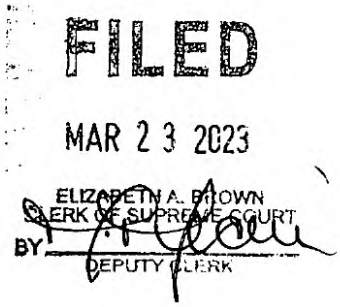
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JENNIFER MARIE MARTINEZ,
Appellant,
vs.
PAUL GILBERT MARTINEZ,
Respondent.

No. 84148-COA



ORDER OF AFFIRMANCE

Jennifer Marie Martinez appeals from district court orders modifying child custody and support. Eighth Judicial District Court, Family Division, Clark County; Rhonda Kay Forsberg, Judge.

Jennifer and her ex-husband, respondent Paul Gilbert Martinez, were divorced in California, and Jennifer received primary physical custody of their minor child, L.M. In that action, the California court permitted Jennifer to relocate with L.M. to Nevada, and the Eighth Judicial District Court assumed jurisdiction over the underlying custody proceedings. Paul then moved for primary physical custody of L.M., and Jennifer filed an opposition and countermotion requesting that Paul's parenting time be supervised until such time as he received a neuropsychological evaluation confirming his ability to care for L.M. without such supervision. Both parties also requested alteration of the parenting-time schedule. Following an evidentiary hearing, the district court entered a written order denying Paul's motion for primary physical custody but altering the parties' parenting-time schedule to give Paul more time than he previously had. The court also denied Jennifer's request for Paul's time to be supervised, declared that Paul was a prevailing party entitled to attorney fees and costs, and later entered a second order

clarifying aspects of the original order. Jennifer filed a motion to alter or amend the district court's determination, which the court denied. This appeal followed.

On appeal, Jennifer sets forth numerous arguments in favor of reversal, including that the district court's factual findings were not supported by substantial evidence, that the court inappropriately relied on evidence predating the prior custody order in violation of *McMonigle v. McMonigle*, 110 Nev. 1407, 887 P.2d 742 (2004), and its progeny, and that the court should not have held an evidentiary hearing in light of Paul's failure to produce certain documents. Jennifer also argues that the district court exceeded its jurisdiction by granting Paul relief that he did not request, that it erred by failing to make appropriate findings under NAC 425.150(1) when ordering Jennifer to pay all travel expenses for Paul's parenting time, and that it erred by awarding Paul attorney fees and costs.

Because it presents a threshold issue, we first address Jennifer's argument that, under *Anastassatos v. Anastassatos*, 112 Nev. 317, 320, 913 P.2d 652, 653-54 (1996), the district court exceeded its jurisdiction and violated her due-process rights by awarding Paul additional time that he did not request. We disagree. Unlike *Anastassatos*, where the district court reached substantive issues in the challenged order that were not addressed by the parties in their motion practice and were therefore not properly before the court, *id.*, the substantive issue of the parties' parenting-time schedule was squarely before the district court below. We therefore reject Jennifer's argument on this point.

Relatedly, to the extent Jennifer contends that her and Paul's proposed timeshares aligned in certain respects and that, as a result, the district court lacked the authority to establish a timeshare inconsistent

with those points of agreement, we likewise disagree. It is well established that, once the parties come before the court to modify child custody, the court must review that request in accordance with Nevada law. *Rivero*, 125 Nev. at 429, 216 P.3d at 227 (providing that, while "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," district courts must nevertheless apply Nevada law when determining whether to modify custody). Accordingly, because Nevada law requires evaluating the best interest of the child in custody actions, NRS 125C.0035(1), and because Jennifer fails to identify any reason why the district court was supposedly prohibited from determining that a timeshare different from those proposed by the parties was in L.M.'s best interest, we discern no basis for relief on this issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

As another threshold matter, Jennifer argues that the district court should not have allowed the evidentiary hearing to go forward in light of Paul's supposed failure to turn over medical records. But she fails to cite any relevant authority or present any cogent argument in support of this contention. *See id.* Rather, she simply cites the law-of-the-case doctrine in summarily contending that Paul failed to comply with the court's earlier order to produce all relevant medical records, while Paul claims that he complied and turned over everything he was required to. Despite the fact that this is essentially a discovery dispute, Jennifer fails to cite any statutes or rules pertaining to evidence or discovery. And even assuming without deciding that the district court's course of action here was inconsistent with its prior order, district courts retain the authority to revise interlocutory

orders at any time before the entry of a final judgment. NRCP 54(b). Jennifer therefore fails to demonstrate that any relief is warranted on this point.

