IN THE SUPREME COURT OF THE STATE OF NEVADA

LUBA GONZALEZ N/K/A LUBA SNOW A/K/A LUBA DACE, Appellant, v. ENRIQUE IVAN VELAZQUEZ-GONZALEZ, Respondent.	Supreme Court No.: 90570 Related Case No. 84759 District Court No.: D-18-575860-D

Electronically Filed
Mar 16 2026 01:37 PM
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL FROM FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDERS (POST-JUDGMENT) & ORDER DENYING MOTION FOR RECONSIDERATION

Eighth Judicial District Court of the State of Nevada
In and for the County of Clark
DISTRICT COURT JUDGE HEIDI ALMASE

APPELLANT'S PETITION FOR REVIEW BY THE SUPREME COURT PURSUANT TO NRAP 40B

Submitted by:
Emily McFarling, Esq.
Nevada Bar Number 8567
McFarling Cohen Fic & Squires
[redacted]

Attorney for Appellant, Luba Dace

I. QUESTIONS FOR REVIEW

Pursuant to NRAP 40B, Appellant, Luba Dace, by and through her attorney, Emily McFarling, Esq. of McFarling Cohen Fic & Squires, hereby petitions for review the Court of Appeals of the State of Nevada's "Order Affirming in Part and Reversing in Part" *Luba Gonzalez n/k/a Luba Snow a/k/a Luba Dace vs. Enrique Ivan Velazquez-Gonzalez*, case no. 90570-COA, filed on February 27, 2026.[1] Specifically, the Petitioner raises the following questions for the Court's review:

A. **Whether the court committed legal error by applying the abduction presumption to a protective act occurring under legally ambiguous circumstances, resulting in a custody modification that is both factually and legally absurd.**

B. **Whether the court exceeded its jurisdiction by bootstrapping a contempt finding into a "substantial change of circumstances," utilizing a custody modification as a measure that is improperly punitive to the parent and the child.**

This Petition is being filed within 14 days of written entry of the Order Affirming in Part and Reversing in Part, which was filed on February 27, 2026. Therefore, this Petition is timely filed pursuant to NRAP 40B(c).

Additionally, pursuant to NRAP 40B(a), the Petitioner hereby certifies this question was/these questions were raised by the parties below and/or the question was/questions were decided by the Court of Appeals ("COA").

[1] *See* Exhibit 1, 90570-COA, Order Affirming in Part and Reversing in Part, filed February 27, 2026.

II. THE GROUNDS OF THE ISSUES FOR REVIEW

Review of these questions is warranted as the decision of the COA conflicts with prior decisions of both the Supreme Court and of the COA. Additionally, both questions presented here implicate fundamental issues of statewide public importance.

A. The court committed legal error by applying the abduction presumption to a protective act occurring under legally ambiguous circumstances, resulting in a custody modification that is both factually and legally absurd

COA affirmed a decision nullifying the NRS 125C.0035(7) rebuttal phase. Although the district court ("DC") found Luba successfully rebutted the abduction presumption—thereby conceding she remained a fit and safe parent— it paradoxically utilized that same incident as the primary basis for modification. This internal inconsistency conflicts with the evidentiary rigor required by *Soldo-Alessio v. Ferguson*[2] and *Davis v. Ewalefo*.[3] Furthermore, equating a protective misjudgment under legally ambiguous circumstances with criminal abduction is a decontextualized application of the law producing an absurd result. Left undisturbed, this creates an unmanageable precedent where any Nevada parent navigating a gray

[2] 141 Nev., Adv. Op. 9 (Feb. 13, 2025).
[3] 131 Nev. 445, 352 P.3d 1139 (2015).

area of a decree faces a one-strike trap: a single, good-faith misstep potentially triggering the permanent loss of joint custody regardless of the parent's fitness.

B. The court exceeded its jurisdiction by bootstrapping a contempt finding to satisfy the "substantial change of circumstances" threshold, resulting in an improperly punitive modification at the expense of the child's stability

Review is also necessary because COA sanctioned a departure from the jurisdictional gatekeeper established in *Romano v Romano*.[4] By essentially bootstrapping a contempt finding into a substantial change of circumstances, DC manufactured a jurisdictional basis for modification where none existed. This created a profound remedial mismatch. The court addressed Luba's conduct first via the improperly punitive modification of custody, adding a fine for contempt as an afterthought, effectively inverting the cautious and conservative approach created by statute and fortified by this state's caselaw. Such a result transforms a child's life into a sword for parental discipline in direct violation of *Lewis v. Lewis*[5] and the paramount stability mandate of *Ellis v. Carucci*.[6] This Court must intervene to ensure isolated acts of simple contempt do not serve as a backdoor to uproot children from stable, established homes. Enabling such potentially harmful judicial overreach is clearly an issue of statewide concern.

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[4] 138 Nev. 1, 501 P.3d 980 (2022).
[5] 132 Nev. 453, 373 P.3d 878 (2016).
[6] 123 Nev. 145, 161 P.3d 239 (2007).

III. BRIEF STATEMENT OF THE CASE AND FACTS

In 2021, Luba and Enrique stipulated to a Decree of Divorce providing for joint legal and physical custody of [redacted] on a week-on/week-off basis [AA14]. This arrangement included specific travel safeguards; any party traveling outside Nevada was required to provide a written itinerary fourteen days in advance, detailing all flights, overnight addresses, and—specifically for travel to Mexico—the dates and locations of any border crossings [AA17-18, AA111]. All communication was mandated through the Talking Parents application [AA111].

On March 13, 2023, to ensure her actions were compliant with court orders, Luba proactively filed a Motion to Clarify these travel orders out of concern for the child's safety in preparation for Enrique's upcoming trip to Mexico. During an off-record telephone conference on March 15, counsel for both parties discussed these concerns with DC. Following this conference, Luba's then-attorney assured her that DC had clarified the decree, requiring Enrique to provide Cross Border Xpress (CBX) tickets as part of the mandatory travel itinerary [AA183-190, AA2852]. Based on the attorney's representation to her, Luba reasonably believed the judge required Enrique provide CBX records to permissibly take the minor child to Mexico in response to her motion. Relying on this informal order, when Enrique's subsequently refused to provide the tickets or enable the required video call features, Luba withheld the child from the March 15 exchange. Luba reasonably concluded

that *Enrique failed to comply* with the safety requirements the judge clarified that same day.

In response, Enrique filed an Emergency Motion seeking criminal charges, an Order to Show Cause, and a modification of custody [AA154-173]. He alleged Luba's protective withholding and her rescheduling of a single dental appointment—moved by only three days—constituted a "wrongful detention" under NRS 125C.0035(7) [AA1051-1090]. While these motions were pending, DC notably denied Enrique's separate emergency motion to override Luba's pre-approved 2022 vacation time for Father's Day 2023 [AA2217-2218].

After evidentiary hearings in March and October 2024, DC issued its Order on January 2, 2025 [AA4126]. The Court made a preliminary finding Luba's March 15 withholding technically triggered the NRS 125C.0035(7) abduction presumption [AA2793]. However, in a subsequent finding, DC determined Luba overcame the presumption, concluding this single withholding was insufficient to show she should be stripped of joint physical custody or limited to supervised visitation [AA4155-4156].

