IN THE SUPREME COURT OF THE STATE OF NEVADA

GRETA MORRELL,
Appellant,
vs.
BRIAN BLATTER,
Respondent.

No. 47481

FILED

FEB 08 2007

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying appellant's motion to relocate with the children to California. Eighth Judicial District Court, Family Court Division, Clark County; N. Anthony Del Vecchio, Judge.

In 1997, the parties were granted a divorce in Washington. They have six children, but only two children are minors and the subject of this proceeding. Under the divorce decree, appellant was awarded sole legal and primary physical custody of the children, with respondent having visitation. The Washington court also entered a lifetime domestic violence restraining order against respondent that expires on December 31, 2099.[1]

In 2001, with respondent's approval, appellant relocated with the children to Utah for a job opportunity with a bail bonds company. In 2002, respondent moved to Utah. In 2004, appellant's bail bonds company

[1]The restraining order prohibits respondent from "assaulting, harassing, molesting or disturbing the peace of the other party," and both parties are prohibited from entering the other's home.

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began downsizing, and she was offered a position in Las Vegas. Accordingly, appellant sought, and was granted, respondent's permission to relocate with the children to Las Vegas. In November 2004, appellant domesticated in Nevada the Washington divorce decree and restraining order, along with orders entered in Utah concerning child custody. In 2005, respondent moved to Las Vegas.

Not long after moving to Las Vegas, appellant's job became unstable and she began looking for a new job. Appellant was offered a position, at $50 per hour, in Palm Desert, California. In preparation for the new job, the employer sent appellant to Utah for training.

On August 3, 2005, appellant sent respondent a letter asking for his permission to relocate with the children to California for the new job. On August 12, 2005, respondent sent a letter to appellant refusing his consent to relocate. On August 25, 2005, respondent moved the district court to change the child custody arrangement and to prevent appellant from moving with the children to California.

In the interim, in anticipation of her new California job, appellant purchased a home in Southern California and enrolled the children in school there. After moving to California, appellant filed a motion in the district court for permission to relocate with the children. Respondent opposed appellant's motion and filed a countermotion for the immediate return of the children to Nevada. Respondent also asked the district court to set aside the Washington restraining order.

A preliminary hearing was conducted, during which the district court admonished appellant for failing to comply with Nevada's relocation statute but allowed her to remain with the children in

California pending a March 2006 hearing.[2] The court also ordered a family evaluation.

In May 2006, a hearing was conducted on the parties' motions. During the hearing, both parties testified.[3] Appellant testified that her new job had not materialized, but instead she works for the employer, one day a week, as a receptionist and that she has started a home business. Respondent testified that he is exercising visitation with the children and that he and appellant alternate transporting the children for visitation.

Subsequently, the district court entered a written order denying appellant permission to relocate with the children and directing her to return to Nevada with the children at the end of the school year. The court modified the child custody arrangement by awarding the parties joint legal custody of the children, although the court allowed appellant to retain primary physical custody. The district court also set forth a parenting plan that detailed the visitation schedule to be followed. In addition, the court dismissed the Washington restraining order. The court also ordered appellant to pay respondent's attorney fees in the amount of $5,000. This appeal followed.

Relocation

The district court has broad discretionary power in determining questions of child custody and visitation.[4] A parent, who is

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[2]NRS 125C.200.

[3]The district court took judicial notice of the family evaluator's report.

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

the minor child's primary physical custodian, can relocate with the child out of state with the written consent of the noncustodial parent.[5] Absent such consent, the custodial parent may petition the district court for permission to move the child.[6]

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.[7] If this threshold requirement is met, the district court must next weigh the factors outlined in Schwartz v. Schwartz,[8] focusing on the availability of adequate, alternative visitation.[9] In considering whether adequate, alternative visitation is available, the district court may consider the potential

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[5]NRS 125C.200.

[6]Id.

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

[8]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).

[9]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).

frustration of the noncustodial parent's relationship with the child if relocation is allowed.[10]

Moreover, NRS 125C.200 provides that, if a custodial parent relocates without the noncustodial parent's consent or a court order approving the relocation, then the "failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the noncustodial parent." The statute does not permit the district court to require the relocating parent to return to Nevada.

In this case, the district court determined that appellant did not show a "good faith actual advantage" for the move to California. The court struggled with the fact that appellant relocated without first seeking permission from the court, and it apparently agreed with respondent's position that, since the high-paying position failed to materialize, appellant could operate a home-based business from Las Vegas just as easily as California. The district court therefore ordered appellant to return to Nevada and set forth a parenting plan suitable for parents living in the same city.

