

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LISA M. EORIO,  
Appellant,  
vs.  
JOEL E. EORIO,  
Respondent.

No. 83132-COA

**FILED**

**APR 15 2022**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Lisa M. Eorio appeals from a district court decree of divorce granting primary physical custody for the purpose of relocating under NRS 125C.0065 and NRS 125C.007. Eighth Judicial District Court, Family Court Division, Clark County; Bryce C. Duckworth, Judge.

Lisa M. Eorio and Joel E. Eorio were married in Las Cruces, New Mexico in 2006.<sup>1</sup> Together, the parties have two children. Additionally, Joel is the equitable father of Lisa's third child. All three of the children were born in New Mexico and lived there until 2019.

In 2019, Lisa accepted a job offer and moved to Las Vegas, Nevada. Joel remained in New Mexico for several months with the children, which allowed them to finish the school year, before also moving to Las Vegas with the children. Approximately one year after moving to Las Vegas, the parties separated, and Joel filed a complaint for divorce and sought primary physical custody and permission to relocate from Nevada to New Mexico. Lisa timely filed an answer to Joel's complaint for divorce, and she counterclaimed for primary physical custody, requesting that the

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<sup>1</sup>We recount the facts only as necessary for our disposition.

children remain with her in Las Vegas. A month after filing for divorce, however, Joel formally petitioned the court for primary physical custody for the purpose of relocating under NRS 125C.0065(1). In his petition, Joel detailed all the provisions relating to relocation found within NRS 125C.007(1)-(2) and the best interest factors of NRS 125C.0035(4). Lisa timely opposed Joel's petition, and eventually the parties stipulated to share temporary joint physical custody of the three children until the district court conducted a trial and made a determination. The parties also attended mediation and developed two parenting agreements, one for if relocation was granted and a second for if relocation was denied.

Apparently, the parties stipulated<sup>2</sup> that they would share joint physical custody if they lived in the same state. However, the parties also stipulated that Joel would receive primary physical custody of the children if the court granted relocation, and Lisa would receive substantial parenting time in Nevada. Likewise, the parties stipulated that if the court denied relocation, Lisa would receive primary physical custody and the children would remain with her in Las Vegas if Joel returned to New Mexico. The parties apparently agreed to these physical custodial arrangements, with the permanent arrangement ultimately being governed by the district court's decision on relocation. Thus, the only custody issue for trial was whether Joel's petition for relocation would be granted.

In April 2021, the district court held a trial wherein it heard testimony from both parties regarding relocation. Joel testified, in part, that if he moved back to New Mexico, he would be more financially stable

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<sup>2</sup>The parties did not include the mediated agreement in the record. However, it was discussed by the parties and the court during the trial; and it is mentioned in the divorce decree.

because he could live rent-free with his parents, and that his job would allow him to make a lateral transfer to a location in New Mexico. Lisa offered testimony that it would be better for the children to remain with her in Las Vegas. At the conclusion of all testimony, the district court made oral findings regarding the threshold provisions in NRS 125C.007(1) and the provisions outlined in NRS 125C.007(2).

When the district court analyzed the threshold best interest provision in NRS 125C.007(1)(b), it made findings regarding each enumerated NRS 125C.0035(4) custody best interest factor. The court found that the provisions either did not apply or applied equally to both parents. Nonetheless, the district court concluded that Joel satisfied all three of the NRS 125C.007(1)'s threshold provisions including that he had a sensible good faith reason for the move, the best interests of the children would be served by relocating, and he and the children would benefit from an actual advantage from relocation. The district court then turned to the provisions outlined in NRS 125C.007(2) and found under the first factor that relocation is likely to improve the quality of life for the children and the relocating parent, and the balance of the provisions did not weigh against relocation. Thus, the district court granted Joel's petition for primary physical custody for the purpose of relocation and permitted Joel to relocate with the children to New Mexico. Following the parties' pre-trial stipulation, the court granted Joel primary physical custody if Lisa remained in Las Vegas. Lisa would, in turn, receive substantial parenting

time. However, if Lisa moved to New Mexico, the parties would continue to share joint physical custody.<sup>3</sup> This appeal followed.

