

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
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2 **JASON PRATZ,**

3 Petitioner-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-40033

5 **LACEY POTTS,**

6 Respondent-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8 **Debra Ramirez, District Court Judge**

9 Batley Family Law, P.A.

10 L. Helen Bennett

11 Roberta S. Batley

12 Albuquerque, NM

13 for Appellee

14 Lacey Potts

15 Portales, NM

16 Pro Se Appellant

17 **MEMORANDUM OPINION**

18 **HANISEE, Chief Judge.**

19 {1} Respondent Lacey Potts (Mother), a self-represented litigant, appeals multiple
20 district court orders that effectively modified an existing joint custody plan of the
21 parties' minor daughter (Child), held between Mother and Petitioner Jason Pratz
22 (Father), and denied Mother's request for reconsideration thereof. Mother asserts
23 multiple errors by the district court, including that (1) the court's orders were not

1 supported by findings regarding the best interest of Child; (2) the district court's
2 orders violate her due process rights; (3) the district court erroneously precluded her
3 from presenting evidence; (4) the district court judge exhibited bias and a lack of
4 impartiality. For the reasons that follow, we affirm.

5 **DISCUSSION**

6 **I. Determination of Best Interest of Child**

7 {2} Throughout the proceedings in this case, the district court filed numerous
8 orders addressing the custody arrangement for Child who was ten years old at the
9 time of appeal. Mother's contentions on appeal center primarily on two such orders:
10 (1) the district court's minute order following an August 2021 hearing on multiple
11 motions filed by Mother, which adopted the report of court clinician Renee Cerami
12 (the August minute order); and (2) the district court's memorandum order filed in
13 response to Mother's motion requesting that the court reject Ms. Cerami's
14 recommendations and reconsider the August minute order. Mother argues these
15 orders are not supported by findings demonstrating that the district court's custody
16 determinations are in the best interest of Child. To that end, Mother argues the
17 district court should have ordered the parties to continue upholding the 50/50
18 timesharing arrangement the parties had agreed upon prior to the August 2021
19 hearing.

1 {3} “We review a district court’s child custody determination for abuse of
2 discretion, and we will uphold the district court’s findings if they are supported by
3 substantial evidence.” *Hough v. Brooks*, 2017-NMCA-050, ¶ 18, 399 P.3d 387.
4 “Substantial evidence is relevant evidence that a reasonable mind would accept as
5 adequate to support a conclusion.” *State ex rel. Child., Youth & Fams. Dep’t v.*
6 *Raymond D.*, 2017-NMCA-067, ¶ 14, 404 P.3d 15 (internal quotation marks and
7 citation omitted). “[A] court may modify a custody order only upon a showing of a
8 substantial change in circumstances affecting the best interests and welfare of the
9 child, and a showing that such change of circumstances has occurred since the entry
10 of the prior custody order.” *Hopkins v. Wollaber*, 2019-NMCA-024, ¶ 17, 458 P.3d
11 583 (internal quotation marks and citation omitted). Although “[t]he ‘best interests’
12 test is broad and vests the [district court] with considerable discretion,” that
13 discretion “must be consistent with the evidence.” *Schuermann v. Schuermann*,
14 1980-NMSC-027, ¶ 8, 94 N.M. 81, 607 P.2d 619.

15 {4} We initially note that this case involves only a question of *modification* of
16 joint custody, and not a question of *termination* of joint custody. Each of the district
17 court orders at issue in this case reiterated that the parties have joint legal custody.
18 “[I]n a situation where the parents have joint custody, physical custody may be
19 shared, or either parent may be designated primary physical custodian, [the status of
20 which] is subject to change without necessarily affecting legal custody.” *Hopkins*,

1 2019-NMCA-024, ¶ 16. Further, “legal custody does not automatically determine or
2 establish the terms of physical custody.” *Id.*; *see also* NMSA 1978, § 40-4-9.1(L)(4)
3 (1999) (“Joint custody does not imply an equal division of the child’s time between
4 the parents.”). We emphasize this distinction given Mother’s stated confusion
5 regarding whether the parties continue to share joint custody in light of the district
6 court’s orders.

7 {5} “Custodial inquiries begin with the well-established rule that once custody has
8 been initially determined, every presumption is in favor of the reasonableness of the
9 original decree and the burden is on the moving party to satisfy the court that
10 circumstances have so changed as to justify the modification of custody.” *Hopkins*,
11 2019-NMCA-024, ¶ 17 (alteration, internal quotation marks, and citation omitted).
12 Here, the district court first determined Child’s custody in a stipulated parenting plan
13 from October 2013, in which the court established the parties as sharing joint
14 custody, with Mother designated as the primary custodial parent. That parenting plan
15 remained in place until July 2019, when the district court filed a stipulated order
16 stating that the parties had agreed to a 50/50 timesharing schedule. In March 2021,
17 Father filed a motion for an order to show cause and for immediate return of Child
18 following Mother’s relocation with Child to Portales, New Mexico. In response to
19 Father’s motion, the district court filed a minute order in May 2021 (the May minute
20 order), requiring Mother to return with Child to Albuquerque and stating that if

1 Mother returned to live in Albuquerque, the parties would resume their 50/50
2 timesharing agreement, and if Mother remained living in Portales, Child would
3 reside in Albuquerque with Father. Mother returned Child to Albuquerque but
4 remained living in Portales.