Nevertheless, DC simultaneously held Luba in contempt for the withholding and the appointment rescheduling, imposing a $500 sanction for each [AA4162]. Significantly disrupting the child's stable week-on/week-off routine, DC utilized the same isolated March 15 incident and dental appointment failing to identify

"substantial change of circumstances" affecting the child's best interest [AA4155]. Consequently, DC reallocated custody, awarding Enrique primary physical custody, reducing Luba's time to three weekends per month [AA4157]. Luba's subsequent Motion for Reconsideration, which highlighted the ambiguity of the March 2023 "gray area" and the punitive nature of the modification, was denied [AA4549].

IV. LEGAL ANALYSIS

A. The Interpretive Error—Statutory Misapplication and the Resulting Absurdity

COA's decision fails to recognize that DC's misapplication of a best interest statute in the context of a contempt hearing led to an absurd and harmful result. Because it conflicts with the overall statutory scheme, well-established precedent, and fundamental state policy, DC's decision should be reversed and joint physical custody reinstated immediately without further evidentiary proceedings.

Taking away half Luba's custody rights due to one incident when Luba *proactively requested clarification* and then followed that clarification is an extreme and punitive consequence and counter to the best interests of the child. Child abductors don't proactively ask courts for clarification and then follow the specifics of that clarification and as a parent who did exactly that, Luba should not be labeled an abductor nor lose 50% of her custody rights.

By applying an unnuanced and inappropriately literalist interpretation of "abduction" to NRS 125C.0035(7), DC failed to account for the proactive compliance, protective intent, and legally ambiguous circumstances of Luba's single instance of withholding. From the outset of the hearings, DC viewed her contextually understandable and ultimately relatively harmless actions through a criminal lens. By failing to meaningfully distinguish between true criminal abduction and an act of intended court order compliance, DC produced an absurd result out of sync with common sense, the statutory scheme, and well-established precedent. Most importantly, it ran afoul of the child's best interest.

a. The COA decision is contrary to the best interest of the child

COA affirmed a DC order that causes far more harm than the parental misconduct it seeks to correct. Because the decision is contrary to the best interests of the child, this Court should reverse the order and reinstate joint custody pursuant to the prior agreement without delay.

The rules of statutory construction require a well-established progression in any interpretive analysis: (1) consider the statute's plain meaning; (2) look for any ambiguities; (3) contemplate possibly absurd results; and (4) if necessary, determine legislative intent. "We will interpret a statute or regulation by its plain meaning unless the statute or regulation is ambiguous, the plain meaning would provide an

absurd result, or the interpretation clearly was not intended."[7] Statutory construction should always avoid an absurd result and must be consistent with public policy and with reason.[8]

DC found Luba's so-called "abduction" not criminal enough for a referral to the prosecutor, but concerning enough to trigger the presumption[9] and represent a substantial change of circumstances. Also, DC determined that same conduct was not egregious enough to overcome finding Luba is "abl(e) to provide daily care for the child, provide for the child's physical and emotional needs, and provide the child with a safe home,"[10] but detrimental enough to destroy an eight-year-old child's stable joint-custody environment nearly two years after the fact.

This convoluted reasoning is legal error. Yet COA overlooked the legal and logical missteps that led DC analysis astray. Focusing on the plain language of the relevant statutes and addressing any potential ambiguities, COA focused on steps one and two of the full analysis. By forgetting to zoom out, however, to consider the absurdity and detrimental impact on the child, COA fell into a categorical trap, using an unnuanced interpretation equating abduction with simple withholding. Removed from the fog of abstract legal analysis, the absurdity here is clear: a mom's good

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[7] *Young v. Nev. Gaming Control Bd*., 473 P.3d 1034 (Nev. 2020)
[8] *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011).
[9] NRS 125C.0035(7).
[10] DC 29-30.

faith attempt to (1) request follow court clarification to protect her child from the very real threat of border violence and (2) ensure the child attended a dentist appointment led to a court-acknowledged fit and responsible parent to lose more than half of her custodial time and led to a child having her mother completely removed from her regular weekday life of school, homework, and routine.

This patently absurd result should have led COA to examine the broader picture of legislative intent via the whole-text canon. "Statutes with related provisions should be interpreted with related provisions to ensure a consistent and coherent framework."[11] If one statute seems to conflict with the general policies enacted by the law, the reader's interpretation is likely flawed. Consequently, statutes within the same scheme, such as the custody provisions of NRS 125C and the abduction definitions of NRS 200.359, must be read in harmony to ensure the ultimate objective of any custody inquiry—the child's best interest.[12] Because the DC and COA decisions are the exact opposite of this particular child's best interests, they should be reviewed and reversed with the prior custodial schedule reinstated immediately without further proceedings.

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[11] *Field Effect Security, Inc. v. Eighth Judicial District Court*, 141 Nev. Adv. Op. 63 (Dec. 4, 2025).

[12] *Soldo-Allesio* 845 *emphasizing* importance of hearing all evidence relevant to child's best interest

b. The COA decision redefines parental abduction to include a well-intentioned withholding following court clarification specifics.

In affirming this order, COA's decision redefines a well-intended act of protection—upon information and belief complying with court orders—as a near criminal act. Because of the potential harm to Nevada families, this Court should immediately reverse the decision and reinstate joint custody without delay.

Here, DC's interpretation of "abduction" under NRS 125C.0035(7) involved a case of failing to see the forest for the trees. In focusing exclusively on NRS 125C.0035(7) and NRS 200.359, DC fell into a categorical trap by applying the abduction label to a situation the legislature already defined as wrongful deprivation under NRS 125C.020:

> **NRS 125C.020 Rights of noncustodial parent: Additional visits to compensate for wrongful deprivation of right to visit.**
>
> 1. In a dispute concerning the rights of a noncustodial parent to visit his or her child, the court may, if it finds the noncustodial parent is being wrongfully deprived of his or her right to visit, enter a judgment ordering the custodial parent to permit additional visits to compensate for the visit of which the noncustodial parent was deprived.
>
> 2. An additional visit must be:
>
> (a) Of the same type and duration as the wrongfully denied visit;
>
> (b) Taken within 1 year after the wrongfully denied visit; and
>
> (c) At a time chosen by the noncustodial parent.
>
> 3. The noncustodial parent must give the court and the custodial parent written notice of his or her intention to make the additional visit at least 7 days before the proposed visit if it is to be on a weekday or weekend and at least 30 days before the proposed visit if it is to be on a holiday or vacation.

The appropriate consequence, already anticipated in our statutes, for a withholding is for additional compensatory visits—which Luba tried to negotiate with Enrique—not a complete change of custody.

NRS 200.359 – Extenuating Circumstances and Judicial Grace

DC utilized the sword of NRS 200.359(1) but failed to consider the implications of subsections (6)(b), (8), and (11), which acknowledge such offenses occur under a variety of circumstances and protect against overly harsh applications of the law. Respectively, the subsections allow for civil remedies only via the family courts, for reduction to a misdemeanor in cases involving first-time offenses not resulting in substantial harm to the child, and for a defense available for actions taken to protect the child or oneself in cases of abuse, neglect, and/or domestic violence. While the mitigating factors listed here apply specifically to criminal charges, the overlap between the two sections of the law imply the legislature understood the complexities of such situations and expected judicial discretion in ascertaining a fair outcome for both parents and a beneficial outcome for the child.

