

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON ROMANO,
Appellant,
vs.
TRACY ROMANO,
Respondent.

No. 81259

AARON ROMANO,
Appellant,
vs.
TRACY ROMANO,
Respondent.

No. 81439

FILED

MAY 10 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

***ORDER DIRECTING FULL BRIEFING
AND INVITING AMICUS CURIAE PARTICIPATION***

This appeal is subject to this court's fast-track child custody rule. NRAP 3E(a). Under NRAP 3E(g)(1), we may direct full briefing based on the documents filed in this court. Having reviewed the fast track statement and response, we conclude that this appeal warrants full briefing.

Here, the parties stipulated to a child custody order, which created a complex timeshare regarding each child. Under the timeshare, the father had 3 minor children approximately 90 percent of the time while the mother had 4 other minor children approximately 95 percent of the time. Despite this timeshare, the parties designated their custodial arrangement as "joint physical custody" in their custody agreement. Less than a year later, the father filed a motion to modify the physical custody agreement, which the district court denied, finding that there had been no change of circumstances.

This appeal identifies a potential inconsistency in this court's jurisprudence regarding whether a party must show a change in

circumstances to warrant modifying a joint physical custody order. *Compare Mosley v. Figliuzzi*, 113 Nev. 51, 58, 930 P.2d 1110, 1115 (1997) (explaining that parties moving to change a joint physical custody order must show a change in circumstances), *overruled in part on other grounds* by *Castle v. Simons*, 120 Nev. 98, 105 n.20, 86 P.3d 1042, 1047 n.20 (2004), *with Rivero v. Rivero*, 125 Nev. 410, 430, 216 P.3d 213, 2271 (2009) (holding that a court may modify a joint physical custody order if it is in the child's best interest). Accordingly, we conclude that supplemental briefing would be of assistance to address the following: (1) whether the test to modify joint physical custody requires a party to show that a change in circumstances occurred since the entry of the previous custody order as well as that modification is in the best interest of the child, consistent with the test to modify primary physical custody announced in *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007); and (2) if so, whether this court should revisit its holding in *Rivero*, 125 Nev. at 429, 216 P.3d at 226 requiring a court to determine the actual custody status of the children under Nevada law on the filing of a motion to modify custody and instead direct courts to do so as part of the best interest analysis only after finding a change in circumstances.

Appellant shall have 30 days from the date of this order to file and serve a supplemental opening brief addressing the questions presented for review. Respondent shall have 30 days from service of the supplemental opening brief to file and serve a supplemental answering brief. Appellant shall have 15 days from service of the supplemental answering brief to file and serve a supplemental reply brief, if warranted. The supplemental briefs shall otherwise comply with NRAP 28 and 32. With regard to the appellate

record, the parties may reference the joint appendix filed on December 31, 2020.

Additionally, it appears that the participation of, and briefing by, amicus curiae may assist our resolution of the issues presented by this appeal. Thus, we request that the Family Law Section of the State Bar of Nevada participate in this appeal as amicus curiae by filing a brief addressing the described issues. The State Bar must file any amicus brief within seven days from the filing of the party's brief that the amicus curiae supports, or within seven days of the respondent's answering brief if the amicus curiae does not support either party. *See* NRAP 29(f). The brief shall comply with the requirements of NRAP 32(a).

It is so ORDERED.

1 Hardesty, C.J.
Hardesty

cc: Hon. Rebecca Burton, District Judge, Family Court Division
The Abrams & Mayo Law Firm
Kainen Law Group
Eighth District Court Clerk
James Barnes, Chair, Family Law Section, State Bar of Nevada