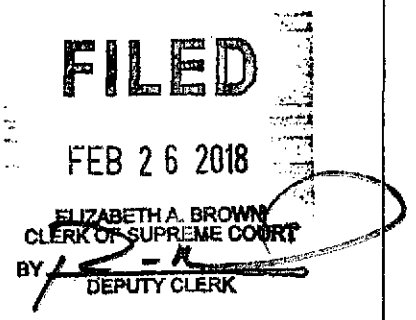
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SINETH MELINKOFF,
Appellant,
vs.
JOHNNY SANCHEZ-LOSADA,
Respondent.

No. 71380



ORDER OF AFFIRMANCE

Sineth Melinkoff appeals from a district court order modifying the physical custody arrangement of her minor child and denying her motion for relocation. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

Sineth was married to Johnny Sanchez-Losada.[1] The couple has one son, age 8, and Sineth has a daughter from a previous marriage, age 11.[2] Sineth and Johnny's marriage ended by a stipulated decree of divorce. In that decree, Sineth and Johnny agreed to joint legal and joint physical custody of their son, and no rights were requested by or awarded to Johnny regarding Sineth's older daughter.

A few months after the district court entered the divorce decree, Sineth filed a motion for primary physical custody of their son for the purposes of relocating with him out-of-state and for permission to relocate to Florida with their son, among other things. Johnny opposed this motion. Before the district court decided her motion, Sineth moved to Florida leaving their son in Nevada with Johnny.

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[1]We do not recount the facts except as necessary to our disposition.

[2]Ages at the time of the district court's order.

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After an extended evidentiary hearing on the motions, the district court denied Sineth's motions for primary physical custody of their son and permission to relocate with him. Further, the district court awarded primary physical custody of their son to Johnny. Sineth appeals the district court's order denying her motions and awarding primary physical custody to Johnny.

Sineth argues the district court abused its discretion by finding that their son would not benefit from any "actual advantage" by relocating to Florida.[3] This court reviews a district court's decision regarding relocation for an abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 444, 92 P.3d 1224, 1229 (2004). "We will uphold the district court's determination if it is supported by substantial evidence." *Id.* at 440, 92 P.3d at 1227 (internal citation and quotation marks omitted). "Substantial evidence 'is evidence that a reasonable person may accept as adequate to sustain a judgment.'" *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009) (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007)).

Sineth does not argue the district court's determination that their son would not benefit from any actual advantage by relocating to Florida is not supported by substantial evidence; instead, she points to a number of benefits she enjoys due to her relocation and suggests that their son would enjoy those benefits as well if he was with her. Thus, Sineth does

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[3]We agree with our dissenting colleague that the district court applied the incorrect test to the actual advantage factor. The correct test is whether the child and relocating parent will *benefit* from the relocation, not whether they will *substantially benefit*. However, we need not consider this issue because Sineth did not raise it on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that an issue not raised on appeal is waived).

not demonstrate that the district court abused its discretion by finding their son would not benefit from any actual advantage by relocation as the statute requires the relocating parent to demonstrate *both* the child and the parent will benefit by an actual advantage. Therefore, we conclude the district court did not abuse its discretion in making this finding.

Sineth also argues the district court abused its discretion in making its best interest determination. In light of our decision regarding the actual advantage factor, we need not consider whether the court erred in its best interest determination as NRS 125C.007(1) requires the relocating parent to meet all threshold factors. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

Silver, C.J.

Silver

TAO, J., concurring:

I join fully in the principal order but add a few words regarding the limited scope of our appellate review in a case like this.

In the words of a fictional television police detective, "all the pieces matter." (Detective Lester Freamon, *The Wire*, HBO 2001). Below, the district court made thirteen separate factual findings: it made a separate factual finding corresponding to each of the twelve individual "best interest" factors set forth in NRS 125C.0035, plus it made the thirteenth

[4]We have considered Sineth's remaining arguments and conclude they are unpersuasive.

finding that the "best interests of the child" ultimately balanced out against Sineth. *Cf. Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004) (apart from the application of individual "best interest" factors, the ultimate determination regarding the child's best interest is itself entitled to deference on appeal).