Importantly Luba's withholding was *intended* as a good faith effort to protect her child, similar in motivation, if not circumstance, to subsection (11) of the criminal code.[13] Furthermore, the context of the decision to withhold is important.

[13] DC, 20 erroneously conflating Tijuana and Cancun violent crime rates.

Luba genuinely misunderstood her rights due to a legal gray area created by the attorneys' phone call with DC,[14] the oral and written agreement between the attorneys,[15] her own counsel's murky advice[16], and even Enrique's failure to respond meaningfully to her texts that day. Surely, if grace is warranted in cases rising to the level of criminal prosecution, this circumstance warrants grace, as well.

In common parlance, "abduction" doesn't apply to a parent proactively requesting court clarification, then reasonably insisting the other parent provide bus tickets—*as DC had required*—to avoid her child's traveling via a dangerous international drug corridor. Niggling about the precise language of a statute can cause tunnel vision. The rules of statutory construction recognize this risk and thus require courts consider absurd outcomes and legislative intent. Here, by overlooking the resulting absurdity and consequently, the overall statutory scheme, COA affirms a permanent modification of custody equating an unfortunate dispute over safety and logistics with a genuine criminal threat. Subsequently, this improper categorization was used to justify an inappropriate remedy, not made in the child's best interest. COA's and DC's decisions establish a dangerous precedent by failing to distinguish

[14] "(DC) found Luba's former counsel made 'absolute misrepresentations' about what happened on the unrecorded telephone conference." AOB (36).
[15] DC 8.
[16] Luba's former attorney testified he told her "it was up to her how she should proceed." AOB 3 n.1

between simple well-intended withholding with true abduction, akin to kidnapping. Out of sync with the legislative intent and potentially harmful to Nevada children, these decisions should be immediately reviewed and reversed with joint physical custody and the prior custodial schedule ordered reinstated immediately without need for any further proceedings.

c. The COA decision ignores the statewide policy of the importance of the parent-child relationship

Nevada policy strongly supports the active involvement of both parents unless it is clearly demonstrated to be not in the child's best interest. Because DC and Court of Appeals orders weaken a parent-child relationship without proper justification, these orders should be reversed and joint custody restored immediately.

NRS 125C.0035(7) creates a rebuttable presumption designed to protect children from true threats of abduction—instances where a parent intends to permanently sever the child's relationship with the other parent. The statute states when abduction is proved by clear and convincing evidence, that parent must overcome the presumption in order to receive sole custody, joint custody, or *even unsupervised visitation*, presumably due to flight risk. This strict provision gives meaning to the use of the word "abduction" in this statute, suggesting an understanding that not all instances of behavior technically meeting the definition established in NRS 200.359 are equally serious threats to the child or affected parent.

NRS 125C.0035(6) provides a similar protection in cases involving domestic violence, creating a rebuttable presumption upon clear and convincing evidence the accused parent committed an act of domestic violence. Like abduction, behaviors that vary greatly in severity and seriousness can still technically meet the statutory definition. And while cases such *Nance v Ferraro*[17] and *Soldo-Alessio v. Ferguson*[18] remind courts this information must be properly considered in determining the best interests of the child, they do not remove a judge's discretion to find the most appropriate remedy given the severity of parental misconduct.

In a sense, this case represents the inverse of these cases. *Nance* reminds courts that evidence of domestic violence forming the basis of previous rulings or which is newly brought before courts must be considered in determining the child's best interest.[19] Likewise, *Soldo-Alessio* clarifies the distinction between the evidentiary standards to create a rebuttable presumption versus when used as a best interest factor. The case does not address how courts should weigh a single, mild instance of domestic violence, but presumably this should be part of the best-interest calculus.

[17] *Nance v. Ferraro*, 418 P.3d 679 (Nev. App. 2018)
[18] *Soldo-Allesio,* 845.
[19] *Nance*, 686.

Importantly, both cases remind judges that any relevant evidence must be considered to achieve courts' ultimate goal—the best interest of the child. In those cases, the child's best interest was not served by the exclusion and/or improper weighting of domestic violence evidence; here, the child's best interest is not served by allowing an understandable and well-intended action to undermine the child's stability. Just as not all acts labelled "domestic violence" are equally severe (a slap versus criminal battery), so too, not every act potentially labelled "abduction" warrants the same judicial treatment. To fail to recognize the spectrum of behaviors possible under this umbrella term neglects the important role of judicial discretion, particularly when the result is not in the child's best interest.

Equating a protective misinterpretation of DC's clarifying directive with criminal abduction is the definition of a legal absurdity. COA's affirmation creates a dangerous precedent where a parent is forced to choose between the child's safety and the permanent loss of custody, thus contradicting the very safety goals the presumption was intended to achieve. Unfortunately, COA seems to also have suffered from tunnel vision. While the decision gives ample examination to "willful" and other potential ambiguities, COA never considers the absurdity of the outcome and the effect on an eight-year-old child. This excessively punitive order was out of sync with common sense, the statutory scheme, and legal precedent. The DC and COA decisions are not in this child's best interests and therefore should be reviewed

and reversed with joint physical custody and the prior custodial schedule ordered reinstated.

The COA decision ignores the best interests of a child

DC exceeded its jurisdiction by bootstrapping a simultaneous finding of contempt to sidestep the essential "substantial change of circumstances" threshold and to determine the outcome of substantive best-interest analysis. In doing so, DC utilized custody modification as an improperly punitive measure. This resulted in significant upheaval for the child, neither warranted by the facts nor permitted under the anti-punitive mandates of *Lewis*[20] and *Sims.*[21] The judicial shortcuts taken in this case are not in the child's best interest and counter to well-established case law. This Court should therefore immediately correct these errors by reversing the decision and reinstating joint custody pursuant to the prior agreement without further delay.

DC's analysis was led astray by starting with a question that should have been answered much later in the proceeding: was the rebuttable presumption triggered?[22] Considering the presumption is a subsection of the statute regarding custody determinations, this seems like a premature starting point. Many possible situations—such as having the audacity to change a dentist appointment once

[20] *Lewis,* 132.
[21] *Sims v. Sims*, 109 Nev. 1146, 865 P.2d 328 (Nev. 1993).
[22] COA 3.

without your co-parent's permission are not worthy of a modification of custody. Asking this question from the outset presumed a certain outcome by effectively leapfrogging over the question of mere contempt. This choice derailed a proper analysis, leading to impermissible shortcuts, a biased and weakly supported best interest inquiry and ultimately, a punitive sanction that was not in the best interest of the child.

