the extension of the TPO must be served no later than 24 hours prior to the scheduled hearing date. (c)

An application requesting an extended protection order must be based upon an affidavit setting forth specific facts within the affiant's personal knowledge which justify the issuance of such an order. (d)

If the application for an extended protection order contains a request for spousal or child support, the applicant must file a financial affidavit on a form approved by the court. (e)

No extended protection order may be renewed beyond the statutory maximum period nor may a new extended protection order be granted based upon the filing of a new application which does not contain a new and distinct factual basis for the issuance of an order. (f)

The court may appoint one or more full-time or part-time family division masters and alternates to serve as domestic violence commissioners. Interim orders signed by the domestic violence commissioner are effective upon issuance subject to approval by the assigned district court judge. A duly-appointed domestic violence commissioner has the authority to: (g)

Review applications for temporary and extended protection orders against domestic violence. (1)

Schedule and hold contempt hearings for alleged violations of temporary and extended protection orders; recommend a finding of contempt; and recommend the appropriate sanction subject to approval by the assigned district court judge, (2)

Recommend a sanction upon a finding of contempt in the presence of the court subject to approval of the assigned district court judge. (3)

Issue, extend, mod (4)ify, or dissolve protection orders against domestic violence under NRS 33.030.

Perform other duties as directed by the assigned district court judge. (5)

A Family Division Master or domestic violence alternate shall have the power to issue TPO's against domestic violence pursuant to (h) NRS 33.020(5). However, any emergency temporary protection order issued by telephone by a Family Division Master or domestic violence alternate, under this section, must be set for hearing within one week of issuance by the Family Division Master or domestic violence alternate on the court's calendar.

The interim orders, modifications or dissolutions, and recommendations pursuant to decision by the domestic violence commissioner shall be in full force and effect until further order of the assigned district court judge irrespective of any post decision motion which may be filed between the rendering of the decision and further order of the court. (i)

In determining whether or not to issue an ex parte TPO pursuant to (j) NRS 33.020, the assigned district court judge or the domestic violence commissioner may take steps to verify the written information provided by the applicant. This verification may include contacting Child Protective Services to determine whether a case is under investigation by that agency and involving either party. Child Protective Services or other agencies may be requested to attend the protection order hearing. Prior domestic violence history of either party may also be researched using criminal justice resources.

When a TPO case and a domestic case have been filed, the domestic violence commissioner will hear the extended protection order matter and related issues, unless a motion has been filed in the domestic case. After a motion is filed and heard by the assigned judge of record, all subsequent protection order filings and all other issues will be heard by that judge until final determination of the domestic case. After the final resolution of the domestic case, the judge of record will determine whether to hear any subsequent protection order filings. (k)

If a domestic case is active, an interim order made by the domestic violence commissioner, other than the protection order determination, will remain in effect for 60 days subject to approval by the assigned judge of record. If there has not been a domestic case filed, **any** interim order may remain in effect for the life of the protection order unless a subsequent modification is made by the assigned judge.

Exception: When a motion is filed in a domestic case **after** the initial TPO has been granted and a hearing has already been set in the TPO court, the domestic violence commissioner may make interim orders on "emergency" matters at the time set for the extended protection order hearing.

Exception: The domestic violence commissioner must bring all TPO cases to the attention of the assigned judge of record before taking any action. The assigned judge may then decide to hear any temporary protection order or extended protection order matter. The assigned judge may also direct that the domestic violence commissioner hear any temporary protection order or extended protection order matter and related issues, if there has been little or no recent activity in the domestic case.

The assigned district court judge or domestic violence commissioner may, pursuant to its discretion, waive the requirements of Rule 5.02 sua sponte or at the request (l) of either party.

A party may object to the domestic violence commissioner's recommendation, in whole or in part, by filing a written objection within 10 days after the decision in the matter. (m)

If the objecting party was not present at the hearing, the 10 day objection period will begin upon the written or personal service of the extended protection order on that party. (1)

The domestic violence commissioner's recommendation would remain in effect until the objection is heard. A copy of the written objection must be served on the other party. If the other party's address is confidential, service may be made on the protection order office for service on the other party. At the hearing on the objection, the assigned district court judge will review the matter and set aside only those recommendations that are found to be "clearly erroneous." (2)

The applicant may be ordered to pay all costs and fees incurred by the adverse party if by clear and convincing evidence it is proven that the applicant knowingly filed a false or intentionally misleading affidavit. (n)

[Amended; effective August 21, 2000.]

Exhibit 1

NRS 33.020 Requirements for issuance of temporary and extended orders; availability of court; court clerk to inform protected party upon transfer of information to Central Repository.

1. If it appears to the satisfaction of the court from specific facts shown by a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence, the court may grant a temporary or extended order. A temporary or extended order must not be granted to the applicant or the adverse party unless the applicant or the adverse party has requested the order and has filed a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence.

