

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

JOSE GUTIERREZ,

Filed 11/13/2025 12:43 PM

Petitioner-Appellant,


Mark Reynolds

v.

No. A-1-CA-41805

CRISTIN ANAYA,

Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY

Cheryl H. Johnston, District Court Judge

Jose Gutierrez

Rio Rancho, NM

Pro Se Appellant

Cristin Anaya

Santa Fe, NM

Pro Se Appellee

MEMORANDUM OPINION

WRAY, Judge.

{1} Jose Gutierrez (Father) and Cristin Anaya (Mother) first separated in March 2020 and after a period of reconciliation, separated again in the fall of 2021. After the first separation, the district court ordered joint custody of the couple's one-year-old child (Child) and required each parent to pay for Child's needs while Child was in their respective care. In January 2022, after the parties had again separated, Mother relocated with Child from the city of Rio Rancho, Sandoval County, to the

city of Santa Fe, Santa Fe County, without Father’s agreement or approval from the district court. Immediately and continuously over the next nearly two years, Father protested Mother’s relocation and Child’s resulting part-time attendance at daycare in Rio Rancho (Springstone). For her part, Mother requested child support. The district court adopted the recommendations of (1) a child support hearing officer (CSHO), which required Father to pay Mother child support without including Springstone tuition in the calculation; and (2) an advisory consultant about the joint custody arrangement, which implicitly approved Mother’s relocation to Santa Fe. Father appeals. Because the parties are familiar with the background of the case and this is a memorandum opinion, we set forth additional facts as they become necessary to our analysis. As we explain, we affirm.

DISCUSSION

Father’s appellate challenges¹ mirror those that he made in district court. First, we evaluate whether the district court improperly adopted the CSHO’s recommendation regarding child support owed to Mother. Second, we turn to the district court’s adoption of recommendations that are premised on Child’s part-time

¹We note that Mother did not file an answer brief, as is permitted under our rules. *See* Rule 12-318(B) NMRA (“The appellee may file an answer brief responding to each brief in chief[.]”). Accordingly, this matter has been submitted on Father’s brief in chief. *See Lozano v. GTE Lenkurt, Inc.*, 1996-NMCA-074, ¶ 30, 122 N.M. 103, 920 P.2d 1057.

1 presence in Santa Fe with Mother, despite Mother’s decision to relocate without
2 consulting Father or the district court.

3 **I. Child Support**

4 {3} Father argues that the New Mexico child support guidelines required the child
5 support obligation to account for the Springstone tuition that Father paid. *See* NMSA
6 1978, § 40-4-11.1 (2023).² “Child support determinations are made at the discretion
7 of the district court and are reviewed for abuse of discretion.” *Jury v. Jury*, 2017-
8 NMCA-036, ¶ 26, 392 P.3d 242. Nevertheless, the district court’s discretion “must
9 be exercised in accordance with the child support guidelines” and it is well
10 established that “[a] district court abuses its discretion if it applies an incorrect
11 standard, incorrect substantive law, or its discretionary decision is premised on a
12 misapprehension of the law.” *Id.* (internal quotation marks and citations omitted).
13 We review de novo to determine “whether a deviation from the child support
14 guidelines resulted from a misapprehension of the law.” *See id.*

15 {4} Section 40-4-11.1(A) requires that the child support guidelines “shall be
16 applied to determine the child support due and shall be a rebuttable presumption for
17 the amount of such child support.” First, each parent’s gross income must be
18 established in conformance with the child support guidelines. *Jury*, 2017-NMCA-

²Section 40-4-11.1 and NMSA 1978, Section 40-4-11.2 (2023) were amended
in 2021 and 2023. Because those amendments do not impact Father’s arguments, we
use the most recent version of the statutes.