"The best interest of the child is the controlling factor in child custody cases and maintaining frequent associations and a continuing relationship with both parents is Nevada's declared public policy."[23] Joint custody is preferred not only because of a parent's fundamental right to parent[24], but also because the legislature has decided generally, it is in the child's best interest.[25] Diverging from this preferred arrangement therefore requires courts complete a careful and well-supported analysis explaining why the norm would be harmful to this child.

d. The COA decision significantly reduces the burden to modify child custody because one incident was enough to meet it

COA and DC decisions improperly lower the bar to modify custody. This undermines the hurdle *Ellis* and *Romano*, intentionally erected to ensure greater

[23] *Davis,* 1144.
[24] *Ramos v Franklin*, 139 Nev. Adv. Op. 6, 525 P.3d 1227 (2023).
[25] *Davis,* 1144.

stability for the child. Because the order effectively erases important protections for Nevada children, the Court should reverse both decisions and restore joint custody without further proceedings.

To modify custody, the movant must clear an even higher bar to overcome the strong preference for stability. Therefore "in determining whether the facts warrant a custody modification, courts should not take the 'changed circumstances' prong lightly."[26] A DC lacks jurisdiction to modify a custody arrangement unless the moving party first demonstrates a *substantial change in circumstances*[27] affecting the child's welfare. This threshold is a mandatory "gatekeeper" designed to guarantee stability.[28] By establishing this threshold question, the court communicates that a child's need for stability is the most important factor in even entertaining a modification of custody.

And yet, COA seemingly gave DC a pass. For while the order's "Conclusions of Law" begins by quoting *Romano*, "In order to modify custody, a movant is required to set forth a substantial change in circumstances affecting the child's best

[26] *Ellis,* 151.
[27] Empahsis added: DC never addressed how the incident continued to impact [redacted] nearly two years later.
[28] Romano, 983: *stating* the threshold question "serves the important purpose of guaranteeing stability unless circumstances have changed to such an extent that a modification is appropriate."

interest,"[29] it offers no discussion on this point before jumping into the best interest factors. Likewise, the "Analysis and Orders"[30] finds Enrique "established a substantial change of circumstances" and yet provides no accompanying analysis or evidentiary support. COA merely observed that *the context* of DC's decision seems to imply that the "Luba's abduction of [redacted] was what constituted the substantial change in circumstances."

Under *Martin v. Martin*, [31]120 Nev. 98 (2004), interference with visitation must be "substantial or pervasive" to warrant a modification. An isolated act of non-criminal custodial interference—particularly one involving a good-faith misjudgment—does not meet this jurisdictional bar as a single act is not pervasive and a simple withholding can rarely be deemed substantial. If DC finds otherwise, failing to supply the reasoning is reversible error. Additionally, the order came out nearly two years after the incident in question. In such circumstances, bypassing the critical step is even more important. Considering the fundamental rights at stake[32],

[29] DC 23
[30] DC 30
[31] COA at 13 determined Luba waived this argument, having failed to present an argument for "substantial." However, *Martin* fails to define "pervasive" or "substantial" and the Alaska case *Martin* relies on for "substantial" uses it synonymously with "pervasive." See *Kelly v. Joseph*, 46 P.3d 1014, 1017 (Alaska 2002).
[32] *Gordon v Geiger*, 133 Nev. 542 (2017).

DC must explain how this single incident was so substantial as to be still harming the welfare of the child.

Appellate review for abuse of discretion includes a determination of whether the lower court's decision was supported by substantial evidence and whether it ignored material facts in the record.[33] A court commits an abuse of discretion when it "cherry-picks" isolated incidents to support a predetermined outcome while ignoring the broader context of the parents' conduct and the child's established environment. When a court "backdoors" a rebutted presumption by using the same facts as the primary weight in a subsequent analysis it hijacks the child's best interest.

Yet COA failed to notice DC's results-oriented analysis used decontextualized evidence to enable the "abduction" label to swallow the reality of the child's life. For example, in determining which parent would more freely allow association with the other, DC cited Luba's trip over Father's Day but didn't mention Enrique approved it six months beforehand yet only objected weeks before her departure. DC also used this trip as the basis for discrediting Luba's testimony regarding the reason for the withholding. DC reasoned her going to Cancun with her family showed she was not afraid to travel to Mexico but failed to account for the vast difference in violent crime rates in resort towns versus border towns. Finally, under cooperation to meet needs,

[33] *Davis v. Ewalefo*, 131 Nev. 445 (2015).

DC cited Dad's lengthy complaints regarding Luba's failure to take [redacted] to an allergist but gave no weight to his subsequent failure to make the appointment himself after having the insurance card for many months. This bias of rewarding Enrique's passivity ("Enrique generally ceded responsibility") while painting Luba as controlling ("Luba enrolled the child in online counseling over his objection") is pervasive throughout the analysis. The selective decontextualization and weaponization of common parenting behaviors betray DC's bias against Luba and the results-oriented approach of the analysis.

DC's failure to directly address how the well-intended withholding represented a substantial change of circumstance and to complete a legitimate best interest analysis suggest a results-oriented approach. Because they thus drastically lower the bar needed to modify custody, COA and DC decisions should be immediately reversed and joint custody restored.

e. The COA decision modifies custody as a contempt sanction

DC's incomplete and weakly-supported analysis suggests a punitive intent. Because Nevada case law strictly prohibits this weaponization of custody, both decisions should be reversed and the prior arrangement should be reinstated at once.

Nevada law strictly prohibits using custody modification as a punitive "sword" to discipline a parent.[34] Furthermore, a child's stability is "paramount," and a modification must be a "substantial improvement" to the child's life.[35] "There are numerous ways to deter parents…without risking harm to an innocent minor."[36] A modification reallocating custody primarily to punish a parent—rather than to enhance the child's environment—is an abuse of discretion.

This modification was an improperly punitive reallocation. The remedial mismatch is clear: DC addressed Luba's misjudgment with a fine, then used the child's life as a second penalty. There were no findings demonstrating that uprooting the child two years after a relatively harmless event was a "substantial improvement" over the stable week-on/week-off routine she enjoyed for years. As evidenced by COA's reversal of the dental appointment sanction, DC was engaged in a "result-oriented" policing of technicalities. By thus weaponizing the modification process, DC essentially sacrificed the child's stability to punish Luba, DC substituted a punitive impulse for the child's fundamental right to continuity. This inappropriate use of judicial authority is strictly prohibited justifying the

[34] *Lewis,* 882. Emphasizing "a court may not use changes of custody as a sword to punish parental misconduct; disobedience of court orders is punishable in other ways."
[35] *Ellis*, 148.
[36] *Abid v. Abid,* 406 P.3d 476 (Nev. 2017).

immediate and total reversal of these decisions and the restoration of joint custody without further proceedings.

V. CONCLUSION

For the reasons set forth above, the Court of Appeal's "Order Affirming in Part and Reversing in Part" should be reviewed by the Supreme Court. Because the District Court and Court of Appeals decisions are the exact opposite of what is in this particular child's best interests, they should be reversed with joint physical custody and the prior custodial schedule ordered reinstated immediately without need for any further proceedings.

RESPECTFULLY SUBMITTED this 13th day of March, 2026.