2. The court may require the applicant or the adverse party, or both, to appear before the court before determining whether to grant the temporary or extended order.

3. A temporary order may be granted with or without notice to the adverse party. An extended order may only be granted after notice to the adverse party and a hearing on the application. A hearing on an application for an extended order must be held within 45 days after the date on which the application for the extended order is filed.

4. The court shall rule upon an application for a temporary order within 1 judicial day after it is filed.

5. If it appears to the satisfaction of the court from specific facts communicated by telephone to the court by an alleged victim that an act of domestic violence has occurred and the alleged perpetrator of the domestic violence has been arrested and is presently in custody pursuant to NRS 171.137, the court may grant a temporary order. Before approving an order under such circumstances, the court shall confirm with the appropriate law enforcement agency that the applicant is an alleged victim and that the alleged perpetrator is in custody. Upon approval by the court, the signed order may be transmitted to the facility where the alleged perpetrator is in custody by electronic or telephonic transmission to a facsimile machine. If such an order is received by the facility holding the alleged perpetrator while the alleged perpetrator is still in custody, the order must be personally served by an authorized employee of the facility before the alleged perpetrator is released. The court shall mail a copy of each order issued pursuant to this subsection to the alleged victim named in the order and cause the original order to be filed with the court clerk on the first judicial day after it is issued.

6. In a county whose population is 52,000 or more, the court shall be available 24 hours a day, 7 days a week, including nonjudicial days and holidays, to receive communications by telephone and for the issuance of a temporary order pursuant to subsection 5.

7. In a county whose population is less than 52,000, the court may be available 24 hours a day, 7 days a week, including nonjudicial days and holidays, to receive communications by telephone and for the issuance of a temporary order pursuant to subsection 5.

8. The clerk of the court shall inform the protected party upon the successful transfer of information concerning the registration to the Central Repository for Nevada Records of Criminal History as required pursuant to NRS 33.095.

(Added to NRS by 1979, 946; A 1985, 2286; 1993, 810; 1995, 902; 1997, 1808; 1999, 1372; 2001, 1214; 2011, 1138)

Exhibit J

NRS 33.018 Acts which constitute domestic violence.

1. Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:

(a) A battery.

(b) An assault.

(c) Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform.

(d) A sexual assault.

(e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:

(1) Stalking.

(2) Arson.

(3) Trespassing.

(4) Larceny.

(5) Destruction of private property.

(6) Carrying a concealed weapon without a permit.

(7) Injuring or killing an animal.

(f) A false imprisonment.

(g) Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry.

2. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

(Added to NRS by 1985, 2283; A 1995, 902; 1997, 1808; 2007, 82, 1275)

Exhibit K

APPO

DISTRICT COURT,
FAMILY DIVISION,
CLARK COUNTY, NEVADA

_____,
Applicant,

Case No. T_____

vs.

_____,
Adverse Party.

APPLICATION FOR A TEMPORARY AND/OR EXTENDED ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE

Applicant states the following facts under penalty of perjury:

Applicant Date of Birth: _____ Adverse Party Date of Birth: _____

1. My relationship to the Adverse Party is (for example, current/former husband, current/former wife, current/former boyfriend, current/former girlfriend, father, mother ,brother, sister, etc.):

_____.

☐ Length of relationship: _____.

☐ Have you ever lived together? Yes or No _____. If so, how long? _____.

☐ Are you living together now? Yes or No _____.

☐ Date of Separation: _____.

☐ We have child(ren) TOGETHER: Yes or No _____. If yes, where and with whom are these child(ren) living? _____.

2. My address is: ☐ CONFIDENTIAL. (If confidential do not write address here)

or, if not confidential list _____

City_____ County _____ State _____ Zip Code _____

Phone _____.

I ☐ own ☐ rent this residence. Lease/title is held in all the following name(s):

_____

I have been living in this residence for _____.

3. Adverse Party's address is: _____

City _____ County _____ State _____ Zip Code _____

Phone:_____ .

Adverse Party has been living in this residence for _____.