On appeal, Sineth, along with my colleague in dissent, have nothing to say about twelve of those findings. But they argue that the whole thing must be reversed anyway because the district court erred with respect to one of the thirteen, namely, 125C.0035(4)(i) relating to the ability of the child to maintain relationships with siblings. To me, that's not how review for "abuse of discretion" works. We have to look at all of the findings as a whole, and I don't agree that an "abuse of discretion" occurs simply because we might have weighed one factor differently than the district court did, unless that factor is somehow more important than everything else in the case that the district court got right.

I.

Let's put this in terms an economist might use, or that Detective Freamon's TV nemesis Stringer Bell might have learned in economics class. If we look at this case the way the dissent does, by focusing only on one factor all by itself, in isolation from everything else in the case, then our decision is a "binary option" producing an all-or-nothing outcome: if the district court got that one factor right, then it got everything right; but if it got that one factor wrong, then it got everything wrong.

But the district court didn't base its decision on only one factor; it correctly considered all twelve factors outlined in the statute, and then found that the best interests of the child weighed against Sineth's argument. If we look at all twelve factors together, what we have instead

is an analysis of "marginal benefit": right or wrong, how much did that one factor either add to, or detract from, the balance of all of the other factors taken together as a whole that the dissent acknowledges the district court got right? If wrong, would that one factor alone have been enough to render the whole thing an "abuse of discretion"?

Of these two approaches, it seems to me that the latter, not the former, is the more consistent with existing jurisprudence. One thing unresolved about NRS 125C.0035, and other "best interests of the child" statutes like it, which we've always left for district courts to decide is how much weight to give each individual factor. The statute itself doesn't say; it requires only that each factor be "considered" without prioritizing how each must be weighed against the others. The Nevada Supreme Court has emphasized that no single factor necessarily possesses any intrinsically greater weight than the others, and it's never said that every factor must be given exactly equal mathematical weight. Quite to the contrary, it's repeatedly held that the district court possesses "broad discretionary powers" on how to weigh each factor in any particular case. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). Moreover, there's no requirement that the district court simply count up the factors and go with the majority: a district court is free to find a majority of the factors to weigh toward one party, yet rule in favor of the other in the end, simply because it considered some factors more important than others under the facts at hand. *See Davis*, 131 Nev. at ___, 352 P.3d at 1143 (stating that a district court should not "simply process[] the case through the factors"). The standard of proof for establishing any fact is by a "preponderance of the evidence." But there's nothing that says the district court's conclusions regarding the children's best interests must be driven by a "preponderance

of the findings." Here, the district court considered all of the statutory factors and decided that the best interests of the child lay with keeping one child with the father in Nevada and, whether we like it or not, its findings are entitled to significant deference. *See Harrison v. Harrison*, 132 Nev. ___, ___, 376 P.3d 173, 175 (2016) ("We also recognize broad discretionary powers for district courts when deciding child custody matters.").

So, in a case like this, the weight that the district court gave to any single factor might have been microscopically little, gigantically large, or none at all; how much weight to give it was the district court's call. But reversing based upon the district court's resolution of that factor and that factor alone assumes that the district court gave great weight to it. Indeed, it assumes the district court made it outweigh everything else in the case. But that's an assumption that the record doesn't support. Furthermore, it gives the last factor far more weight than all of the others combined when the statute says that we do nothing of the kind, and requires reversal based on that factor alone while ignoring how everything else came out.

II.

The district court reviewed all twelve of the "best interest" factors delineated in NRS 125C.0035 and concluded that, with the exception of 125C.0035(4)(i) relating to the ability of the child to maintain relationships with siblings, all factors weighed equally (or did not apply). By doing so, the district court made clear that it considered this to be a near-run thing, something very close to a 50/50 decision that could have gone either way. To me, that means we must affirm when our standard of review is limited to reversal only for "abuse of discretion." If judicial discretion means anything, it means we must affirm the closest cases that fall within a few points of 50% one way or the other, for the simple reason that the

closer you get to the line, the more judges can reasonably disagree on precisely where the line ought to be drawn.