MCFARLING COHEN FIC & SQUIRES

/s/ Emily McFarling
Emily McFarling, Esq.
Nevada Bar Number 8567
[redacted]
Attorney for Appellant,
Luba Dace

VI. CERTIFICATE OF COMPLIANCE

I hereby certify that this Petition for Review complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because this petition has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman and 14 pt. font.

I further certify that this petition complies with the page- or type volume limitations of NRAP 40B(f) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4,663 words (out of 4,667 allowed).

Finally, I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 40B(b), which disallows citation to authority or argument incorporated into the petition by reference to another document and requires that the questions presented for review appear on the first page after the cover. I understand that I may be subject to sanctions in the event that

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the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 13th day of March, 2026.

MCFARLING COHEN FIC & SQUIRES

/s/ Emily McFarling
Emily McFarling, Esq.
Nevada Bar Number 8567
[redacted]
Attorney for Appellant,
Luba Dace

VII. CERTIFICATE OF SERVICE

I, an employee of McFarling Cohen Fic & Squires, hereby certify that on the 16th day of March, 2026, I served a true and correct copy of Appellant's Petition for Review by the Supreme Court pursuant to NRAP 40B:

☒via Supreme Court's electronic filing and service system (eFlex):to the following:

Amanda M. Roberts, Esq.
Melvin R. Grimes, Esq.
Attorneys for Respondent

/s/ Rebeca Renderos
Rebeca Renderos

EXHIBIT 1

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUBA GONZALEZ N/K/A LUBA SNOW A/K/A LUBA DACE,
Appellant,
vs.
ENRIQUE IVAN VELAZQUEZ-GONZALEZ,
Respondent.

No. 90570-COA

FILED

FEB 27 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART AND REVERSING IN PART

Luba Gonzalez n/k/a Luba Snow a/k/a Luba Dace appeals from a district court order modifying child custody, finding her in contempt, and awarding attorney fees. Eighth Judicial District Court, Family Division, Clark County; Heidi Almase, Judge.

Luba and respondent Enrique Ivan Velazquez-Gonzalez married in March 2013. Their daughter, [redacted] was [redacted] However, in December 2021, the couple divorced. Under the stipulated decree of divorce, Luba and Enrique shared joint legal custody of [redacted] and were required to confer with one another "on all important matters pertaining to [redacted] health" and "on all matters regarding [redacted] health care, including . . . dental." Luba and Enrique also shared joint physical custody of [redacted] alternating parenting time on a weekly basis. Annually, each parent was entitled to receive up to seven vacation days with [redacted] which they could sandwich between their usual weeks of custody to create a three-week block of vacation time. For vacations outside of Nevada, the vacationing parent was required to provide a written itinerary to the other parent that identified all flights [redacted] would take, the address and hotel name (if applicable) where [redacted] would be staying each night of the trip, a phone number where [redacted] could be reached in case of an emergency, and the

dates of any border crossings [redacted] would be making by car or on foot. In addition to that vacation time, the decree set aside certain holidays for each parent. Of relevance, the decree provided for Enrique to have [redacted] during Father's Day. In July 2022, the parties also agreed that, absent an emergency, all communication would occur through the TalkingParents phone application and each parent had up to 24 hours to respond.

In March 2023, two situations caused disagreement between the parents regarding their rights and obligations under the decree. First, I.G. was supposed to have a dental appointment during Enrique's timeshare; but, without first asking Enrique, Luba changed the date of that appointment to occur during her own timeshare. Second, [redacted] was supposed to go to Mexico with Enrique, his new wife, and their child (I.G.'s half-sister) to visit Enrique's parents. Two days before their planned departure, however, Luba filed a motion to stop Enrique from taking [redacted] on the trip. In that motion, Luba expressed concern that Enrique planned to enter Mexico at the border rather than through the CBX tunnel between San Diego and the Tijuana airport and because Enrique was taking [redacted] to parts of Mexico that Luba thought were unsafe.

On the morning of the trip, the district court held an off-the-record phone conference with the attorneys for both parents to help facilitate a resolution. Because the meeting was off the record, it was not transcribed, and the district court did not enter an order granting or denying Luba's motion or otherwise resolving the parties' dispute during that teleconference.

Rather, following the conference, the parents' attorneys attempted to negotiate terms that would resolve Luba's safety concerns. Of note, Luba asked Enrique to purchase CBX tickets and provide her with copies of those tickets before exchanging [redacted] But Enrique refused to provide copies of the tickets in advance. He believed that his money would go to waste because Luba

would create another obstacle to prevent him from taking his vacation with [redacted] even if he provided copies of the tickets in advance.

After Enrique refused to provide the tickets, Luba conferred with her attorney on how to proceed. Luba testified that, based on that discussion, she believed that the itinerary provision in the decree had been clarified by the district court that morning, requiring Enrique to provide copies of his CBX tickets in advance. Because Enrique failed to provide the tickets, Luba decided that she did not have to exchange [redacted] with Enrique. Accordingly, Luba refused to exchange [redacted] (i.e., she withheld [redacted] which caused [redacted] to miss the trip to Mexico. Shortly thereafter, Enrique filed a motion for an order to show cause seeking to hold Luba in contempt and refer her for criminal prosecution for parental kidnapping. *See* NRS 200.359. He also filed a motion to modify custody, seeking primary physical custody based on Luba's changing of the dental appointment and her withholding of [redacted] Luba opposed both motions.

The district court granted Enrique's motion for an order to show cause. It then held a consolidated evidentiary hearing on whether Luba should be held in contempt for violating the decree and whether Enrique's motion to modify custody should be granted.

The first day of the hearing occurred in March 2024. Because Enrique alleged that Luba committed an act of abduction against [redacted] *see* NRS 200.359, that first day revolved around whether there was clear and convincing evidence that Luba willfully detained [redacted] in violation of a court order thereby triggering the NRS 125C.0035(7) rebuttable presumption that she should not be awarded sole or joint physical custody or unsupervised parenting time. After hearing testimony from Luba, her former attorney,[1] Enrique, and others,

[1]Luba's former attorney testified that he did not tell Luba to violate the decree and instead advised her that it was up to her how she should proceed. The district court found that testimony credible.

the district court orally announced its preliminary finding, which it memorialized in a written order in August 2024, that there was clear and convincing evidence that Luba willfully detained I.G., triggering the rebuttable presumption. The court did not find credible Luba's testimony that she did not intend to withhold [redacted] from Enrique. The court then continued the hearing for another day to hear evidence on whether that presumption was overcome.

In August 2024, Luba moved the district court to reconsider its finding that she triggered the NRS 125C.0035(7) rebuttable presumption, arguing that her attorney misrepresented his advice to her during the first day of the hearing. Enrique opposed that motion and asked the court to award him attorney fees for responding. Luba did not file a reply. The district court subsequently denied that motion, noting that it found credible Luba's former attorney's testimony that he did not advise her to violate the decree. The court then preliminarily granted Enrique's request for fees, stating that "Luba's plea for relief multiplied the costs of litigation without just cause and did so unreasonably and vexatiously." The court also ordered Enrique to file briefing on the amount of fees to be awarded, which he timely filed. He requested $767.50 in fees.

The second day of the hearing was held in October 2024. Luba and Enrique again testified. This time, the focus of their testimony was whether Luba rebutted the presumption set forth in NRS 125C.0035(7). At the close of the second day, the court took the matter under advisement.