4. My employment is: ☐ CONFIDENTIAL. (If confidential do not write address here)
or, if not confidential, state place of employment _____
Address: _____
City _____ County _____ State _____ Zip Code _____
Phone _____

5. Adverse Party's employment is: _____
Address: _____
City _____ County _____ State _____ Zip Code _____
Phone _____

6. (a) The name(s) and dates of birth of minor child(ren) who I am the parent of, or who live in my home, are as follows:

NAME(first and last)	Date of Birth	APPLICANT'S CHILD (YES/NO)	ADVERSE PARTY'S CHILD (YES/NO)	WHO CHILD LIVES WITH
1.		Check one Yes ☐ No ☐	Check one Yes ☐ No ☐	
2.		Check one Yes ☐ No ☐	Check one Yes ☐ No ☐	
3.		Check one Yes ☐ No ☐	Check one Yes ☐ No ☐	
4.		Check one Yes ☐ No ☐	Check one Yes ☐ No ☐	
5.		Check one Yes ☐ No ☐	Check one Yes ☐ No ☐	

(b) Have you or the Adverse Party ever been awarded custody of the minor child(ren) that you have in common by Court order? ☐ Yes ☐ No

Who was awarded custody? ☐ Applicant ☐ Adverse Party

By what Court? _____ Case No. _____

7. Please check the appropriate box. IF YOU or the ADVERSE PARTY has ever filed a case in any Court for ☐ Divorce, ☐ Custody, ☐ Paternity, ☐ Child Support, ☐ Guardianship, ☐ Order for Protection, ☐ Stalking/Harassment Order. Please indicate when and where the case was filed, and list the case numbers. _____

_____

_____

_____

_____

8. Has CHILD PROTECTIVE SERVICES (CPS) ever been contacted regarding any member of the household in the past year? ☐ Yes ☐ No. Is CPS currently involved with this family? ☐ Yes ☐ No.
If yes to the question, give details, including the caseworker's name: _____

_____

_____

_____

_____

_____

9. ☐ I have been or reasonably believe I will become a victim of domestic violence committed by the Adverse Party.

☐ My child(ren) have been or are in danger of being a victim of domestic violence committed by the Adverse Party.

In the following space, state the facts which support your application. Be as specific as you can, starting with the most recent incident. Include the approximate dates of domestic violence, how long it has gone on, and whether law enforcement or medical personnel have been involved.

Please do not write on the backs of any pages.

10. Have YOU ever been arrested or charged with domestic violence, or any other crime committed against your spouse, partner, or child(ren)? ☐ Yes ☐ No. If yes, WHEN and where? _____

_____

_____

11. To your knowledge, has the **ADVERSE PARTY** ever been arrested or charged with domestic violence, or any other crime committed against his/her spouse, partner, or child(ren)? ☐ Yes ☐ No. If yes, WHEN and where? _____

_____

_____

12. ☐ An emergency exists, and I need a TEMPORARY ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE issued immediately without notice to the Adverse Party to avoid irreparable injury or harm. I request that it include the following relief (please check all the choices that apply to you):

☐ (a) Prohibit the Adverse Party, either directly or through an agent, from threatening, physically injuring or harassing me and/or my minor child(ren).

☐ (b) Prohibit the Adverse Party from any contact with me whatsoever.

☐ (c) Exclude the Adverse Party from my residence and order the Adverse Party to stay at least 100 yards away from my residence.

☐ (d) Obtain law enforcement assistance to ☐ accompany me to the following residence, _____, or ☐ to accompany the Adverse Party, to the following residence, _____ to obtain personal property.

☐ (e) Grant temporary custody of the minor child(ren) to me.

☐ (f) Order that custody, visitation, and support of the minor child(ren) remain as ordered in the Decree of Divorce/Order entered in Case Number _____ in the _____ Judicial District Court of the State of _____.

☐ (g) Order the Adverse Party to stay at least 100 yards away from the minor child(ren)'s school, or day care, located at ☐ CONFIDENTIAL, (If confidential do not write address here) or, if not confidential list 1._____Address: _____

City _____ County _____ State___ Zip Code _____

2._____

Address: _____

City _____ County _____ State ___ Zip Code _____

3._____

Address: _____

City _____ County _____ State ___ Zip Code _____

☐ (h) Order the Adverse Party to stay at least 100 yards away from my place of employment.

☐ (i) Order the Adverse Party to stay at least 100 yards away from places which I or my minor child(ren) frequent regularly: ☐ CONFIDENTIAL, (If confidential do not write address here) or, if not confidential list 1._____

Address: _____

City _____ County _____ State ____ Zip Code _____

2._____

Address: _____

City _____ County _____ State ____ Zip Code _____

3._____

Address: _____

City _____ County _____ State ____ Zip Code _____

☐ (j) I further request the following other conditions: _____

_____

_____

_____

_____

_____

IF YOU WISH TO APPLY FOR A HEARING FOR AN EXTENDED ORDER FOR PROTECTION COMPLETE THE FOLLOWING INFORMATION

13. ☐ I request the Court hold a hearing for an EXTENDED ORDER FOR PROTECTION AGAINST DOMESTIC VIOLENCE (which could be in effect for up to one year), and at that hearing the Court issue an Extended Order for Protection Against Domestic Violence and that it include the following relief (please check all the choices that apply to you):

☐ (a) Prohibit the Adverse Party, either directly or through an agent, from threatening, physically injuring or harassing me and/or my minor child(ren)!