036, ¶ 32. Next, the basic child support obligation for shared physical custody arrangements is calculated based on each parents' income multiplied by the percent of time that the parent is responsible for the child, so that the parent retains income to pay for the child's expenses while the child is in their custody. *See* § 40-4-11.1(G)-(I) (outlining the basic support obligation and adjustments for "shared responsibility arrangements"); Instructions for Worksheet B, Part 1, Line 9 (illustrating the calculation of "the amount that each parent retains to pay the children's expenses during that parent's periods of responsibility"). To ensure that parents contribute equally to the child's expenses, however, a parent is entitled to a deduction from the basic support obligation if that parent pays for—in relevant part—medical or dental insurance, work-related childcare, or other "extraordinary educational expenses." *See* § 40-4-11.1(J), (K) (describing deductions); Instruction for Worksheet B, Part 1, Line 11 ("In shared responsibility situations, both parents are entitled not only to retain money for direct expenses but also to receive contributions from the other parent toward those expenses."); *Jury*, 2017-NMCA-036, ¶ 33 (explaining deductions from the basic support obligation).

{5} Under certain circumstances, the child support guidelines permit deviation from the amount of child support that results from the calculations that we have described. *See* NMSA 1978, § 40-4-11.2 (2023) (establishing the requirements for deviation from the guidelines); § 40-4-11.1(A) (requiring that any deviations from

1 the child support guidelines “shall contain a statement of the reasons for the
2 deviation”). Deviations from the child support guidelines “shall be supported by a
3 written finding in the decree, judgment or order of child support that application of
4 the guidelines and basic child support schedule would be unjust or inappropriate.”
5 Section 40-4-11.2. Such a finding shall “state the amount of support that would have
6 been required under the guidelines and basic child support schedule and the
7 justification of why the order varies from the guidelines and the basic child support
8 schedule.” *Id.* Section 40-4-11.2 declares that “[c]ircumstances creating a substantial
9 hardship in the obligor, obligee or subject children may justify a deviation upward
10 or downward from the amount that would otherwise be payable under the guidelines
11 and basic child support schedule.” Father does not dispute the income calculation—
12 only the exclusion of Springstone tuition from the total child support calculation.

13 {6} To evaluate the CSHO’s recommendation to deviate from the child support
14 guidelines—insofar as the Springstone tuition would have been a component of the
15 guideline calculation—we look to the record. In an initial child support
16 recommendation, the CSHO credited Father for Springstone tuition payments but
17 not medical insurance premiums. After the district court adopted the CSHO’s
18 recommendation, Father requested an amendment to the child support obligation to
19 account for additional evidence that he paid for Child’s medical insurance. In a
20 second recommendation, the CSHO credited the payment for medical insurance but

1 excluded the Springstone tuition from the child support calculation (Second
2 Recommendation).

3 {7} In the Second Recommendation, the CSHO made written findings that the
4 application of the child support guidelines would be “inequitable.” The findings set
5 forth that accounting for the Springstone tuition, the calculation under the child
6 support guidelines would require Mother to pay Father \$26.62 per month and found
7 that result would be “inequitable” based on “the substantial difference in the parties’
8 incomes” and Father’s “unilateral decision to keep . . . [C]hild in a daycare that is
9 far beyond Mother’s ability to pay.” *Cf. Thomas v. Thomas*, 1999-NMCA-135, ¶ 16,
10 128 N.M. 177, 991 P.2d 7 (determining that findings that tracked the statutory
11 factors justified a custody modification). Thus, although the Second
12 Recommendation deviated from the child support guidelines, the written findings
13 satisfied Section 40-4-11.2’s requirements.