III.

Individual factors aside, did the district court err when it ultimately found that, all things considered, the child's best interests were served by denying Sineth's motion to relocate? The dissent concludes that it did, but I think otherwise. Sineth argued that she should be allowed to move to Florida with both children, away from Johnny, because doing so would create the actual advantage of improving the relationship between the siblings since they would both live together there in the same household. But the district court disagreed, concluding instead that Johnny's child should remain with him in Nevada even after Sineth moved to Florida with the other child, in part because there existed "other means of maintaining and adequately fostering the mother-child relationship" with that child including such things as "webcam visits and an alternative visitation schedule."

It seems to me that Sineth has the slightly better of the two arguments since the district court's resolution ended up splitting the kids up, and courts generally look favorably on the idea of allowing siblings to reside together whenever possible. *See Jones v. Jones*, 110 Nev. 1253, 1260, 885 P.2d 563, 568 (1994). But, most emphatically, that is not the question before us. The only question here is whether the district court's decision was so unreasonable, and the only possible resolution so obviously one-sided, that every district judge that could ever conceivably consider the matter would have no choice whatsoever but to side with Sineth. This is the conclusion we must reach to find that an "abuse of discretion" occurred. *See Leavitt v. Simms*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014) (stating that

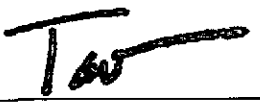
an abuse of discretion occurs only "when no reasonable judge could reach a similar conclusion under the same circumstances").

This is a case in which no easy answer exists. The district court was presented with two options, neither ideal for anybody involved: either keep the kids together in Florida with Sineth but thousands of miles away from Johnny, or split the kids up with one living in Florida with Sineth and the other living in Nevada with Johnny. As framed, the motions presented the district court with a stark black-and-white choice in a situation that really cried out for more choices, and better ones at that. But that's frequently the nature of custody cases: no good choices and many bad ones, and the district court is forced to try to predict the future to foresee which might be the lesser evil. I fully agree with my dissenting colleague that it's a difficult job for any district court. But unlike my colleague, the conclusion I draw from that is that, on appeal, we have to respect the difficulty by not second-guessing the closest and toughest calls unless we can confidently say that there was only one right answer and the district court got it wrong despite the answer being clear.

To conclude that the district court committed an "abuse of discretion" by choosing one outcome over the other, we'd really have to say one of two things: either we have a better crystal ball to gaze into the future with than the district court did to see how this all turns out for the kids; or, alternatively, there was one, and only one, easy and obvious answer that every judge in the world would have clearly and indisputably chosen except for this judge. Unlike my colleague in dissent, I don't think we can fairly say either thing.

IV.

For all of these reasons, I join the principal order and would affirm the district court's resolution of what it correctly identified as a very close decision that could have gone either way. "It's all in the game." (Omar Little, *The Wire*, HBO 2001). Reaching the right result means identifying the correct rules of the game to follow. I concur.



_____, J.
Tao

GIBBONS, J., dissenting:

I empathize with the parties, the district court, and my colleagues. Relocation cases are among the most difficult cases for all involved. Nevertheless, I disagree with the result reached by the majority and would reverse and remand for the district court to correctly apply the law and complete the statutory decision-making process as needed.

The district court has substantial discretion in deciding child custody and relocation matters, but the record reveals that the district court misapplied the law with regard to the sibling best interest factor in NRS 125C.0035(4)(i). Additionally, substantial evidence does not support the district court's finding that there is "no" actual advantage on Sineth's part that would also benefit Thomas. Therefore, the district court abused its discretion in applying the actual advantage threshold factor of NRS 125C.007(1)(c). Because the district court did not complete the relocation analysis under NRS 125C.007(2), there are no alternative grounds to affirm the district court's decision. Therefore, I would reverse and remand this

matter to the district court. I first briefly discuss the facts of this case to frame the issues and put into context how the legal mistakes occurred.