☐ (b) Prohibit the Adverse Party from any contact with me whatsoever.

☐ (c) Exclude the Adverse Party from my residence and order the Adverse Party to stay at least 100 yards away from my residence.

☐ (d) Grant temporary custody of the minor child(ren) to me.

☐ (e) Grant the Adverse Party visitation with the minor child(ren).

☐ (f) Order the Adverse Party to pay support and maintenance of the minor child(ren). (You may be required to file an affidavit of financial condition prior to the hearing.)

☐ (g) Order the Adverse Party to pay the rent or make payments on a mortgage or pay towards my support and maintenance.

☐ (h) Order that custody, visitation, and support of the minor child(ren) remain as ordered in the Decree of Divorce/Order entered in Case Number _____ In the _____ Court of the State of _____.

☐ (i) Order the Adverse Party to stay at least 100 yards away from the minor child(ren)'s school, or day care, located at: ☐ CONFIDENTIAL, (If confidential, do not write address here) or, if not confidential list 1. _____ Address: _____ City _____ _____ County _____ State ____ Zip Code_____

2._____

Address: _____

City _____ County _____ State ____ Zip Code_____

3._____

Address: _____

City _____ County _____ State ____ Zip Code_____

☐ (j) Order the Adverse Party to stay at least 100 yards away from my place of employment.

☐ (k) Order the Adverse Party to stay at least 100 yards away from places which I or my minor child(ren) frequent regularly: ☐ CONFIDENTIAL, (If confidential do not write address here) or, if not confidential list 1. _____ Address: _____ City _____ _____ County _____ State ____ Zip Code_____

2._____

Address: _____

City _____ County _____ State ____ Zip Code_____

3._____

Address: _____

City _____ County _____ State ____ Zip Code_____

☐ (l) I further request the following other conditions: _____

_____

_____

_____

_____

_____

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF NEVADA THAT I HAVE READ THE STATEMENTS CONTAINED IN THIS APPLICATION, KNOW THE CONTENTS THEREOF, AND BELIEVE THEM TO BE TRUE AND CORRECT

DATED _____.

_____
Signature of Applicant

_____
Applicant's Name (Please Print)

SUBSCRIBED and SWORN before me

this _____ day of _____, _____.

_____
NOTARY PUBLIC

Application taken by _____

Exhibit L

Pursuant to NRS 125.510(6), the Parties are hereby put on notice of the following:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY "D" FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation is subject to being punished for a category "D" felony as provided in NRS 193.130.

The State of Nevada, United States of America, is the habitual residence of the minor child of the Parties hereto. The Parties are also put on notice that the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law apply if a parent abducts or wrongfully retains a child in a foreign country. The Parties are also put on notice of the following provisions in NRS 125.510(8):

If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

> (a) The Parties may agree, and the court shall include in the order for custody of the child, that the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.
> (b) Upon motion of one of the Parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside of the country of habitual residence. The bond must in an amount determined by the court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent poses an imminent risk of wrongfully removing or concealing the child.

The Parties are also put on notice of the following provision of NRS 125C.200:

> If custody has been established and the custodial parent or a parent having joint custody intends to move his residence to a place outside of this state and to take the child with him, he must, as soon as possible and before the planned move, attempt to obtain the written consent of the other parent to move the child from the state. If the noncustodial parent or other parent having joint custody refuses to give that consent, the parent planning the

> move shall, before he leaves the state with the child, petition the court for permission to move the child. The failure of a parent to comply with the provisions of this section may be considered as a factor
> if a change of custody is requested by the noncustodial parent or other parent having joint custody.

The Parties are further put on notice that they are subject to the provisions of NRS 31A and 125.450 regarding the collection of delinquent child support payments.

The Parties are further put on notice that either Party may request a review of child support pursuant to NRS 125B.145.

The Parties shall submit the information required in NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten (10) days from the date the Decree in this matter is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The Parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten (10) days should any of that information become inaccurate.

Exhibit M

BEHAVIOR ORDER

The behavior order shall be defined as:

1. No abusive telephone calls to either Party.
2. No name calling.
3. No foul language.
4. Avoid conflicts/contacts with the other Party's "significant other."
5. Do not use child as a weapon against the other parent.
6. No harassment at places of employment.
7. No copies of letters to anyone associated with the Parties.
8. No phone calls to other people associated with the other Party.
9. Focus to remain on best interest of the child.
10. Maintain respect toward the other Parties relatives and friends.
11. Advise friends/relatives/significant others not to disparage, criticize or harass the other Party.
12. Child custody exchanges/visitation/etc., shall be done in a civil law abiding manner and reasonably close to the time specified by the Court.
13. No threats of violence or harm to any other Party/relative/friends/significant others of other Party.