14 {8} Father nevertheless argues that the decision not to include the Springstone
15 tuition in the calculation was erroneous. Specifically, Father maintains that (1) the
16 deviation was “solely based on gender”; (2) the CSHO set forth false information
17 and disregarded evidence of tuition payments; (3) the CSHO disregarded evidence
18 at the first hearing that Father paid for Child’s health insurance; and (4) the
19 retroactive modification of child support was impermissible. We address Father’s
20 remaining arguments in turn but initially note that the record does not reveal, and

1 Father does not establish, that the gender bias argument was preserved. *See* Rule 12-
2 321(A) NMRA (“To preserve an issue for review, it must appear that a ruling or
3 decision by the trial court was fairly invoked.”). Father’s objections to the Second
4 Recommendation did not ask the district court to consider evidence of or argument
5 about gender bias. We therefore need not consider Father’s argument on appeal. *See*
6 *Day-Peck v. Little*, 2021-NMCA-034, ¶ 30, 493 P.3d 477 (“We generally do not
7 consider issues on appeal that are not preserved below.” (internal quotation marks
8 and citation omitted)). But even if Father had preserved the argument, as we explain,
9 we are not persuaded that the two findings of the CSHO that Father challenges
10 establish gender bias.

11 {9} First, Father quotes the CSHO’s report as follows: “including the tuition for
12 Spring[s]tone on the worksheet would eliminate any child support to Mother, and
13 require her to pay support to Father, simply due to Father’s unilateral decision to
14 keep . . . [C]hild in daycare that is far beyond mothers ability to pay.” Father’s
15 quotation of this finding refers to “mothers ability to pay” rather than the CSHO’s
16 language, “Mother’s ability to pay,” which suggests that he interprets the finding to
17 refer generally to the ability of all “Women or Mothers” to pay and not this Mother
18 in particular. In context, we disagree. The finding continues, “This result would be
19 inequitable, given the substantial difference in the parties’ incomes.” This finding
20 therefore reasonably communicates that the inequity is based on the income of these

1 parties, as opposed to the gender of one of them. Even if Father meant Mother, rather
2 than mothers generally, the result is no different, because the evidence in the record
3 established that the price of daycare chosen by Father exceeded Mother's ability to
4 contribute and would have left her owing Father child support in a manner
5 inequitable under the circumstances, as the district court determined.

6 {10} Second, Father points to the CSHO's finding that "Mother has already been
7 deprived of child support that she should have received, due to the inclusion of
8 Father's tuition payment." Father's quote, however, omits important language. The
9 CSHO found in total: "Mother has already been deprived of child support that she
10 should have received, due to the prior CSHO [r]eport's inclusion of Father's tuition
11 payment on the worksheet." The finding continues to explain that the first CSHO
12 report incorrectly included the tuition payment, which artificially reduced the
13 support calculation, and that Mother did not notice the error. Rather than indicating
14 gender bias, the finding explains the CSHO's view that it was a hearing officer's
15 error in the first report to include the tuition payment that resulted in an improperly
16 low child support calculation. *Cf. Thomas*, 1999-NMCA-135, ¶ 32 (considering a
17 custody decision and concluding that an award to one parent of a particular gender,
18 by itself, is not "a basis for inferring gender bias").

19 {11} This error by the CSHO also forms the basis for Father's contention that the
20 CSHO set forth false information and disregarded evidence. Father appears to view

1 the CSHO's Second Recommendation to find that he did not pay the Springstone
2 tuition and as a result, argues that the second report (1) contains a false finding in
3 violation of 22 C.F.R. § 127.2 (2013), and (2) disregards or misrepresents evidence
4 that Father paid tuition. The federal law that Father cites applies to the regulation of
5 foreign relations. *See id.* Regardless, the CSHO accepted Father's evidence, over
6 Mother's objection, and found that Father paid \$985 per month to Springstone. The
7 recommendation to not include the tuition in the support calculation was not based
8 on a lack of proof or a misunderstanding by the district court that Father had not paid
9 the tuition, but rather the CSHO's finding, which is permitted by Section 40-4-11.2,
10 that the result of accounting for the tuition would be inequitable.

