

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORA SHUAGIS A/K/A CORA
CARROLL,
Appellant,
vs.
NICHOLAS OSTROUT,
Respondent.

No. 58860

FILED

MAR 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingessou
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's motion to modify child custody and for permission to relocate with the parties' minor child to Oklahoma. First Judicial District Court, Carson City; James E. Wilson, Judge.

Because the parties share joint physical custody, in seeking to relocate with the parties' minor child, appellant was required to move the court for primary physical custody and for permission to relocate outside Nevada. Potter v. Potter, 121 Nev. 613, 618, 119 P.3d 1246, 1249-50 (2005). In reviewing appellant's relocation motion, the district court was required to determine whether it is in the child's best interest to live with appellant in Oklahoma or with respondent in Nevada. Id.; Truax v. Truax, 110 Nev. 437, 438-39, 874 P.2d 10, 11 (1994); NRS 125.510(2). As the moving party, appellant bore the burden of proving that it is in the child's best interest to award her primary physical custody and to relocate to Oklahoma. Potter, 121 Nev. at 618, 119 P.3d at 1250.

Relocation

Based on the evidence presented, the district court determined that the child's best interest was served by denying the relocation motion, and appellant appealed. On appeal, this court will not disturb the district

court's custody determination absent an abuse of discretion. Truax, 110 Nev. at 439, 874 P.2d at 11; Wallace v. Wallace, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (providing that this court reviews district court child custody decisions for an abuse of discretion). Having considered appellant's arguments and the appellate record, we conclude that reversal of the district court's order is not warranted.

In its written order, the district court considered potential benefits of the move for appellant and how they related to the child, finding that appellant sought to move to Oklahoma to be with her husband, who is in the military; that the move would alleviate stress between appellant and her parents, with whom she lives in Nevada; and that these benefits served the child's best interest. The district court also found, however, that appellant had failed to adequately demonstrate the other benefits she asserted—that her employment, educational, and financial opportunities would improve with the move. While the child has relatives in both states, the court found that the child had a relationship only with the relatives in Nevada. Moreover, the court found that appellant failed to sufficiently demonstrate an ability to facilitate visits with respondent if the child moved out of state.

These findings are supported by substantial evidence in the district court record. Thus, despite the fact that the district court's primary reason for denying appellant's relocation motion was improper, see McGuinness v. McGuinness, 114 Nev. 1431, 1437, 970 P.2d 1074, 1078 (1998) (holding that a relocation motion may not be denied simply because the proposed move will interfere with the nonmoving parent's custody or visitation rights); Trent v. Trent, 111 Nev. 309, 316-17, 890 P.2d 1309, 1313-14 (1995) (recognizing that a father's preference for frequent contact

with the child may not serve as a basis to “chain” the mother to Nevada), the district court ultimately did not abuse its discretion in concluding that appellant had not met her burden of demonstrating that it was in the child’s best interest to relocate with her to Oklahoma. Gepford v. Gepford, 116 Nev. 1033, 1036, 13 P.3d 47, 49 (2000) (explaining that a district court’s factual findings will be upheld if supported by substantial evidence in the record); Wallace, 112 Nev. at 1019, 922 P.2d at 543 (providing that this court reviews district court child custody decisions for an abuse of discretion).

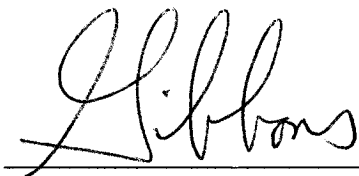
Constitutional challenge

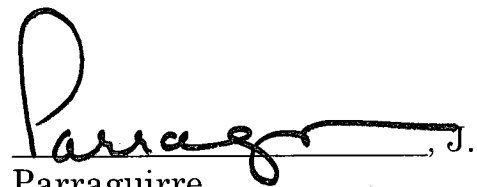
Concerning appellant’s constitutional challenges to the district court’s order, we conclude that her arguments lack merit. See Reel v. Harrison, 118 Nev. 881, 886-87, 60 P.3d 480, 483-84 (2002) (recognizing that a custodial parent’s freedom of movement is qualified by the noncustodial parent’s competing interest and the child’s best interest); Hayes v. Gallacher, 115 Nev. 1, 8, 972 P.2d 1138, 1142 (1999) (providing that conditional relocation orders are permissible “if the court affirmatively determines that the best interests of the child are served by the change in custody, taking into consideration all factors, not just the move”). In this case, the district court weighed all the evidence presented to it and considered the parties’ competing interests in light of the child’s best interest. The district court ordered that if appellant moved to Oklahoma, respondent would be awarded primary physical custody and appellant would have as much visitation as was financially possible. In rendering its decision, the district court took into account the arguments presented to it. Thus, we conclude that the district court’s conditional relocation order is not an impermissible penalty against appellant. Cf.

Hayes, 115 Nev. at 7-8, 972 P.2d at 1141-42 (suggesting that the district court's conditional relocation order was an impermissible penalty because the order failed to provide the moving party with any contact with the children, no evidence was presented regarding whether it was in the children's best interest to live with the noncustodial parent instead of relocating, and the district court failed to consider the noncustodial parent's history of domestic violence); see also Azia v. DiLascia, 780 A.2d 992, 1000-03 (Conn. App. Ct. 2001) (upholding the lower court's decision that it was in the child's best interest to award respondent father primary physical custody, which the court found negated appellant's constitutional challenge that the order improperly burdened her constitutional right to travel); Weiland v. Ruppel, 75 P.3d 176, 179 (Idaho 2003) (recognizing that no infringement on a custodial parent's constitutional right to travel occurs when the state restricts the parent's movement based on the child's best interest); Matter of Custody of D.M.G., 951 P.2d 1377, 1383 (Mont. 1998) (same).

Accordingly, based on the above discussion, we

ORDER the judgment of the district court AFFIRMED.¹

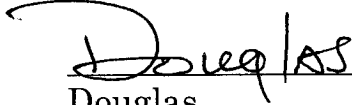

_____, J.
Gibbons


_____, J.
Parraguirre

¹We note that once appellant's plans become less speculative she may repetition the district court for a custody modification and permission to relocate.

DOUGLAS, J., dissenting:

Because the system respondent claims to have in place to care for the child is just as speculative as that put forth by appellant, it has not been established that it is in the child's best interest to award respondent primary physical custody. Accordingly, I would reverse the district court's award of primary physical custody to respondent, and therefore I dissent.

_____, J.
Douglas

cc: Hon. James E. Wilson, District Judge
Kathleen B. Kelly
Nicholas Ostrout
Carson City Clerk