In January 2025, the district court entered an order granting Enrique's motions to modify custody and hold Luba in contempt. As to custody, the court determined that—even though Luba had committed an act of abduction—she successfully rebutted the presumption against sole or joint physical custody or unsupervised parenting time. Specifically, the court stated that "Luba demonstrated her ability to provide daily care for the child, provide

for the child's physical and emotional needs, and provide the child with a safe home[, which] overcomes the presumption set forth in NRS 125C.0035(7)." Despite finding that Luba had overcome the abduction presumption, the court went on to find that "Enrique nonetheless established a substantial change of circumstances affecting the child's welfare and in the child's best interest." While not overtly stated as such, it is clear from the district court's order that the court found that Luba's abduction of [redacted] was a substantial change in circumstances warranting modification of custody.

When evaluating the custody best-interest factors, the district court found the six factors set forth in NRS 125C.0035(4)(c)-(g) and (l) weighed in Enrique's favor and the remaining factors were neutral or inapplicable. The court then determined it was in [redacted] best interest for Enrique to have primary physical custody. In reaching this conclusion, the court placed heavy weight on

> Luba's actions which prevented Enrique from having frequent associations with the child, Luba's demonstrated unwillingness to co-parent with Enrique, her near constant actions leading to increased conflict and litigation in this matter and her demonstrated inability to meet the needs of the child by valuing conflict with Enrique over the child's best interest.

The district court then awarded Enrique primary physical custody and awarded Luba parenting time every weekend except the third weekend of each month. However, the court maintained the existing joint legal custody arrangement and the prior holiday and vacation timeshare. The court also ordered Luba to pay $301 per month in child support and allowed Enrique to claim the child tax credit for [redacted] on his federal tax return.

As to Enrique's contempt motion, the court found Luba in contempt both for withholding [redacted] during Enrique's March 2023 vacation timeshare and for changing [redacted] dental appointment without first conferring

with Enrique. It ordered her to pay $1,000 in sanctions: $500 for each count of contempt. Then, in a separate order issued that same day, the court awarded Enrique the $767.50 in attorney fees he requested for responding to Luba's August 2024 motion for reconsideration. Following the denial of a subsequent motion for reconsideration, Luba timely appealed.

On appeal, Luba argues that the district court abused its discretion by awarding Enrique primary physical custody, by holding her in contempt, and by awarding Enrique attorney fees. We address these issues below, in turn.

The district court did not abuse its discretion by awarding Enrique primary physical custody

This court will not disturb a district court's child custody determination absent a clear abuse of discretion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). "An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous." *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018). Substantial evidence "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis*, 123 Nev. at 149, 161 P.3d at 242. This court does not reweigh evidence or witness credibility. *Id.* at 152, 161 P.3d at 244; *Roe v. Roe*, 139 Nev. 163, 171, 535 P.3d 274, 285 (Ct. App. 2023).

"[A] court may modify a joint . . . physical custody arrangement only when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Romano v. Romano*, 138 Nev. 1, 5, 501 P.3d 980, 983 (2022) (internal quotation marks omitted), *abrogated on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev. 401, 403-05, 535 P.3d 1167, 1170-71 (2023).

Abduction

In challenging the district court's decision to modify custody, Luba argues that the district court abused its discretion in concluding that she

abducted [redacted] and in relying on that determination to find that a substantial change in circumstances had occurred and that modification was in [redacted] best interest. She maintains that her single act of withholding [redacted] did not constitute an act of abduction under NRS 200.359, as she did not act "willfully" (i.e., with "specific intent") when she withheld [redacted] Luba further argues there was no evidence that she detained or concealed [redacted] from Enrique and that one act of withholding is insufficient to constitute an act of abduction.

"Conclusions of law, including the interpretation and construction of statutes, are reviewed de novo." *Chandra v. Schulte*, 135 Nev. 499, 501, 454 P.3d 740, 743 (2019). When interpreting a statute, we "interpret clear and unambiguous statutory language by its plain meaning unless doing so would lead to an unreasonable or absurd result." *Moore v. State*, 136 Nev. 620, 622-23, 475 P.3d 33, 36 (2020). "A statute is ambiguous 'when the statutory language lends itself to two or more reasonable interpretations.'" *Sharpe v. State*, 131 Nev. 269, 274, 350 P.3d 388, 391 (2015) (quoting *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011)).

For purposes of NRS 125C.0035, "'[a]bduction' means the commission of an act described in NRS 200.310 to 200.340, inclusive, or 200.359." NRS 125C.0035(10)(a). Relevant to the issues before us, NRS 200.359(1) provides:

> 1. A person having a limited right of custody to a child by operation of law or pursuant to an order, judgment or decree of any court, including a judgment or decree which grants another person rights to custody or visitation of the child . . . who:
>
> (a) In violation of an order, judgment or decree of any court *willfully* detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation of the child
>
> . . .

> is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(Emphasis added.)

On appeal, Luba points out that the term "willfully" is not defined within Nevada's child custody statutes and argues that, for purposes of NRS 200.359(1), willfully must be defined as requiring a showing of specific intent, and that under such a construction of the statute, the district court's finding that she abducted [redacted] is not supported by substantial evidence. We disagree.

Although "willfully" can have different meanings, it is not necessarily an ambiguous term, and it does not always require proof of specific intent. *See Willson v. First Jud. Dist. Ct.*, 140 Nev. 62, 67-70, 547 P.3d 122, 130-32 (Ct. App. 2024) (collecting cases where the term "willfully" required either general or specific intent and concluding NRS 197.190 was "ambiguous as to whether [obstructing a public officer] is a general or specific intent crime"). Whether statutory language is plain or ambiguous "is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context of the statute as a whole." *Sharpe*, 131 Nev. at 274, 350 P.3d at 391 (quoting *Yates v. United States*, 574 U.S. 528, 537 (2015)) (citation modified).

The statute at issue in this case, NRS 200.359, criminalizes willfully detaining, concealing, or removing a child from a person having lawful custody of that child. And "in the context of statutes aimed at the protection of [children], such as child abuse statutes, the term 'willfully' has been defined to refer to general intent: as an intent to do the act, rather than any intent to violate the law or injure another." *Jenkins v. State*, 110 Nev. 865, 870, 877 P.2d 1063, 1066 (1994) (interpreting NRS 200.364, which defines statutory sexual seduction, and NRS 200.368, which criminalizes statutory sexual seduction, as not requiring specific intent).