11 {12} The question of medical insurance, however, was initially related to lack of
12 evidence, and to the extent that Father suggests that the CSHO's ruling on medical
13 insurance after the first hearing wrongfully caused the need for the proceedings in
14 which the tuition payments were reconsidered—we disagree. For the first hearing,
15 Father submitted documents related to medical insurance premiums and testified that
16 Child had insurance and he had taken Child to the doctor. The CSHO found that the
17 documents submitted by Father established what the premiums would be for
18 "various coverages," but not that Father actually paid those premiums, and that
19 Mother testified that Father gave her no medical insurance information. As a result,
20 the evidence at the first hearing did not support a specific amount to be included in

1 the child support calculation. Father provided additional documents, and at the
2 second hearing, the parties stipulated to an amount that he paid for Child's medical
3 insurance and agreed that the remaining dispute centered around the tuition payment.
4 The record therefore supports a conclusion that the CSHO's reconsideration of child
5 support stemmed from the lack of evidence at the first hearing to support a credit for
6 the payment of medical insurance, and Father's motion to amend the child support
7 calculation provided additional evidence to support the credit in the Second
8 Recommendation—but also lead to the CSHO's recalculation and exclusion of
9 Father's payment of the Springstone tuition.

10 {13} The Second Recommendation excluded the Springstone tuition retroactively,
11 to the month that Father filed the motion to amend, which in turn led to the
12 imposition of arrears. Father argues that the imposition of arrears is “contrary to the
13 requirements” of Section 40-4-11.1(J), which states as follows:

14 The cost of providing medical and dental insurance for the children of
15 the parties and the net reasonable child-care costs incurred on behalf of
16 these children due to employment or job search of either parent shall be
17 paid by each parent in proportion to that parent's income, in addition to
18 the basic obligation.

19 We understand Father to argue that retroactive modification was not permissible
20 because the child support guidelines require the payment of medical insurance or
21 “net reasonable child-care costs” and the evidence showed that he paid both. As we
22 have explained, the CSHO made the requisite findings to justify deviation from the

child support guidelines in this regard, and New Mexico courts permit the application of modified child support retroactive to the date of the pleading requesting modification. *See Montoya v. Montoya*, 1980-NMSC-122, ¶ 2, 95 N.M. 189, 619 P.2d 1233 (explaining the general rule that “the applicable date for any modification is the date of filing of the petition or pleading”); *Leeder v. Leeder*, 1994-NMCA-105, ¶ 26, 118 N.M. 603, 884 P.2d 494 (noting “the rule that modifications of child support cannot be effective before the date of the pleading seeking increased or decreased support”).

{14} For these reasons, we conclude that the CSHO’s deviation from the child support guidelines complied with Section 41-4-11.2. The CSHO found that Father paid the Springstone tuition but also found that crediting those tuition payments to Father would be unjust, based on the parties’ respective incomes and Father’s “unilateral” decision to keep Child in an expensive daycare. We therefore affirm the district court’s adoption of the CSHO’s Second Recommendation.

II. Relocation of Home and School

{15} Father additionally challenges Mother’s relocation to Santa Fe with Child and later decisions based on Child’s part-time presence in Santa Fe. In April 2020, the district court ordered joint custody to Father and Mother. Joint custody, under Section 40-4-9.1(J), means

(3) the parents shall consult with each other on major decisions involving the child before implementing those decisions; that

1 is, neither parent shall make a decision or take an action which results
2 in a major change in a child's life until the matter has been discussed
3 with the other parent and the parents agree. If the parents, after
4 discussion, cannot agree and if one parent wishes to effect a major
5 change while the other does not wish the major change to occur, then
6 no change shall occur until the issue has been resolved as provided in
7 this subsection;

8 (4) the following guidelines apply to major changes in a
9 child's life:

10 (a) if either parent plans to change [their] home city or
11 state of residence, [they] shall provide to the other parent thirty days'
12 notice in writing stating the date and destination of move;

13

14 (c) both parents shall have access to school records,
15 teachers and activities. The type of education, public or private, which
16 was in place during the marriage should continue, whenever possible,
17 and school districts should not be changed unless the parties agree or it
18 has been otherwise resolved as provided in this subsection.