Sineth, Johnny, Sineth's daughter from a prior relationship (Camila), and the parties' child (Thomas) are citizens of Venezuela. Sineth testified that the entire family's ability to legally reside in the United States was contingent upon Johnny's investor's visa, but when Johnny and Sineth divorced, Sineth and Camila lost their legal right to live in the United States. Sineth further testified that she asked Johnny to put Camila on his visa, but Johnny refused to do so. Assuming Sineth's testimony regarding their legal status is accurate, both Sineth and Camila could have been deported to Venezuela and forced to live in an unstable country on a different continent than Thomas.[5]

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[5]The turmoil in Venezuela during the time of the parties' divorce is well-documented and has only gotten worse. *See* Ann Taylor, *Venezuela's Disputed Election*, The Atlantic (Apr. 18, 2013, viewed on Jan. 30, 2018), httts://www.theatlanticcom/photo/2013/venezuelas-disputed-election/100498 (political turmoil immediately after the presidential election); Anna Adrianova, *Venezuela after Chavez: An Economy on the Verge*, CNBC (Nov. 26, 2013, 8:02 AM), https://www.cnbc.com/2013/11/24/economy-mismangement-makes-collapse-look-likely.html (Venezuela's economic crisis); Andrew Cawthorne & Carlos Garcia Rawlins, *Venezuela's Violent Crime Fuels the Death Business*, Reuters (Feb. 20, 2014, 2:23 AM), https://www.reuters.com/article/us-venezuela-crime/venezuelas-violent-crime-fuels-the-death-business-idUSBREA1J0KM20140220 (documenting the escalating rate for violent crime); Reuters staff, *Venezuela Says Murders Soared to 60 Per Day in 2016* (Mar. 31, 2017, 4:41 PM), https://www.reuters.com/article/us-venezuela-violence/venezuela-says-murders-soared-to-60-per-day-in-2016-idUSKBN17230R (reporting the high and increasing murder rate and noting the economic situation as a cause).

During the marriage, Sineth worked from home as a counselor but her employment income decreased dramatically due to the worsening exchange rate for the Venezuelan currency. After the divorce, Sineth was offered employment in Florida that would pay a substantial salary, allow her to work primarily from home, and would permit her to continue her counseling business. Furthermore, the new employment was not contingent upon her legal status. Partly to accept this employment, and partly to be closer to her fiancé, Sineth sought permission to relocate to Florida with Thomas.

Sineth and her fiancé married and she and Camila reside with her husband in a nice five-bedroom home in Florida. Because Sineth's husband is a United States citizen, Sineth, Thomas, and Camila are on track to become United States citizens and the immediate threat of deportation to Venezuela for Sineth and Camila has been eliminated.

Approximately one month after Sineth remarried, Johnny called the Miami police, alleging that Camila may be in serious danger due to Sineth. Local authorities were constrained to investigate, and immediately removed Camila from her classroom in front of her classmates, questioned her, and a patrol car followed her home from school. Camila felt traumatized. The investigation quickly revealed that there was no threat to Camila and the authorities closed the case. The district court determined that the emergency call by Johnny to the police was "unnecessary." Camila became upset when Johnny contacted her after the incident. Therefore, Sineth discontinued contact between Johnny and Camila. The district court noted that Sineth testified that she would resume contact between Camila and Johnny if Johnny apologized. Yet, after almost two years, contact had not resumed.

Camila and Thomas, who are young (8 and 11 at the time of the final order), had a close bond prior to the divorce. Sineth and her husband testified that the children continue to have a strong bond when they are together, and the district court found that they continue to have a relationship when they are together in Sineth's home.