An examination of the plain language of NRS 200.359 further reveals that different levels of intent are required by NRS 200.359(1) and NRS 200.359(2)—specifically that subsection (1) does not require a showing of specific intent, whereas subsection (2) requires such a showing. NRS 200.359(2) states that "a parent who has joint legal and physical custody of a child pursuant to NRS 125C.0015[2] shall not *willfully* conceal or remove the child from the custody of the other parent *with the specific intent* to frustrate the efforts of the other parent to establish or maintain a meaningful relationship with the child." (Emphases added.) By contrast, NRS 200.359(1)(a) lacks any "specific intent" language, stating only that "[a] person having a limited right of custody to a child . . . pursuant to an order . . . who . . . [i]n violation of an order . . . *willfully* detains, conceals or removes the child from a parent, guardian or other person having lawful custody or a right of visitation . . . is guilty of a category D felony." (Emphasis added.) "If a provision is susceptible of . . . a meaning that deprives another provision of all independent effect, . . . and another meaning that leaves both provisions with some independent operation, the latter should be preferred." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 176 (2012). Thus, as used in NRS 200.359(1), "willfully" may not be read as requiring specific intent, as this would deprive the additional language in NRS 200.359(2) of its independent effect by rendering that language superfluous.

Under this construction of NRS 200.359(1), the district court was not required to find Luba specifically intended to detain [redacted] in violation of a

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[2]NRS 125C.0015(2) states that "[i]f a court has not made a determination regarding the custody of a child, each parent has joint legal custody and joint physical custody of the child until otherwise ordered by a court of competent jurisdiction."

court order to find she committed an act of abduction. Regardless, the court did not credit Luba's testimony that she did not intend to withhold [redacted] from Enrique, which is a determination we will not reweigh. *Ellis*, 123 Nev. at 152, 161 P.3d at 244. Under these circumstances, Luba's contention that her withholding of [redacted] was not "willful" because she was acting "in the best interests of her child based on her safety concerns and upon the advice of her counsel" is unavailing.

Luba further argues that she did not commit an act of abduction because there was not clear and convincing evidence that she detained or concealed [redacted] from Enrique. "In reviewing child custody determinations, we will not set aside the district court's factual findings if they are supported by substantial evidence, which is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis*, 123 Nev. at 149, 161 P.3d at 242 (footnote omitted). Here, the district court found that Enrique proved, by clear and convincing evidence, that "Luba willfully detained the minor child on March 15, 2023," as the decree "clearly identified the vacation timeshare and itinerary provisions" and Luba "conceded in her testimony" that she did not turn [redacted] over to Enrique for his vacation timeshare on that date.

Although NRS 200.359 does not define "detain," a plain meaning examination of this term demonstrates that "detain" is commonly defined as "to hold or keep in or as if in custody." *See Merriam-Webster's Collegiate Dictionary* (11th ed. 2014); *see also AZG Ltd. P'ship v. Dickinson Wright PLLC*, 141 Nev., Adv. Op. 37, 574 P.3d 929, 932 (2025) (providing that the appellate courts may look to other sources, such as dictionaries, to determine plain meaning where a statute does not provide a definition for a term). Applying this definition to the facts before us, we consider Luba's testimony that even though the decree required her to exchange [redacted] on March 15, 2023, she refused to do so. In other words, Luba held or kept custody of [redacted] even though the

decree required her to complete the exchange. Thus, substantial evidence supports the district court's finding that Luba detained [redacted] *See Ellis*, 123 Nev. at 149, 161 P.3d at 242.

Finally, to the extent Luba argues that "one withholding" was insufficient to constitute an act of abduction for purposes of NRS 125C.0035, her argument fails. Notably, Luba cites no authority in support of this proposition. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that the appellate courts need not consider assertions that are not supported by relevant authority). And regardless, NRS 125C.0035(10)(a) defines "abduction" as "the commission of *an act* described in" NRS 200.359, among other statutes; so, by definition, Luba's single act of withholding [redacted] was sufficient to constitute an abduction.[4] NRS 125C.0035(10)(a) (emphasis added).

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[3]Because a willful detention, on its own, satisfies the requirements of NRS 200.359(1)(a), we need not address Luba's argument that she did not conceal [redacted] *See* NRS 200.359(1)(a) (providing that the crime is committed if a parent "willfully detains, conceals *or* removes the child" (emphasis added)).

[4]To the extent Luba asserts that her constitutional rights were violated because a determination that she abducted [redacted] must be made through a criminal trial, that argument lacks merit. While NRS 125C.0035(10)(a) defines "abduction" in accordance with a criminal statute—NRS 200.359—she was not charged with, much less convicted of a crime, and NRS 125C.0035 contains no requirement that a parent be convicted of abduction before a court can find that an abduction occurred. *See* NRS 125C.0035(7) (stating that a finding of abduction must be supported by clear and convincing evidence); NRS 125C.0035(8)(a) (stating that a conviction under NRS 200.359 establishes conclusive evidence of abduction). Moreover, Luba points to no authority to support her contention that due process or her right to parent requires a criminal conviction before a court can find that an abduction occurred in accordance with NRS 125C.0035(7). *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

Thus, for the reasons set forth above, we discern no error or abuse of discretion in the district court's determination that Luba's withholding of I.G. during Enrique's scheduled vacation time constituted an abduction, as that determination is supported by substantial evidence. With this conclusion in mind, we turn to whether the district court properly found that a modification of custody was warranted.

Substantial change in circumstances

Luba argues that the district court abused its discretion when it found that there was a substantial change in circumstances affecting I.G.'s welfare that warranted a modification of custody. She first asserts that the court did not provide clear reasoning for finding a substantial change in circumstances as required by *Davis v. Ewalefo*, 131 Nev. 445, 452, 352 P.3d 1139, 1143 (2015) (requiring "[s]pecific findings and an adequate explanation of the reasons for [a] custody determination"). This argument lacks merit, however, as the context in which the court made its substantial change in circumstances finding makes clear that Luba's abduction of [redacted] was what constituted a substantial change in circumstances. Notably, the district court found that, while Enrique could not prevail in limiting Luba's parenting time based on the abduction presumption, he had "nonetheless established a substantial change of circumstances affecting the child's welfare."

And while Luba alternatively argues that her withholding o[redacted] in March 2023 cannot constitute a substantial change in circumstances because one instance of withholding is not pervasive and therefore cannot constitute a substantial change in circumstances under *Martin v. Martin*, 120 Nev. 342, 343, 90 P.3d 981, 981-82 (2004), *abrogated on other grounds by Ellis*, 123 Nev. at 150-51, 161 P.3d at 242-43, that argument does not provide a basis for relief. *Martin* states that "a custodial parent's substantial *or* pervasive interference with a noncustodial parent's [parenting time] could give rise to

changed circumstances warranting a change in custody," 120 Nev. at 343, 90 P.3d at 981-82 (emphasis added). Thus, to the extent Luba argues *Martin* requires that parental interference be both pervasive *and* substantial to constitute a substantial change in circumstances, she misreads that decision. As set forth in *Martin*, interference that is either substantial or pervasive may suffice. *Id.* And here, Luba does not argue that her withholding of [redacted] was not a substantial interference with Enrique's parenting time, and thus she has forfeited any such argument. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (declining to consider issues that the appellant failed to raise on appeal). As a result, Luba has not demonstrated any abuse of discretion in the district court's determination that a substantial change in circumstances warranting modification had occurred.

Best-interest findings

Luba next argues that the district court abused its discretion in finding that modification of custody was in [redacted] best interest because its best-interest findings for the NRS 125C.0035(4)(c)-(g), (i)-(j), and (l) factors were unsupported by substantial evidence. We disagree.