19 Father argues that (1) because the move was made without agreement or a court
20 order, "[a]ny referencing of the [c]ity of Santa Fe in any documentation or
21 recommendations from the [district c]ourt is improper, a violation of due process,
22 and unjust"; (2) Mother's attempt to enroll Child in a Santa Fe public school was a
23 violation of law; and (3) Mother failed to list Father as an emergency contact. We
24 address these arguments in turn.

25 {16} Throughout these proceedings, Father sought a remedy for Mother's
26 undisputedly unilateral relocation to Santa Fe with Child. Although the law in New
27 Mexico clearly requires parents with joint custody to consult with each other and

1 resolve disputes about relocation before a parent moves a child, *see* § 40-4-
2 9.1(J)(4)(a), the remedy for the failure to do so is less clear. In the district court,
3 Father sought to have Child returned to the city of Rio Rancho, which would have
4 increased his physical custody. On appeal, Father essentially argues that the district
5 court should not consider that Mother lives in Santa Fe when crafting orders relating
6 to Child. Both positions ultimately seek to punish Mother’s violation of the statute
7 by modifying Mother’s access to Child.

8 {17} In the context of sole, rather than joint, custody, this Court has explained that
9 although “a custodial parent’s refusal to cooperate with the non[]custodial parent or
10 to follow court orders concerning visitation *can* be grounds for change of custody in
11 extreme cases,” district courts “should not generally determine custody questions so
12 as to sanction a recalcitrant custodial parent to the detriment of the best interests of
13 the child.” *Newhouse v. Chavez*, 1988-NMCA-110, ¶ 12, 108 N.M. 319, 772 P.2d
14 353 (emphasis added). Thus, the inquiry is whether Mother’s failure to abide by the
15 notice and approval requirements of Section 40-4-9.1(J)(1)—and not the move
16 itself—impacted the best interests of Child such that the district court should have
17 altered the terms of joint custody as Father requested. *See Hopkins v. Wollaber*,
18 2019-NMCA-024, ¶ 26, 458 P.3d 583 (“The guiding principle in child custody
19 determinations is the best interests of the child.” (internal quotation marks and
20 citation omitted)).

1 {18} The record demonstrates that the district court considered Mother’s actions
2 regarding the relocation in the context of the best interests of Child. Immediately
3 after the move, Father filed a motion to modify child custody and requested that
4 Child “not reside in another [c]ounty or [c]ity.” At the hearing, Father argued that
5 stability was in Child’s best interests, and the district court expressed concern about
6 Mother’s unilateral move and questioned what Mother’s expectations would be to
7 make the time share work after “she basically left the jurisdiction.” Mother’s counsel
8 explained that Mother hoped an advisory consultation would help the parties “work
9 something out” regarding the difficulties that the move had caused for time-sharing
10 and exchange. After extended discussion, the district court ordered an advisory
11 consultation to establish a parenting plan “moving forward” that was consistent with
12 the best interests of Child. *See id.* (“Upon a party’s motion to modify an existing
13 joint custody arrangement due to a custodial parent’s relocation, it becomes
14 incumbent on the district court to consider as much information as the parties choose
15 to submit, or to elicit further information on its own motion, and to decide what new
16 arrangement will serve the children’s best interests.” (alterations, omission, internal
17 quotation marks, and citation omitted)). In the context of determining how Mother’s
18 decisions impacted Child’s best interest, rather than punishing Mother’s unilateral
19 decision-making, the district court’s decision to “mov[e] forward” with a parenting
20 plan was not an abuse of discretion. *See id.* ¶ 9 (reviewing the “district court’s child

1 custody determination for abuse of discretion” (internal quotation marks and citation
2 omitted)). Both parties made arguments and presented evidence, and the district
3 court was persuaded to order the parties to develop a parenting plan based on homes
4 in different cities. *See id.* ¶ 26 (explaining that “neither parent will have the burden
5 to show that relocation of the children with the removing parent will be in or contrary
6 to the children’s best interests” but instead, “each party will have the burden to
7 persuade the court that the new custody arrangement or parenting plan proposed by
8 him or her should be adopted by the court” (alterations, internal quotation marks,
9 and citation omitted)).