5 {6} Following the August 2021 hearing—at which Ms. Cerami testified for over
6 forty-five minutes regarding her report’s findings and recommendations—the
7 district court adopted Ms. Cerami’s recommendations in its memorandum order,
8 detailing that it was in Child’s best interest to enforce the district court’s May minute
9 order in which the court previously stated that Child should reside primarily with
10 Father in Albuquerque if Mother remained residing in Portales. Ms. Cerami’s
11 testimony detailed, among other findings, her observations regarding Child’s
12 educational needs, her relationship with the parties, the parties’ abilities to
13 effectively co-parent, and the wishes of the parties and child.

14 {7} The original custodial decree in this case was the stipulated parenting plan
15 from October 2013. Mother’s subsequent relocation constituted a change in
16 circumstances that justified modification of custody of Child, as reflected in the
17 memorandum order. *See Hopkins*, 2019-NMCA-024, ¶ 17. Regarding Mother’s
18 assertion that the district court’s orders are not supported by findings demonstrating
19 the best interest of Child, we note that in its memorandum order, the district court
20 found:

1 The [c]ourt adopted the recommendations of the [c]ourt [c]linic
2 because the recommendations were in the best interests of [C]hild,
3 addressed the distance problems from Portales to Albuquerque,
4 addressed the co-parenting issues that were adversely impacting the
5 child and addressed all other needs of [C]hild as priorities over the
6 needs of the parents.

7 The district court further stated that the evidence presented at the August 2021
8 hearing, did not support a 50/50 timesharing plan, explaining that if the parties’
9 previous 50/50 custody arrangement had been “healthy,” then “the parties would
10 have been able to continue working together” under the arrangement that existed
11 “before Mother wrongfully removed [Child] from her school and moved to another
12 town[, which] made the 50/50 custody plan impossible.”

13 {8} Under NMSA 1978, Section 40-4-9(A) (1977), “[i]n any case in which a
14 judgment or decree will be entered awarding the custody of a minor, the district court
15 shall, if the minor is under the age of fourteen, determine custody in accordance with
16 the best interests of the child.” The statute further specifies that the district court
17 must “consider all relevant factors” in its best interests of the child analysis,
18 including:

19 (1) the wishes of the child’s parent or parents as to his[or her]
20 custody;

21 (2) the wishes of the child as to his[or her] custodian;

22 (3) the interaction and interrelationship of the child with his[
23 or her] parents, [their] siblings and any other person who may
24 significantly affect the child’s best interest;

1 (4) the child’s adjustment to his[or her] home, school and
2 community; and

3 (5) the mental and physical health of all individuals involved.

4 *Id.* The district court need not make point-by-point findings to correspond to the
5 statutory factors, so long as its order “sufficiently tracks the factors, indicating that
6 the [district] court considered them in making its decision.” *Thomas v. Thomas*,
7 1999-NMCA-135, ¶ 16, 128 N.M. 177, 991 P.2d 7 (finding no abuse of discretion
8 where the district “court’s order indicates . . . concern[] about the emotional well-
9 being of the children and that the children had close relationships with both parents,
10 each of whom was able to take care of the children,” and otherwise “counseled
11 against” a joint custody arrangement based on facts relevant to the statutory factors).
12 Our review of the minute and memorandum orders indicates that the district court
13 sufficiently considered the requisite factors in making its decision, despite not
14 explicitly stating its findings regarding each factor. Further, although the parties
15 were both amenable to continuing in the 50/50 timesharing arrangement, the district
16 court is nonetheless permitted to find that a different timesharing arrangement would
17 be in Child’s best interest, as occurred here. *See* § 40-4-9.1(F)(5) (“The court may
18 accept [a] plan proposed by either party or it may . . . revise these plans as it deems
19 necessary in the child’s best interests.”).

20 {9} We are unpersuaded by Mother’s challenges to the validity of the
21 recommendations of Ms. Cerami and the findings of the district court, as well as by

1 her assertions of additional and contradictory evidence—some of which is not
2 reflected in the record on appeal—that she argues should have amounted to a
3 different result below. Our task on appeal is not to reweigh the evidence and
4 substitute our judgment for that of the district court. *See Las Cruces Prof'l Fire*
5 *Fighters v. City of Las Cruces*, 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940 P.2d 177.
6 When determining whether a district court's findings are supported by substantial
7 evidence, "[t]he question is not whether substantial evidence exists to support the
8 opposite result, but rather whether such evidence supports the result reached." *Id.*
9 Further, we are precluded from considering on appeal such facts and allegations that
10 are not reflected in or supported by the record. *See Kepler v. Slade*, 1995-NMSC-
11 035, ¶ 13, 119 N.M. 802, 896 P.2d 482 ("Matters outside the record present no issue
12 for review." (internal quotation marks and citation omitted)).

