

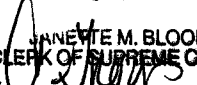
IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN E. WHITMER,
Appellant,
vs.
TAMMYTHA S. WHITMER,
Respondent.

No. 46808

FILED

DEC 07 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court divorce decree. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

The parties were married in 1993. They have four minor children. There is a history of violence between the parties, as well as drug abuse.

In September 2004, through counsel, respondent filed a complaint for divorce. Respondent sought custody of the parties' children and permission to relocate with the children to California. Appellant, who was also represented by counsel, opposed respondent's request for custody and relocation. The district court ordered a child custody evaluation. Following a hearing, the district court granted the parties a divorce, awarded respondent primary physical custody of the children, and granted her permission to relocate, with appellant having visitation. This appeal followed.

Appellant primarily contends that the district court abused its discretion by (1) awarding respondent primary physical custody of the parties' minor children and granting her permission to relocate with the

children to California, and (2) restricting the minor children's contact with appellant's father and brother.¹

Matters of custody, including visitation, rest in the district court's sound discretion.² This court will not disturb the district court's custody decision absent a clear abuse of discretion.³ In determining child custody, the court's sole consideration is the children's best interests.⁴

Here, the district court ordered a child custody evaluation, and after a hearing, in which the court heard testimony from appellant, respondent and several other witnesses,⁵ the court rendered its decision. In the divorce decree, the court stated that it was in the children's best interests for the parties to share joint legal custody, with respondent having primary physical custody and appellant having liberal visitation. Specifically, the court awarded appellant visitation with the children for one weekend each month, during summer vacation, spring break, and every other Thanksgiving and Christmas; the court also provided that

¹We have considered appellant's additional contentions and conclude that they lack merit.

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

³Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993).

⁴NRS 125.480(1).

⁵See Greeson v. Barnes, 111 Nev. 1198, 1202, 900 P.2d 943, 946 (1995) (holding that determining the credibility of a witness is within the sole province of the trier of fact), superseded on other grounds by statute as stated in Matter of Parental Rights as to N.J., 116 Nev. 790, 8 P.3d 126 (2000).

appellant may request an additional weekend visitation upon seven-days notice to respondent. Additionally, the court found that it was not in the children's best interest to have contact with appellant's father and brother. The record supports the district court's child custody and visitation determination.

With regard to relocation, when considering a relocation request, 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.⁶ If this threshold requirement is met, the district court must next weigh the factors outlined in Schwartz v. Schwartz,⁷ focusing on the availability of adequate, alternative visitation.⁸

Here, the record shows that the district court found that respondent's request for relocation was in good faith. The court concluded that the children would benefit from the move, as respondent has secured an "excellent employment opportunity" and free housing. Moreover, the

⁶Davis v. Davis, 114 Nev. 1461, 1466, 970 P.2d 1084, 1087 (1998).

⁷107 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's 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).

⁸Trent 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).

court found that appellant will have a realistic opportunity to exercise visitation and maintain his relationship with the children.

Having reviewed appellant's proper person civil appeal statement and the record, we conclude that the district court did not abuse its discretion when it awarded respondent primary physical custody of the children and granted her permission to relocate with the children to California, with appellant having visitation. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Shawn E. Whitmer
Rhonda L. Mushkin, Chtd.
Clark County Clerk

⁹We deny appellant's October 31, 2006 "Motion for Emergency Hearing to Hold Plaintiff in Contempt of Court for Willfully Denying Court Ordered Visitation, Based Upon Unsubstantiated Allegations, Psychological Evaluation of Plaintiff, Award of Fees and Costs, and Related Relief." The relief that appellant seeks in his motion should be directed to the district court.