10 {19} Father contends that the unilateral move caused the district court “to engage[]
11 in continuous recommendations for . . . [C]hild in the [c]ity of Santa Fe without
12 proper adjudication and due process.” Due process requires notice and an
13 opportunity to be heard before the state may deprive a person of a constitutionally
14 protected right. *See Thomas*, 1999-NMCA-135, ¶ 19 (“Due process requires notice
15 and a meaningful opportunity to be heard.”); U.S. Const. amend. XIV (prohibiting
16 the deprivation “of life, liberty, or property, without due process of law” by any
17 state). Although Father had no advance notice of Mother’s relocation, the district
18 court gave Father notice and an opportunity to be heard on his objections to Mother’s
19 actions. In a subsequent hearing, after Father again raised the unilateral move and
20 argued for an order to show cause, the district court stated that it had already ruled

1 on that issue. Based on this exchange, the district court believed the issue of
2 Mother's noncompliance with Section 40-4-9.1(J)(4)(a) had been resolved with the
3 order for an advisory consultation to address time-sharing arrangements. To the
4 extent that it is Father's position that Mother was required to file a specific motion
5 before the relocation could be considered "properly" adjudicated, under these
6 circumstances, when the matter was raised and heard, we decline to adopt such a
7 constitutional requirement. In the present case, the "flexible" requirements of due
8 process were satisfied. *See Gonzalez v. Gonzalez*, 1985-NMCA-071, ¶ 26, 103 N.M.
9 157, 703 P.2d 934 ("Due process considerations are flexible; a particular resolution
10 of conflicting interests depends upon the situation.").

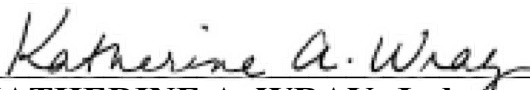
11 {20} Father's remaining two arguments related to Section 40-4-9.1(J) involve
12 Child's enrollment in school in Santa Fe and Father's status as an emergency contact.
13 The district court permitted Mother to enroll Child in school or daycare for the
14 periods of time that Child was with Mother in Santa Fe and Father to maintain
15 Child's enrollment at Springstone while she was with him. In January 2023, Father
16 filed a motion to reconsider the adoption of the advisory consultation
17 recommendation, and at the hearing, in pertinent part, Father requested that the time-
18 sharing schedule be adjusted so that Child could attend Springstone fulltime. The
19 district court viewed Father's motion as a request to change "the school situation"
20 and expressed concern that the parties had not conferred. Father's counsel clarified

1 that if Mother and Father could not agree on future schooling, a motion would be
2 filed to resolve the issue. After that, Father filed a motion to allow Child's enrollment
3 in full-time school to his preferred school. Within that motion, a dispute arose about
4 Mother excluding Father from a list of emergency contacts. On appeal, and despite
5 the absence of resolution as to these issues in the district court, Father asks this Court
6 to review Mother's actions regarding Child's enrollment in Santa Fe Public Schools
7 and emergency contacts. We, however, decline to do so given that no ruling by the
8 district court is before this Court for review and that the matter remains to be
9 resolved in district court in future proceedings.

10 **CONCLUSION**

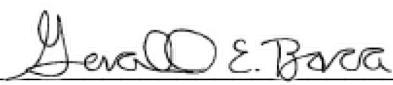
11 {21} We affirm.

12 {22} **IT IS SO ORDERED.**

13 
14 **KATHERINE A. WRAY, Judge**

15 **WE CONCUR:**

16 
17 **J. MILES HANISEE, Judge**

18 
19 **GERALD E. BACA, Judge**