On appeal, Lisa argues that the district court abused its discretion in permitting Joel to relocate with the children to New Mexico. She argues that Joel did not show that relocating to New Mexico was in the children's best interests and that the children would benefit from an actual advantage and an improvement of their quality of life. She also argues that the district court failed to make specific findings that adequately explain why the court found that Joel's relocating to New Mexico would be in the children's best interests. Joel responds that the district court did not abuse its discretion in granting relocation and its order is sufficient when read in conjunction with the court's oral findings at trial. We agree in part with Lisa, and therefore, reverse and remand.<sup>4</sup>

#### *Standard of review*

This court reviews a district court's decision regarding relocation for an abuse of discretion. *Pelkola v. Pelkola*, 137 Nev., Adv. Op. 24, 487 P.3d 807, 809 (2021); *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1229 (2004). But while our review is limited to an abuse of discretion, which is ordinarily deferential, "deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 446, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted).

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<sup>3</sup>The court also delayed the effective date of the order until the school year was completed and required that Lisa state her intention to remain in Nevada or relocate by May 28, 2021.

<sup>4</sup>Because it is dispositive of the appeal, we only address Lisa's arguments concerning the district court's best interest findings.



*The district court abused its discretion by not making adequate findings regarding the best interests of the children*

Under the Nevada relocation statute, a relocating parent must first demonstrate that (1) there is a sensible, good-faith reason for the move that is not intended to deprive the non-relocating parent of his or her parenting time; (2) relocating is in the child's best interests; and (3) both the relocating parent and the child will benefit from an actual advantage from the relocation. *See* NRS 125C.007(1)(a)-(c); *see also* NRS 125C.007(3) (stating the relocating parent bears the burden to show that relocation is in the child's best interest); *Monahan v. Hogan*, 138 Nev., Adv. Op. 7, \*9, \_\_\_ P.3d \_\_\_, \_\_\_ (Ct. App. 2022) (clarifying that the relocating parent must show, by a preponderance of the evidence, that relocation is in the child's best interest). If the relocating parent cannot meet the burden under these threshold requirements, then the court must deny the motion to relocate. *See* NRS 125C.007(2) (stating that if the relocating parent demonstrates the provisions in NRS 125C.007(1)(a)-(c), the court must then weigh the remaining relocation provisions).

Therefore, the burden is on the relocating parent and the district court is required to issue specific findings for each provision under NRS 125C.007(1) and then tie those findings to the decision made. *See Pelkola*, 137 Nev., Adv. Op. 24, 487 P.3d at 810; *Davis*, 131 Nev. at 452, 352 P.3d at 1143 ("Crucially, the decree or order must tie the child's best interest, as informed by specific, relevant findings . . . to the . . . determination made."). When the court is making those specific findings under NRS 125C.007(1)(b), it should look to the NRS 125C.0035(4) custody best interest factors and any other factors that may bear on the issue. *See Monahan*, 138 Nev., Adv. Op. 7, \*7, \_\_\_ P.3d at \_\_\_ (describing that when making a best interests determination under the relocation

statute, district courts should consider the enumerated NRS 125C.0035(4) factors as well as any other nonenumerated factor that may be applicable).

Here, we cannot conclude that the district court correctly found that it was in the best interests of the children to relocate by a preponderance of the evidence. The court's decree only states,

[r]elative to the best interest of the subject minor children, most of the factors do not apply; however, the factors that do apply are equal to both parents absent the fact that [Joel] was able to spend more time with the children as [Lisa] was the historical primary wage earner.

Thus, considering only the written order, and recognizing that Joel bore the burden to prove relocation was in the best interest of the children, *see* NRS 125C.007(3), we cannot say that the district court adequately considered and determined the children's best interests by a preponderance of the evidence. Indeed, the court never actually made a determination in the divorce decree itself that relocation was in the children's best interests. *See generally Davis*, 131 Nev. at 450-52, 352 P.3d at 1142-43 (requiring specific factual findings and an adequate explanation and holding that an appellate court cannot defer to a conclusory order as legally sufficient).

However, we can review the district court's oral findings on the record to construe its judgment. *See In re Parental Rights as to C.C.A.*, 128 Nev. 166, 169, 273 P.3d 852, 854 (2012) (noting whether in writing or orally on the record, all the necessary factual findings should be on the record for proper appellate review because without specific findings, this court cannot determine whether the district court's conclusions are supported by substantial evidence); *see also Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016) (holding a district court abused its discretion in not making specific factual findings when "the district court's order and oral findings,

when read together” made it “unclear” whether the court considered each best interest factor). Thus, we turn to the transcript of proceedings.

At trial, the district court made detailed and comprehensive oral findings regarding NRS 125C.0035(4)’s best interest factors.<sup>5</sup> However, the district court only found that none of the factors disqualified either Joel or Lisa from enjoying joint physical custody. Yet, the district court summarily determined that Joel met his burden for primary physical custody for the purpose of relocating even though the best interest factors were neutral or inapplicable. Thus, the court failed to explain through its findings how Joel could relocate with the children when none of the best interest factors the court considered showed relocation was in the children’s best interests.

