

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MCCALL,
Appellant,
vs.
MICHELLE BURNS, F/K/A MICHELLE
MCCALL,
Respondent.

No. 44672

FILED

JUL 06 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting respondent permission to relocate with the minor child to Arizona. Eighth Judicial District Court, Family Court Division, Clark County; Robert W. Lueck, Judge.

The district court has broad discretionary power in determining questions of child custody and visitation, and this court will not disturb the district court's determination absent a clear abuse of discretion.¹ A parent, who is the minor child's primary physical custodian, can relocate with the child out of state with the written consent of the noncustodial parent.² Absent such consent, the custodial parent may petition the district court for permission to move the child.³

In reviewing such a petition, the district court must determine whether the custodial parent wishing to leave Nevada made a threshold

¹See Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).

²NRS 125C.200.

³Id.

showing of a sensible, good faith reason for the move.⁴ If this threshold requirement is met, the district court must next weigh the factors outlined in Schwartz v. Schwartz,⁵ focusing on the availability of adequate, alternative visitation.⁶ In considering whether adequate, alternative visitation is available, the district court may consider the potential frustration of the noncustodial parent's relationship with the child if relocation is allowed.⁷

Here, the record shows that the district court found that respondent's motion for relocation was in good faith. The court considered the Schwartz factors and concluded that the child would benefit from the move. Moreover, the court found that appellant will have a realistic opportunity to exercise visitation and maintain his relationship with the child. The court awarded appellant visitation with the child for six weeks each summer, during spring and fall breaks, every Thanksgiving, and half of Christmas break, and also directed that appellant may exercise

⁴Davis v. Davis, 114 Nev. 1461, 1466, 970 P.2d 1084, 1087 (1998).

⁵107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991) (providing that the district court must consider: (1) how likely the move will improve the moving parent and child's quality of life; (2) whether the moving parent's motives are honorable; (3) whether the custodial parent will comply with the court's visitation orders; (4) whether the noncustodial parent's motives for resisting the move are honorable; and (5) whether, if the move is approved, the noncustodial parent will have a realistic opportunity to exercise visitation such that the parent's relationship with the child will be adequately fostered).


⁶Trent v. Trent, 111 Nev. 309, 315-16, 890 P.2d 1309, 1313 (1995) (emphasizing that the Schwartz factors must be considered in light of the availability of adequate, alternative visitation).

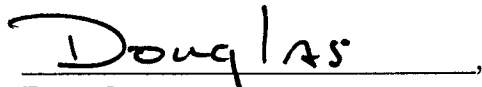
⁷Mason v. Mason, 115 Nev. 68, 70, 975 P.2d 340, 341 (1999).

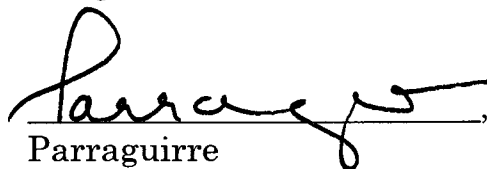
visitation on three-day weekends throughout the year with 30-days' advance notice to respondent. Additionally, the court allowed a monthly offset from appellant's child support obligation to defray travel expenses incurred during visitation. Finally, the court ordered respondent responsible for transportation costs during the child's spring, summer and fall breaks, and each Thanksgiving, with appellant responsible for all other transportation costs for visitation.

Having reviewed the record, we conclude that the district court did not abuse its discretion when it granted respondent permission to relocate with the child to Arizona, with appellant having visitation. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Eighth Judicial District Court Dept. E, District Judge,
Family Court Division
Paul M. Gaudet
David McCall
Clark County Clerk