

IN THE SUPREME COURT OF THE STATE OF NEVADA

CONNIE M. JENNINGS,

Appellant,

vs.

MICHAEL JOHN EMMANS,

Respondent.

No. 34962

FILED

NOV 14 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's motion for a change of child custody and granting respondent's petition to relocate to California with the parties' minor children.

On appeal, appellant Connie M. Jennings contends that the district court: (1) abused its discretion in denying her motion for a change of custody; (2) failed to comply with NRS 125C.010 in reinstating the existing visitation order; and (3) abused its discretion in granting respondent Michael John Emmans's petition to remove their children from Carson City, Nevada, to Sacramento, California.

First, Jennings contends that the district court abused its discretion in finding there was no change in circumstances to warrant a change of custody because: (1) Emmans failed to obtain her written consent pursuant to NRS 125C.200 prior to attempting to move the children to Sacramento; (2) the court did not consider the wishes of the children; and (3) Emmans has committed domestic violence against their son and Jennings's current husband. See McMonigle v. McMonigle, 110 Nev. 1407, 1408, 887 P.2d 742, 743 (1994) (quoting Murphy v. Murphy, 84 Nev. 710, 711, 447 P.2d 664, 665 (1968) ("Once primary custody has been established, a court can consider changing custody only if '(1) the

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circumstances of the parents have been materially altered; and (2) the child's welfare would be substantially enhanced by the change.'").

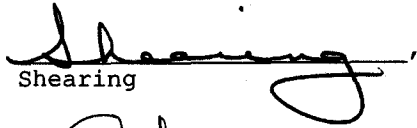
We conclude that because failure to obtain written consent is but one factor that a court may consider in determining whether a change of custody is warranted, the district court did not abuse its discretion in finding that Emmans's noncompliance with the statute was not an attempt to interfere with Jennings's access to the children. We further conclude that because the only evidence of the children's wishes was contradictory, the district court did not abuse its discretion in failing to grant Jennings's motion for a change of custody based on the wishes of the children. Finally, we conclude that the district court did not abuse its discretion in finding that Jennings had failed to show by clear and convincing evidence that Emmans had committed domestic violence against their son and Jennings's current husband. See NRS 125.480(5).

Second, Jennings contends that the district court failed to comply with NRS 125C.010 in reinstating the existing visitation order. After reviewing the district court's order, we conclude that it contains sufficient particularity to ensure that Jennings's rights can be properly enforced and that the best interests of the children are achieved.


Third, Jennings contends that the district court abused its discretion in granting Emmans's petition to remove the children from Carson City to Sacramento. We conclude that the district court did not abuse its discretion in finding that Emmans had not attempted to frustrate Jennings's visitation rights, and that the move would improve the quality of life for both Emmans and the children. See *Schwartz v. Schwartz*, 107 Nev. 378, 382, 812 P.2d 1268, 1271 (1991). The

children have many relatives and extended family members in Sacramento. They will be living in a larger house with their own rooms in the neighborhood where they previously lived, and Emmans has a union job in Sacramento with better pay and benefits than he is likely to find in northern Nevada. The focus of this inquiry must be "whether reasonable, alternative visitation is possible." Jones v. Jones, 110 Nev. 1253, 1266, 812 P.2d 563, 572 (1994). The parties have already shown that reasonable visitation is possible between Carson City and Sacramento; for eight months they carried out the visitation schedule with no problems other than occasional disruptions due to the weather. Having considered Jennings's contentions and concluded that they lack merit, we

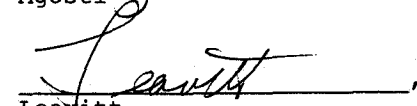
ORDER the district court's judgment affirmed.



Shearing J.



Agosti J.



Leavitt J.

c: Hon. William A. Maddox, District Judge
Day R. Williams
Kenneth J. Jordan
Carson City Clerk