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<sup>5</sup>The district court found that, under subsection (a), the children had a natural bond with both parents. The district court acknowledged that subfactor (b) (the nomination of a guardian) did not apply. The district court stated that as to subfactor (c), concerning which parent is more likely to allow frequent associations and a continuing relationship, “nothing jumps out at me as it relates to either of you in terms of your gatekeeping propensities[,]” and that as to subfactors (d) and (e), both parties showed signs of being able to cooperate. As to subfactor (f), the district court noted that both parties are physically capable of providing for the children, and despite Lisa’s journal discussing self-harm, the district court noted that it did not find Lisa to be mentally unstable. It continued that there has been no expert testimony or reports to suggest any mental incapacity by either party. Next, the district court noted that subfactor (g) and (h) are “somewhat intertwined” and highlighted that Joel was more of a stay-at-home parent and therefore more involved in terms of some day-to-day affairs while Lisa worked. The district court continued that subfactor (i) is not applicable because it will not be splitting the children up. The district court also acknowledged (j) (history of abuse or neglect), (k) (whether either parent has engaged in act of domestic violence against the child, a parent, or any other person residing with the child), or (l) (whether either parent has engaged in an act of abduction) are inapplicable.



As we previously noted, a parent with joint physical custody, which existed here by pretrial agreement, must petition the court for primary physical custody for purpose of relocating and demonstrate relocating is in the best interests of the children by a preponderance of the evidence. The district court, however, cannot make this best interest determination in a vacuum. Instead, it must consider it in relation to the parent's petition for relocation and compare the lives of the children and the parents in each location. See NRS 125C.0065(1)(b) (the relocating parent seeks primary physical custody *for the purpose of relocation* (emphasis added)); *Potter v. Potter*, 121 Nev. 613, 618, 119 P.3d 1246, 1250 (2005) (concluding that in determining relocation, “[t]he moving party has the burden of establishing that it is in the child’s best interest to reside outside of Nevada with the moving parent as the primary physical custodian. 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.” (emphasis added)); see also *McGuinness v. McGuinness*, 114 Nev. 1431, 1435, 970 P.2d 1074, 1077 (1998) (“Thus, Teresa’s desire to relocate *should have been considered in the initial permanent custody determination*, just as it would be if the motion to relocate were made after the divorce decree in which permanent custody is determined.” (emphasis added)); *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991) (listing the provisions the court should balance when comparing life for the children in two different locations).

This is why a petition for primary physical custody under NRS 125C.0065(1)(b) normally requires that the district court provide detailed and specific findings as to any applicable best interest factors from NRS 125C.0035(4), or any other relevant factors, in the context of relocation. See generally *Pelkola*, 137 Nev., Adv. Op. 24, 487 P.3d at 810; *Davis*, 131 Nev.



at 452, 352 P.3d at 1143; *Lewis*, 132 Nev. at 459-60, 373 P.3d at 882; *but cf. Monahan*, 138 Nev., Adv. Op. 7, \*7-8, \_\_\_ P.3d at \_\_\_ (explaining that “every custody best interest factor need not be applied anew when the relocating parent is *already* a primary physical custodian”). Thus, because there were not adequate findings regarding best interests and relocation in the written order, and the oral findings also do not establish best interests by a preponderance of the evidence, we cannot conclude that the district court properly exercised its discretion. *See generally Schwartz*, 107 Nev. at 382-83, 812 P.2d at 1270-71 (“[S]ome of the factual and policy considerations [between child custody and relocation] may overlap” because, in both contexts, the best interest of the child should, at the very least, “be the paramount judicial concern.”); *see also Monahan*, 138 Nev., Adv. Op. 7, \*19, \_\_\_ P.3d at \_\_\_ (concluding that the district court’s failure to restate actual advantage findings for relocation under the best interests relocating provision when they overlap each other was not fatal to the best interests determination).

Therefore, we ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court<sup>6</sup> to make specific findings, tie those findings to its conclusion regarding which NRS 125C.0035(4) best interest factors, if any, support primary physical custody for the purposes of relocation, or any

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<sup>6</sup>The district court’s order regarding relocation is to remain in effect until a new order is entered.

other relevant factors, and then balance all factors by comparing each potential home.<sup>7</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Bryce C. Duckworth, District Judge, Family Court Division  
Settlement Judge, Israel Kunin  
Pecos Law Group  
McFarling Law Group  
Eighth District Court Clerk

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<sup>7</sup>Insofar as the parties raise any other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.