Methodology for a relocation case under the new statutes

The new relocation statutes establish the methodology that district courts must use when a parent with custodial rights seeks to relocate outside Nevada with the child.[6] NRS 125C.006(1)(a) and NRS 125C.0065(1)(a) mandate that when custodial rights have been awarded pursuant to a decree or order, and a parent wants to relocate outside Nevada with that child, the parent must first attempt to obtain the written consent from the other parent. If that consent cannot be obtained, then the relocating parent must file a petition seeking permission to relocate. *See* NRS 125C.006(1)(b). Additionally, if the parents share joint physical custody, the petitioner must request primary physical custody for the purpose of relocating. NRS 125C.0065(1)(b).

Notably, NRS 125C.006 and NRS 125C.0065 only require the filing of the petition; they do not require the district court to determine custody at that stage of the proceedings. *See* NRS 125C.006(1)(b) ("If the noncustodial parent refuses to give that consent, [the relocating parent shall] *petition* the court for permission to relocate with the child") (emphasis added); NRS 125C.0065(1)(b) ("If the non-relocating parent refuses to give

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[6]This methodology also applies to cases where the moving parent is relocating within Nevada but that relocation substantially impairs the ability of the other parent to maintain a meaningful relationship with the child. *See* NRS 125C.006(1); NRS 125C.0065(1).

that consent, [the relocating parent shall] *petition* the court for primary physical custody for the purpose of relocating.") (emphasis added). After the petition is filed, the district court must analyze the petition using the factors enumerated in NRS 125C.007. The plain language of NRS 125C.007 indicates that these factors apply regardless of the pre-petition custodial designation. *See* NRS 125C.007(1) ("In *every instance* of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 *or* NRS 125C.0065, the relocating parent must demonstrate to the court that [the factors in the rest of that section are met].") (emphasis added).

NRS 125C.007(1) establishes threshold requirements that the relocating parent must meet. *See* NRS 125C.007(2) ("*If* a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must *then* weigh [the factors of subsection 2] . . . .") (emphasis added). These threshold requirements are derived from caselaw. The "actual advantage" threshold factor from *Schwartz v. Schwartz*, 107 Nev. 378, 382-83, 812 P.2d 1268, 1271 (1991) is now found in NRS 125C.007(1)(c).

In *Jones v. Jones*, 110 Nev. 1253, 1261, 885 P.2d 563, 569 (1994), the supreme court held that the "actual advantage" threshold test could be met by demonstrating that there exists a sensible good-faith reason for the move and that the move is not intended to thwart the non-relocating parent from exercising parenting time. That same test is now a separate threshold factor. *See* NRS 125C.007(1)(a).[7] The threshold test of NRS 125C.007(1)(b) codifies the best interest test established in *Potter v. Potter*,

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[7]It has become apparent through numerous appeals that, by making the test for actual advantage under *Schwartz* a separate threshold factor, the new statute has created uncertainty for the district courts and the bar. However, this court need not decide this issue under the facts and issues raised in this case.

121 Nev. 613, 618, 119 P.3d 1246, 1249-50 (2005) ("The issue is whether it is in the best interest of the child to live with parent A in a different state or parent B in Nevada."). Because these are threshold factors, the level of proof required to meet them is low. *See Jones*, 110 Nev. at 1265-66, 885 P.2d at 572. ("[W]e note that a custodial parent seeking removal does not need to show a significant economic or other tangible benefit to meet the threshold 'actual advantage' showing.").

If the moving party meets the three threshold factors, the district court must weigh the factors enumerated in NRS 125C.007(2). These factors closely follow the factors set forth in *Schwartz*. *Compare* NRS 125C.007(2) *with Schwartz*, 107 Nev. at 382-83, 812 P.2d at 1271. As in *Schwartz* and its progeny, these factors focus on the child's best interest and overlap with the threshold factors to some degree. The level of proof for these factors is higher than the level of proof needed to meet the threshold factors. *Cf. Rooney v. Rooney*, 109 Nev. 540, 542-43, 853 P.3d 123, 124-25 (1993) (establishing a lower level of proof threshold test before requiring a hearing in custody modification cases). The moving party has the burden of proof throughout the statutory analysis. *See* NRS 125C.007(3) (the burden of proof is on the relocating parent to establish that a relocation is in the best interest of the child).