Starting with the district court's finding that Enrique was the parent more likely to permit frequent associations and a continuing relationship with [redacted] NRS 125C.0035(4)(c), this determination was supported by Enrique's testimony that Luba interfered with his vacations while he did not do so with hers and Luba's testimony that she refused to exchange [redacted] for Enrique's 2023 trip to Mexico and scheduled her 2023 vacation to occur during Enrique's Father's Day parenting time. With regard to the level of conflict between the parties, NRS 125C.0035(4)(d), the district court found Luba was the bigger source of conflict between the parents given that she testified to allowing [redacted] to call her new husband "dad" over Enrique's objections and to improperly contacting Enrique outside of the TalkingParents app for non-

emergencies. Moreover, as the district court found, Luba filed more than three times the number of motions in the case as Enrique.

The district court further found that Enrique was the parent better able to cooperate to meet [redacted] needs, NRS 125C.0035(4)(e), based on Enrique's testimony that Luba created conflict at [redacted] medical appointments to such a degree that Enrique was no longer comfortable attending, and the fact that Luba prevented [redacted] from going on the March 2023 trip to Mexico and changed [redacted] dental appointment without first conferring with Enrique.

Turning to the parents' mental and physical health, NRS 125C.0035(4)(f), the district court found this factor favored Enrique. Luba conceded she had been diagnosed and treated for anxiety. Although Luba claimed she had learned tools to cope with that issue, the court found her withholding of [redacted] demonstrated that her anxiety could still cause her to make poor decisions. As for [redacted] physical, developmental, and emotional needs, NRS 125C.0035(4)(g), the court found this factor "nominally" weighed in Enrique's favor based on Enrique's testimony that he avoided [redacted] appointments because of Luba and Luba's testimony that she enrolled [redacted] in online counseling over Enrique's objection that [redacted] would be better served by an in-person counselor.

Further, the parents testified that [redacted] had a sibling in both of their households, so the district court found that the factor on sibling relationships weighed neutrally. NRS 125C.0034(4)(i). And no one testified that either parent abused or neglected [redacted] so the court found the factor on abuse and neglect inapplicable. NRS 125C.0035(4)(j). Finally, given Luba's withholding of [redacted] during Enrique's 2023 vacation time, the district court found that the abduction factor weighed in Enrique's favor. NRS 125C.0035(4)(l).

Each of these findings is supported by substantial evidence in the record. *See Ellis*, 123 Nev. at 149, 161 P.3d at 242. Further, the record does not support Luba's contention that the district court failed to consider certain evidence. And because we are not at liberty to reweigh the evidence or the district court's credibility determinations, we cannot conclude that the district court improperly weighed any of the best-interest factors. *Id.* at 152, 161 P.3d at 244. Under these circumstances, we conclude the district court did not abuse its discretion in modifying custody to award Enrique primary physical custody of [redacted] and thus we affirm that decision.[5]

The district court abused its discretion by holding Luba in contempt for changing [redacted] dental appointment, but it did not abuse its discretion by holding Luba in contempt for withholding I.G.

This court reviews district court contempt orders for an abuse of discretion. *Lewis v. Lewis*, 132 Nev. 453, 456, 373 P.3d 878, 880 (2016); *see also Vaile v. Vaile*, 133 Nev. 213, 217, 396 P.3d 791, 794-95 (2017) (explaining that, while orders of contempt are not appealable, this court has jurisdiction to review contempt findings when included in an order that is otherwise independently appealable). "A court order which does not specify the compliance details in unambiguous terms cannot form the basis for a subsequent contempt order." *Div. of Child & Fam. Servs. v. Eighth Jud. Dist. Ct.*, 120 Nev. 445, 455, 92 P.3d 1239, 1245 (2004).

We conclude that the district court abused its discretion in holding Luba in contempt for changing [redacted] dental appointment. Here, the decree inconsistently states both that Luba must confer with Enrique "on *all* matters regarding [redacted] health care . . . including dental" and that she must confer

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[5]Because we discern no abuse of discretion in the district court's substantial-change-in-circumstances and best-interest analysis, we reject Luba's argument based on *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993), that the district court improperly modified custody to punish her.

"on all *important* matters pertaining to [redacted] health." (Emphases added). Further, the decree does not indicate *when* Luba had to confer with Enrique on such matters. While Luba's conduct was not advisable, given the lack of clarity in the decree on those issues, these portions of the decree cannot form the basis for holding Luba in contempt, and thus we reverse that portion of the district court's contempt determination, including the $500 monetary sanction. *See id.* ("A court order which does not specify the compliance details in unambiguous terms cannot form the basis for a subsequent contempt order.").

Turning to the decision to hold Luba in contempt for withholding [redacted] Luba conceded in her testimony that she refused to exchange [redacted] for Enrique's vacation timeshare as was required under the decree. While Luba argues that she withheld I.G. due to legitimate safety concerns and on the advice of counsel, the district court did not find credible Luba's testimony about her intentions for withholding [redacted] and we will not reweigh that determination. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244. Moreover, Luba cites no authority to support her contention that a party can simply ignore a court order under such circumstances. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Thus, we discern no abuse of discretion in the district court's decision to hold Luba in contempt for withholding [redacted] and we therefore affirm that determination. *See Lewis*, 132 Nev. at 456, 373 P.3d at 880; NRS 22.010(3) (providing that disobeying a lawful court order constitutes a contempt).

Accordingly, for the reasons set forth above, we

ORDER the judgments of the district court REVERSED in part as to the decision to hold Luba in contempt for modifying [redacted] dental

appointment, including the $500 monetary sanction, and AFFIRMED in part as to the remainder of the judgments.[6]



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

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[6]With regard to Luba's challenge to the $767.50 attorney fee award to Enrique, the district court found that fees were warranted under NRS 18.010(2)(b) and EDCR 5.219 because Luba's motion to reconsider the determination that she abducted [redacted] unreasonably and vexatiously multiplied the costs of the litigation. *See* NRS 18.010(2)(b) (providing for attorney fees "when the court finds that the claim . . . was brought or maintained without reasonable ground or to harass the prevailing party"); EDCR 5.219 (providing for sanctions when a party "[m]ultipl[ies] the proceedings in a case so as to increase costs unreasonably and vexatiously"). On appeal, Luba argues that fees should not have been awarded because reconsideration was necessary to challenge the court's erroneous decision on the abduction issue. But as detailed above, the district court properly concluded that Luba had abducted I.G. Under these circumstances, we discern no abuse of discretion in the award of attorney fees. *See Frederic & Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 580, 427 P.3d 104, 112 (2018) ("We review a district court's attorney fees decision for an abuse of discretion.").

Further, to the extent Luba argues that the district court was biased against her, this argument does not provide a basis for relief, as she has not demonstrated that the district court's decisions were based on knowledge acquired outside of the proceedings or that they reflected "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification").

Finally, insofar as Luba raises other arguments not specifically addressed in this order, we have considered the same and conclude that they also do not present a basis for further relief.

cc: Hon. Heidi Almase, District Judge, Family Division
McFarling Law Group
Cohen Fic & Squires
Roberts Stoffel Family Law Group
Eighth District Court Clerk