IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS FIORE, JR.,
Appellant,
vs.
SALLY FIORE,
Respondent.

No. 43012

FILED

FEB 13 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order that establishes a child custody arrangement and grants respondent permission to relocate with the children to Indiana. Eighth Judicial District Court, Clark County; Jennifer Elliott, Judge, Family Court Division.

Appellant Nicholas Fiore appeals from a district court order granting respondent Sally Fiore's motion to relocate with the children to Indiana. The parties are familiar with the facts, and we do not recount them here except as is necessary for our disposition.

Threshold factors

Nicholas contends that the district court erred as a matter of law when it failed to consider whether Sally established the threshold factors of a sensible, good faith reason to move that would result in an actual advantage to both the children and Sally. We disagree.

The district court explicitly and comprehensively addressed the threshold factors in its findings of fact and conclusions of law.[1] After considering the evidence, the district court concluded that "[t]here is more than a preponderance of evidence that the move to Indiana is likely to improve the quality of life for both the Fiore children and MOM as the

[1]Primm v. Lopes, 109 Nev. 502, 853 P.2d 103 (1993).

custodial parent" and that Sally "has met the threshold burden by showing she has an honorable good faith reason for the move to Indiana." Substantial evidence supports the district court's finding that Sally had established the threshold factors of a sensible, good faith reason to move and that the move will create a real advantage for both her and the children.[2]

Analysis of the Schwartz factors

Nicholas contends that the district court abused its discretion by granting Sally's motion to relocate because it failed to properly analyze the Schwartz v. Schwartz[3] factors. We disagree.

Upon review of the record, we conclude that substantial evidence supports the district court's findings that (1) the move would improve the quality of life for both the children and Sally, (2) Sally's motives were honorable and not designed to frustrate or defeat visitation rights accorded to Nicholas, (3) Sally would comply with any substitute visitation orders issued by the court, and (4) there would be a realistic opportunity for Nicholas to maintain a visitation schedule that would adequately foster and preserve his relationship with the children.[4] The district court did not abuse its discretion in permitting Sally to relocate with the children from Nevada.

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[2]Primm, 109 at 506, 853 P.2d at 105.

[3]107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991).

[4]This finding of the district court distinguishes the facts of this case from our decision in Mason v. Mason, 115 Nev. 68, 70, 975 P.2d 340, 341 (1999).

Davis as controlling authority

Nicholas contends that the district court erred in failing to acknowledge Davis v. Davis[5] as controlling authority because of the factual similarities in the cases. We disagree.

"Determination of the best interests of a child in the removal context necessarily involves a fact-specific inquiry and cannot be reduced to a rigid 'bright-line' test."[6] "Each case must be decided on the basis of its own facts by applying the applicable principles of law."[7]

The district court granted Sally primary physical custody of the children, concluding that Nicholas rarely participated in the rearing of the children before Sally filed for divorce. In Davis, the father was a firefighter with a rigid work schedule. The district court found that he could not adequately sustain his relationship with his children if his former wife relocated to Florida.

Nicholas also had a demanding work schedule and was on call several days a week. However, the district court found that Nicholas could adequately maintain his newly-established relationship with the children even if he had to travel to Indiana to visit them. Thus, the district court did not err in not applying Davis.

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

[6]Schwartz, 107 Nev. at 382, 812 P.2d at 1271 (quoting In re Marriage of Eckert, 518 N.E.2d 1041, 1045 (Ill. 1988)).

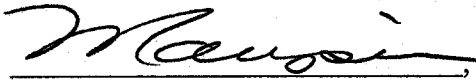
[7]McGuinness v. McGuinness, 114 Nev. 1431, 1436, 970 P.2d 1074, 1077 (1998).

The LaMusga decision

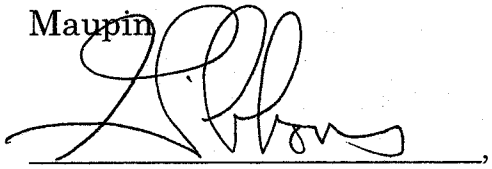
Nicholas contends that the legal standard for relocation has changed in light of a recent California Supreme Court decision, In re Marriage of LaMusga.[8] We disagree.

In its findings of fact and conclusions of law, the district court first reevaluated its determination that Sally should be the primary physical custodian of the children and found that "a change of the temporary custody order from MOM as primary to DAD and MOM jointly would not be in the best interest of the children."[9] Because the district court properly reevaluated its custody determination before proceeding to consider Sally's motion to relocate, it tracked the analysis that the lower court performed in LaMusga. Furthermore, under Nevada law, the fifth Schwartz factor adequately addresses the impact of a proposed move on the noncustodial parent's relationship with the children, and the district court satisfied this requirement. In light of the above, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



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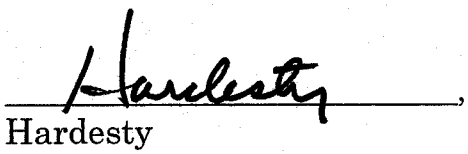

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[8]88 P.3d 81 (Cal. 2004).

[9]See Potter v. Potter, 121 Nev. ___, 119 P.3d 1246 (2005).

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Law Office of Daniel Marks
Ecker & Kainen, Chtd.
Lemons Grundy & Eisenberg
Clark County Clerk