Substantial evidence does not support the district court's finding that "no" actual advantage obtained by Sineth would benefit Thomas

This court reviews the district court's findings for an abuse of discretion and will uphold the district court's findings if they are supported by substantial evidence. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). "Substantial evidence is evidence that a reasonable person may accept as adequate to sustain a judgment." *Rivero v. Rivero*, 125 Nev.

410, 428, 216 P.3d 213, 226 (2009) (quoting *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 241-42 (2007)).

The district court found that there was "*no* actual advantage on [Sineth's] part that would *substantially benefit* the minor child." (emphasis added). Preliminarily, I note that the district court used an incorrect test for this factor. NRS 125C.007(1)(c) only requires that the moving party demonstrate that the relocating parent and child benefit from an actual advantage as a result of the relocation, not that they "substantially" benefit. However, because Sineth did not argue this point on appeal, I do not base my dissent on this clear misapplication of the law by the district court.

As noted above, the factors in NRS 125C.007(1) are threshold factors, and the level of proof needed to meet these factors is low. Sineth did not did not need to prove a substantial economic or tangible benefit to meet the actual advantage threshold. Further the Nevada Supreme Court has recognized that the welfare of the child and relocating parent are intertwined, and what benefits the parent can also benefit the child. *See McGuinness v. McGuinness*, 114 Nev. 1431, 1433, 970 P.2d 1074, 1057 (1998). In assessing the actual advantage factor, "courts are not free to ignore noneconomic factors likely to contribute to the well-being and general happiness of the custodial parent and the children." *Jones*, 110 Nev. at 1260, 885 P.2d at 568.

Here, Sineth provided evidence of the economic and noneconomic benefits she received from relocating to Florida, such as her improved employment situation, the ability to have a more affluent lifestyle than she would have had in Las Vegas, the ability to physically reside with her husband, and to be relieved of the fear of deportation. By living in Florida with Sineth, Thomas would receive at least some of those benefits

as well. Additionally, Thomas and Camila were very close prior to Sineth's move to Florida, and Thomas has a relationship with Camila when they are in the same location. The district court found the physical separation and distance between the children has impacted their relationship. The happiness of Thomas by being in the same physical location as Camila, with whom he shares a sibling bond, should have been considered by the district court. *See id.* Given the evidence presented by Sineth and the low level of proof required to meet the threshold test, I cannot conclude that there is substantial evidence to sustain the district court's finding that Sineth demonstrated "no" actual advantage that would benefit Thomas by the relocation.

The district court abused its discretion by finding Sineth had not met the best interest threshold factor.

As stated above, a district court's findings in custody matters are reviewed for an abuse of discretion. However, "[w]hile review for abuse of discretion is ordinarily deferential, deference is not owed to legal error." *AA Primo Builders, LLC v. Washington*, 125 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

After conducting a best interest analysis under NRS 125C.0035(4), the district court found "all of the factors being given equal weight, with the exception of [Sineth's decision to discontinue contact between Camila and Johnny] having adversely affected the current sibling relationship . . . the Court finds given the totality of the circumstances, that it would not be in Thomas's best interest to relocate from Nevada to Florida." Indeed, Sineth's decision to discontinue contact between Johnny and Camila, Johnny's former step daughter, permeates the district court's analysis and findings. While it is for the district court to determine how

much weight to give each best interest factor, *see Ellis,* 123 Nev. at 152, 161 P.3d at 244, it is readily apparent that Sineth's parenting decision regarding Camila had a significant impact on the district court's decision. This was improper in the way it was done. NRS 125C.0035(4)(i) does not ask the court to evaluate whether a parent's decision regarding a child who is unrelated to the other party strains the child's relationship with a sibling; rather, it instructs the district court to consider the ability of the child to maintain a relationship with siblings. By injecting Sineth's parenting decision into this analysis, the district court misapplied this factor.

