IN THE SUPREME COURT OF THE STATE OF NEVADA

JOAQUIN ESPARZA,
Appellant,
vs.
NICOLE SPANOS,
Respondent.

No. 43011

FILED

OCT 15 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting respondent permission to relocate with the children to New York and determining child support.[1] Eighth Judicial District Court, Family Court Division, Clark County; T. Arthur Ritchie, 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.[2] 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

[1]We note that in his notice of appeal, appellant designates that he is appealing from the district court's February 11, 2004 order granting respondent permission to relocate. In the February order, the district court deferred ruling on the issues of visitation, travel expenses, child support and arrears, and unpaid health insurance premiums. The district court entered a more complete written order on March 3, 2004, resolving all issues. On March 16, 2004, appellant filed his notice of appeal, designating only the February 11, 2004. We construe appellant's notice of appeal as from the March 3, 2004 order. See Forman v. Eagle Thrifty Drugs & Markets, 89 Nev. 533, 516 P.2d 1234 (1973), overruled on other grounds by Garvin v. Dist. Ct., 118 Nev. 749, 59 P.3d 1180 (2002).

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

noncustodial parent.[3] Absent such consent, the custodial parent may petition the district court for permission to move the child.[4]

In reviewing such a petition, the district court must determine whether the custodial parent wishing to leave Nevada made a threshold showing of a sensible, good faith reason for the move.[5] If this threshold requirement is met, the district court must next weigh the factors outlined in Schwartz v. Schwartz,[6] focusing on the availability of adequate, alternative visitation.[7] 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.[8]

Here, the record shows that the district court found that respondent's petition for relocation was in good faith. The court

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[3]NRS 125C.200.

[4]Id.

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

[6]107 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).

[7]Trent 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).

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

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 during summer vacation, spring break, every other Thanksgiving, and Christmas, and also when appellant visits New York for various holidays. The court also allowed a monthly offset from appellant's child support obligation to defray travel expenses incurred during visitation. We conclude that the district court did not abuse its discretion when it granted respondent permission to relocate with the child to New York, with appellant having visitation.

Regarding child support, under NRS 125B.070(1)(b)(1), a formula has been established providing that a noncustodial parent's monthly child support obligation for one child is set at 18% of the parent's gross monthly income. The record shows that appellant's gross monthly income is $3,500 per month and 18% of that amount is $630. The district court ordered appellant to pay child support at $520 per month with a monthly offset of $75 for travel expenses. We conclude that the district court did not abuse its discretion as to the issue of child support.

As to the portion of the district court's order directing appellant to pay $50 per month on the accrued arrears, this issue is not substantively appealable to the extent that the district court is enforcing an earlier support order.[9] Here, the district court merely determined the

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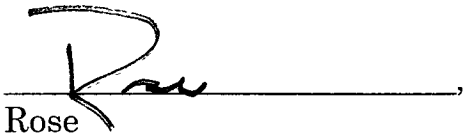
[9]See NRS 125B.140 (providing that the district court has the authority to enforce orders for support); Khaldy v. Khaldy, 111 Nev. 374, 377, 892 P.2d 584, 586 (1995) (providing that once payments for child support have accrued they become vested rights and cannot be modified or voided).

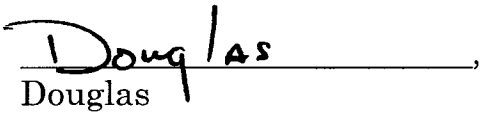
amount of arrears, and structured a payment schedule for the purpose of enforcing the order.

Having reviewed the record, we conclude that the district court did not abuse its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. T. Arthur Ritchie, District Judge, Family Court Division
Joaquin Esparza
Piazza & Associates
Clark County Clerk