13 {10} That Mother disagrees with the opinions of Ms. Cerami or the district court is
14 immaterial to our analysis of whether the district court abused its discretion in
15 modifying the time-sharing arrangements the parties share in their joint custody of
16 Child. *See Las Cruces Prof'l Fire Fighters*, 1997-NMCA-044, ¶ 12. Following our
17 own thorough review of the record, we conclude that a reasonable mind would
18 accept the evidence of Ms. Cerami's testimony as adequate to support the district
19 court's custody determination. *See Raymond D.*, 2017-NMCA-067, ¶ 14. Viewing
20 the evidence in the light most favorable to the district court's ruling, as we are

1 required to do, *Gilmore v. Gilmore*, 2010-NMCA-013, ¶ 24, 147 N.M. 625, 227 P.3d
2 115, we discern no error in the district court’s enforcement of the terms of the August
3 minute order through justified modification of the original custodial decree in this
4 case.

5 **II. Due Process**

6 {11} Mother broadly claims that the district court violated her due process rights
7 and fundamental liberty interest in parenting Child, generally citing precedent
8 without providing analysis thereof. As best we can discern, Mother’s due process
9 contentions center on the district court’s findings and orders as they relate to Child’s
10 education. Prior to the August minute order’s filing, which ordered Child to attend
11 in-person school in Albuquerque, Child attended school online—in part due to the
12 COVID-19 pandemic. Mother asserts that the right to direct the education of one’s
13 child is a fundamental liberty protected by the due process clause and the state is
14 precluded from infringing on such right. “While it is true that case law recognizes
15 parents’ fundamental constitutional right to raise their children,” such “case law also
16 establishes that parents’ right to raise their children is not beyond regulation in the
17 public interest.” *Hopkins*, 2019-NMCA-024, ¶ 34 (alteration, internal quotation
18 marks, and citation omitted). We reiterate that in matters such as these “[t]he ‘best
19 interests’ criterion . . . is the lodestar for determining a custody award.” *Jaramillo v.*
20 *Jaramillo*, 1991-NMSC-101, ¶ 13, 113 N.M. 57, 823 P.2d 299. The mere fact that

1 Mother wishes Child to be enrolled in a different educational program than that
2 which the district court ordered is an insufficient basis upon which to assert a due
3 process violation.

4 {12} Further, Mother’s argument in this regard lacks any meaningful analysis or
5 application of law to the facts at hand, as this section of her brief in chief consists of
6 a single paragraph asserting her perceived errors followed by over two pages of
7 uninterrupted and unannotated passages from federal case law. Though we read
8 Mother’s pro se briefing with a tolerant eye, we are required to hold her “to the same
9 standard of conduct and compliance with court rules, procedures, and orders as [we
10 would hold] members of the bar.” *Camino Real Env’t Ctr., Inc. v. N.M. Dep’t of*
11 *Env’t*, 2010-NMCA-057, ¶ 21, 148 N.M. 776, 242 P.3d 343. Without some analysis,
12 application, or explanation of such authority as it relates to the facts of this case, we
13 consider this argument to be undeveloped and decline to further consider it. *See*
14 *Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 (“This Court has no duty
15 to review an argument that is not adequately developed.”).

16 **III. Opportunity to Present Evidence**

17 {13} Mother contends she was never provided the opportunity to present evidence
18 of reports from Children, Youth & Families Department (CYFD) and Para Los
19 Niños regarding alleged child sexual abuse of Child by Father. The record does not
20 support such an assertion. Rather, the record reflects that parties were notified of the

1 August 2021 hearing on multiple motions by Mother and were directed to prepare
2 evidence they wished to present to the district court. At the start of the August 2021
3 hearing, Father’s counsel informed the court—without any objection or
4 disagreement from Mother—that Mother’s motions had been resolved and required
5 no further attention. Further, Ms. Cerami testified that the allegations of abuse made
6 by Mother against Father were unsubstantiated. Moreover, Mother declined to raise
7 any issues regarding additional evidence when the district court gave parties the
8 opportunity to raise questions following Ms. Cerami’s testimony. For these reasons,
9 we consider this argument to be without merit.

10 **IV. Alleged Judicial Misconduct**

11 {14} Mother argues the district court judge exhibited bias and a lack of impartiality
12 throughout the proceedings. Mother attempts to demonstrate these assertions by
13 identifying findings and statements by the district court judge with which Mother
14 disagrees. Mother cites the Code of Judicial Conduct for the assertion that “[a] judge
15 shall act at all times in a manner that promotes public confidence in the
16 independence, integrity, and impartiality of the judiciary and shall avoid impropriety
17 and the appearance of impropriety,” Rule 21-102 NMRA, but does so without
18 providing any analysis, argument, or factual assertion as to how the district court
19 judge failed to comply with such rule. Mother’s argument in this regard is
20 unavailing, undeveloped, and we decline to consider it further.

1 **CONCLUSION**

2 {15} For the reasons stated above, we affirm.

3 {16} **IT IS SO ORDERED.**

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5 _____
6 **J. MILES HANISEE, Chief Judge**

6 **WE CONCUR:**

7 
8 _____
9 **KRISTINA BOZARDUS, Judge**

9 
10 _____
11 **ZACHARY A. IVES, Judge**