Here, Thomas and Camila enjoyed a very strong bond prior to Camila's move to Florida. As the New York Court of Appeals observed in *Eschbach v. Eschbach,* 436 N.E.2d 1260, 1264 (N.Y. 1982), "[y]oung brothers and sisters need each other's strengths and association in their everyday and often common experiences, and to separate them, unnecessarily, is likely to be traumatic and harmful." (quoting *Obey v. Degling*, 337 N.E.2d 601 (N.Y. 1975)). Electronic communication and occasional visits are not likely to maintain the same bond as Camila and Thomas would enjoy if they lived in the same household.[8]

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[8]Other jurisdictions have recognized that keeping siblings together should be part of the court's best interest analysis. *See Schmidt v. Bakke*, 691 N.W.2d 239, 244, 245 (N.D. 2005) ("[T]he effect of the separation of siblings is a consideration in the trial court's analysis of the best interests of the child and whether to grant a motion to relocate a child out of this state . . . as a general rule the courts do not look favorably upon separating siblings in custody cases."); *Stark v. Anderson*, 748 So.2d 838, 844 (Miss. Ct. App. 1999) (noting that there is a general rule that keeping siblings together is in their best interest). Similarly, Nevada has recognized the benefit of keeping siblings together when being protected by the state. *See* NRS 432B.390(7) (siblings removed from parents by child protective services must be kept together whenever possible).

Furthermore, the district court appears to be punishing Sineth for her parenting decision regarding Camila. For example, the district court noted that Sineth would allow contact if Johnny apologized for his conduct, yet the district court faulted only Sineth for the continued lack of communication between Johnny and Camila. ("Notably, [Sineth] was the parent who had the ability to resume contact between [Johnny and Camila].") Additionally, the district court stated that the children's relationship had been "strained and adversely affected by [Sineth's] long-term decision to deny [Johnny] contact with Camila for over one (1) year." However, the district court noted that Johnny used video calls between Camila and Thomas to try to communicate with Camila, and that this upset Camila. Thus, it appears that Johnny is at least partly at fault for any strain that may have resulted between the children.

Regardless of who is at fault for the ongoing dispute regarding Camila, district courts should not take actions that punish the child for conduct of the parent. *See Abid v. Abid*, 133 Nev. ____, ____, 406 P.3d 476, 479 (2017); *see, e.g.*, *Sims v. Sims*, 109 Nev. 1146, 1149, 865 P.2d 328, 330 (1993) (reversing because "[a]lthough the order signed by the district court judge recites that the change is in the best interests of the child, the entire thrust of the findings by the factfinder, the domestic relations referee, relates to the mother's disobedience of the court's prior order."). By denying the relocation due at least in part to this dispute, the court is in effect punishing Thomas for what it perceives to be Sineth's bad acts by keeping Thomas from a sibling with whom he shared a close bond.

Because the district court abused its discretion by misapplying the law regarding the best interest test, and because substantial evidence did not support the district court's finding of no actual advantage to

Thomas, I would reverse and remand this matter to the district court with instructions to reevaluate this matter consistent with the law above, and then proceed to the second part of the relocation analysis if appropriate by applying the *Schwartz* factors outlined in NRS 125C.007(2).[9]

_____, J.
Gibbons

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Barnes Law Group
Cutter Law Firm, Chtd.
Eighth District Court Clerk

[9]A district court is not required to conduct the analysis under NRS 125C.007(2) if it concludes that the threshold factors have not been met. However, the district court would be properly exercising its discretion if it conducted this analysis, and its findings and conclusions for subsection (2) may provide an alternative ground for affirmance of an order on appeal. *See generally Corcoran v. Zamora*, Docket No. 71111(Order of Affirmance, Dec. 27, 2017).