

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTOR UGOCHUKWU EMENIKE
GOLD,
Appellant,
vs.
JUDITH SAPPHIRE EMENIKE GOLD,
Respondent.

No. 83078-COA

FILED

JUN 30 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

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

Victor Ugochukwu Emenike Gold appeals from a post-decree order modifying child custody. Eighth Judicial District Court, Clark County; Mathew Harter, Judge.

In the proceedings below, Victor and respondent Judith Sapphire Emenike Gold were divorced by way of a stipulated decree of divorce entered in 2019. Pursuant to the terms of the decree, the parties shared joint legal and joint physical custody of their three minor children and Victor was ordered to pay child support, pursuant to a joint physical custody arrangement. Although the decree ordered the parties to share joint physical custody, the parties' timeshare provided that Victor would have the children from Monday at 11:00 a.m. until Wednesday at 11:00 a.m., and that Judith would have the children the remainder of the time each week. Additionally, the parties agreed that the eldest child would have teenage discretion as to how long he stayed with each parent, so long as he spent at least two days each week with each parent.

As relevant here, in October 2020, Victor filed a motion for an order to show cause, asserting that he had not seen the eldest child and seeking enforcement of the custody schedule. In his motion, Victor also asserted that he wanted to change to a week on/week off custody schedule, but that Judith refused to agree to such a change. After a hearing on the motion in November 2020, the district court ordered that the parties' physical custody designation would be modified to give Judith primary physical custody, concluding that the joint physical custody designation in the decree was a mistake as the timeshare did not give the parties joint physical custody. The order also referred the eldest child to be interviewed, and purportedly denied Victor's request to modify custody.

In December 2020, Victor filed a motion to modify the parties' timeshare, while also indicating that he did not want to modify the physical or legal custody designation from joint custody. Asserting that he did not get enough time with the children, Victor requested a week on/week off timeshare, while maintaining a joint legal and joint physical custody arrangement. After several continuances, the district court heard this motion in April 2021, and denied Victor's request to modify custody pursuant to *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993). The district court also noted that Victor agreed to maintain the teenage discretion provision for the eldest child. This appeal followed.

On appeal, Victor challenges the district court's order modifying custody to award Judith primary physical custody and the subsequent order denying his motion to modify custody. Victor asserts that the parties agreed that their timeshare was one of joint physical custody and the same was ordered in the decree of divorce; therefore, the district court erred in modifying the parties' physical custody arrangement without an

evidentiary hearing and without making any findings.¹ This court reviews a child custody decision for an abuse of discretion, but “the district court must have reached its conclusions for the appropriate reasons.” *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007). In reviewing child custody determinations, this court will affirm the district court’s factual findings if they are supported by substantial evidence. *Id.* at 149, 161 P.3d at 242. “Although this court reviews a district court’s discretionary determinations deferentially, deference is not owed to legal error, or to findings so conclusory they may mask legal error.” *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted). When making a custody determination, the sole consideration is the best interest of the child. NRS 125C.0035(1); *Davis*, 131 Nev. at 451, 352 P.3d at 1143.

¹In his notice of appeal, Victor also purports to challenge the district court’s orders filed on May 20, 2021, and May 21, 2021, directing the clerk of the court to sign any necessary documents required for Judith to travel with the children. Because these orders are not substantively appealable, we lack jurisdiction to consider Victor’s appeal from them and necessarily dismiss the appeal to the extent he seeks to challenge those orders. See NRAP 3A(b) (designating the judgments and orders from which an appeal may be taken); *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) (noting that the appellate courts generally have jurisdiction to consider an appeal only when authorized by statute or court rule). Victor likewise purports to challenge an order entered June 4, 2021, entered by Chief Judge Linda Bell, denying his request to disqualify Judge Harter. Because Victor fails to offer any argument challenging this order on appeal, we necessarily affirm it. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (“Issues not raised in an appellant’s opening brief are deemed waived.”); *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims not cogently argued).

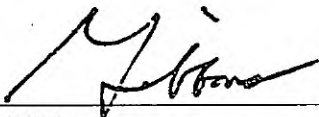
At the hearing on Victor's initial motion, the district court summarily concluded that the joint physical custody award provided by the parties' decree was a mistake as the timeshare arrangement was one of a primary physical custody arrangement pursuant to *Rivero v. Rivero*, 125 Nev. 410, 427, 216 P.3d 213, 225 (2009) (providing that "[e]ach parent must have physical custody of the child at least 40 percent of the time" to constitute joint physical custody), *overruled in part on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 982 (2022). Based on this conclusion, the court modified the custody order to award Judith primary physical custody of the parties' children. Although *Rivero* established the parameters for determining whether a timeshare arrangement qualifies as joint or primary physical custody, the Nevada Supreme Court has since gone on to clarify that *Rivero's* "guideline should not be so rigidly applied that it would preclude joint physical custody when the court has determined in the exercise of its broad discretion that such a custodial designation is in the child's best interest" and that it does not "abrogate the court's focus on the child's best interest." *Bluestein v. Bluestein*, 131 Nev. 106, 113, 345 P.3d 1044, 1049 (2015). Thus, under *Bluestein*, even if a parent has physical custody less than 40 percent of the time, the custody arrangement may still be designated as one of joint physical custody if the district court finds that arrangement is in the child's best interest. *See id.*

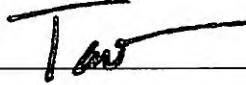
Here, the district court relied solely on the timeshare that the parties agreed to and that was subsequently awarded in the decree of divorce to change the designation on the parties' custody arrangement to primary physical custody. Because the district court did not consider any evidence of the parties' actual timeshare or whether modification of the

custody designation was in the children's best interest, and likewise did not make any findings as to the same, the district court abused its discretion in modifying the parties' physical custody arrangement and we necessarily reverse and remand this matter to the district court for further proceedings. *See id.* (reversing and remanding because "the district court abused its discretion by failing to set forth specific findings that modifying the parties' custodial agreement to designate [the mother] as primary physical custodian was in the best interest of the child"); *Davis*, 131 Nev. at 451, 352 P.3d at 1143 (explaining that the district court must make "express findings as to the best interest of the child in custody and visitation matters").

Accordingly, we

ORDER the judgment of the district court DISMISSED IN PART, AFFIRMED IN PART, AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Linda Marie Bell, Chief Judge
Hon. Mathew Harter, District Judge
Victor Ugochukwu Emenike Gold
Judith Sapphire Emenike Gold
Eighth District Court Clerk