Turning to the substance of the district court's order modifying the parties' timeshare, we review a district court's decision concerning child custody, including parenting-time schedules, for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022). When making such a determination, "the sole consideration of the court is the best interest of the child." NRS 125C.0035(1); *see* NRS 125A.045(1) (defining "[c]hild custody determination" in part as an order providing for parenting time). We will not disturb the district court's findings if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain the judgment. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Further, we presume the district court properly exercised its discretion in determining the child's best interest. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1226-27 (2004).

We are not persuaded by Jennifer's argument that we should reverse the district court's parenting-time determination because it was unsupported by substantial evidence. In making its decision, the district court addressed all of the statutory best-interest factors and other relevant considerations in determining that increasing Paul's parenting time and leaving it unsupervised would be in L.M.'s best interest. *See Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016) (requiring that district courts set forth specific findings as to all of the statutory best-interest factors). To the extent the evidence presented to the district court was conflicting, we

are not at liberty to reweigh that evidence, and we defer to the district court's credibility determinations. *Ellis*, 123 Nev. at 152, 161 P.3d at 244. Accordingly, insofar as Jennifer contends that the district court misapprehended the evidence as to certain individual findings, we cannot say that the district court's overall decision might reasonably have been different had it not done so, especially in light of its ultimate conclusion that Paul is fully capable of caring for L.M. without supervision and that increased time with him in California would serve her best interest.[1] *See McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 495-96 (2016) (providing that reversal is warranted only where an error affects a party's substantial rights such that "a different result might reasonably have been reached" but for the error). We therefore discern no abuse of discretion in the district court's parenting-time decision. *See Rivero*, 125 Nev. at 428, 216 P.3d at 226.

Jennifer further argues that the district court erred in failing to consider the requisite factors for adjusting child support when it ordered her to pay all transportation costs in connection with L.M. traveling to and from California for Paul's custodial time. *See* NAC 425.150(1) (providing that the district court may adjust "[a]ny child support obligation . . . in

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[1]To the extent Jennifer argues summarily that the district court wrongly considered evidence predating the prior custody order in violation of *McMonigle* and its progeny, she fails to provide any cogent explanation as to why she believes that evidence was inadmissible for the purpose of determining whether a modification of parenting time was in L.M.'s best interest. *See Nance v. Ferraro*, 134 Nev. 152, 153, 418 P.3d 679, 681 (Ct. App. 2018) (holding that a district court is generally "not bar[red] . . . from reviewing the facts and evidence underpinning . . . prior rulings or custody determinations in deciding whether the modification of a prior custody order is in the child's best interest"); *see also Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

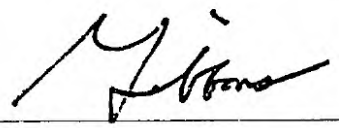
accordance with the specific needs of the child and the economic circumstances of the parties based upon the . . . factors and specific findings of fact" enumerated in NAC 425.150(1)(a)-(h), including "[t]he cost of transportation of the child to and from visitation"). Paul counters that NAC 425.150(1) does not apply because the district court set child support according to the standard base obligation and did not deviate from that amount; rather, it simply ordered Jennifer to pay travel costs because she was the relocating parent, separate from the issue of child support.

We agree with Paul that the district court's ruling on travel costs was not an adjustment of child support, as the district court simply set the amount of child support in accordance with the regulatory base obligation and separately ordered Jennifer to pay travel costs. And our supreme court has acknowledged that, when a district court orders one parent to pay certain expenses separate from the court's calculation of child support, those expenses are "remov[ed] from consideration for purposes of NAC 425.150(1)." *Matkulak v. Davis*, 138 Nev., Adv. Op. 61, 516 P.3d 667, 671 (2022). We therefore reject Jennifer's argument, and because she does not otherwise challenge the district court's child-support determination, we necessarily affirm the order to that extent.

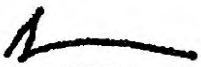
Finally, with respect to Jennifer's argument that the district court erred in declaring Paul a prevailing party entitled to an award of attorney fees and costs, as noted by Paul, the district court has not yet entered any such award. Thus, to the extent Jennifer is challenging the award, her attempt to appeal that determination is premature. *See Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006) ("An order awarding attorney fees and costs is substantively appealable as a special order after final judgment.").

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.[2]



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Rhonda Kay Forsberg, District Judge, Family Division
The Abrams & Mayo Law Firm
Roberts Stoffel Family Law Group
Eighth District Court Clerk

[2]Insofar 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.