The district court applied an incorrect standard, however. The district court required appellant to show a "good faith actual advantage" to the move. But our case law initially requires a "good faith reason" for the move.[11] We have also held that enhanced job opportunities constitute a

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

[11]Davis, 114 Nev. at 1466, 970 P.2d at 1087 (emphasis added).

sensible, good faith reason to move.[12] At the time appellant sought permission to move to California, she had been offered a position at a substantial increase in salary; respondent does not dispute that this offer was made to appellant. As noted above, the district court was then required to evaluate the Schwartz factors, focusing on the availability of adequate, alternative visitation.[13] Although in most cases this court will not disturb the district court's relocation determination absent a clear abuse of discretion,[14] the district court must have applied the correct legal standard.[15] Since the district court failed to apply the proper standard here, we must reverse its decision to deny the relocation motion. Also, because we are reversing the district court's relocation decision, we necessarily reverse the district court's award of $5,000 in attorney fees, and we likewise vacate the parenting plan set forth in the district court's order, which is suitable for parents living in the same city.

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[12]Reel v. Harrison, 118 Nev. 881, 60 P.3d 480 (2002); Mason, 115 Nev. at 70 n.2, 975 P.2d at 341 n.2; Halbrook v. Halbrook, 114 Nev. 1455, 971 P.2d 1262 (1998); Gandee v. Gandee, 111 Nev. 754, 895 P.2d 1285 (1995).

[13]Trent, 111 Nev. at 315-16, 890 P.2d at 1313; Schwartz, 107 Nev. at 383, 812 P.2d at 1271. We note in this regard that the parties had been cooperating concerning visitation for several months by the time of the district court's relocation hearing.

[14]See Wallace, 112 Nev. at 1019, 922 P.2d at 543.

[15]See Kerley v. Kerley, 111 Nev. 462, 893 P.2d 358 (1995); Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993).

Washington restraining order

The district court included certain language in its parenting plan that, in essence, prohibited the parties from harassing each other. The district then granted respondent's request to "dismiss" the Washington restraining order. We conclude that the district court was prohibited from doing so under the Full Faith and Credit Clause of the United States Constitution.[16]

In particular, the Constitution's mandate that "Full Faith and Credit shall be given in each State to the . . . judicial Proceedings of every other State"[17] creates a res judicata bar to the extent that a foreign court's valid judgment on a claim precludes relitigating that claim in the forum state.[18] Whether the district court properly applied the full faith and credit clause and the res judicata doctrine presents legal questions subject to de novo review.[19]

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[16]U.S. Const. art. IV, § 1; Mason v. Cuisenaire, 122 Nev. 43, 128 P.3d 446 (2006).

[17]Id.

[18]See Clark v. Clark, 80 Nev. 52, 389 P.2d 69 (1964); In Re Porep, 60 Nev. 393, 111 P.2d 533 (1941); see also Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 835, 963 P.2d 465, 473 (1998).

[19]Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 42, 45 (1992) (noting that whether the doctrine of res judicata bars a party's claim is a legal question); SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993) (stating that "[q]uestions of law are reviewed de novo"); see also First St. Bank of Holly Springs v. Wyssbrod, 124 S.W.3d 566, 573 (Tenn. Ct. App. 2003) (recognizing that the issue whether to grant full faith and credit to a foreign judgment is a legal question).

Here, while not completely clear from the record, it appears that the district court concluded that the Washington restraining order was not necessary after it included a harassment prohibition in its parenting plan. But whether or not the Washington order was "necessary" was not the issue. Respondent did not contest the Washington court's jurisdiction or procedure in entering the restraining order, and thus the order was entitled to full faith and credit.[20] The district court therefore erred in purporting to "dismiss" the Washington order, and we reverse its decision in this regard.

Remand

Certain information in the record before us indicates that respondent has relocated to St. George, Utah. If so, then it appears that Nevada has no further connection to this case and lacks jurisdiction to address the custody issues further.[21] In such circumstances, the case should be dismissed. The parties may then seek a modified custody order in a state that has jurisdiction, likely California.[22]

Alternatively, if Nevada has jurisdiction to render a custody determination, then the district court may consider whether, under the Uniform Child Custody Jurisdiction and Enforcement Act, NRS Chapter

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[20]Mason, 122 Nev. at 47, 128 P.3d at 448.

[21]See NRS 125A.325 (stating that a court has jurisdiction to modify custody only if it has jurisdiction to make an initial custody determination); NRS 125A.305(1)(b)(1) (requiring that at least one parent have a "significant connection" to Nevada for a Nevada court to have jurisdiction to make a custody determination).

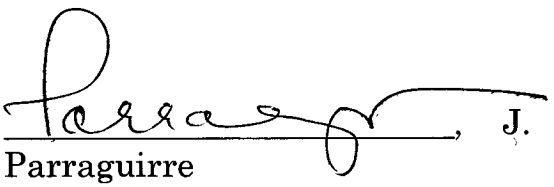
[22]See NRS 125A.305(1)(a) (providing that the children's home state has jurisdiction to make custody determinations).

125A, jurisdiction should properly be exercised. If the district court concludes that jurisdiction is properly exercised, then it shall apply the correct standard, discussed above, for deciding relocation motions.

Conclusion

For the foregoing reasons, we reverse the district court's order denying appellant's relocation motion and its award of attorney fees, and we vacate the parenting plan and the "dismissal" of the Washington restraining order. We remand this matter to the district court for proceedings consistent with this order.

It is so ORDERED.



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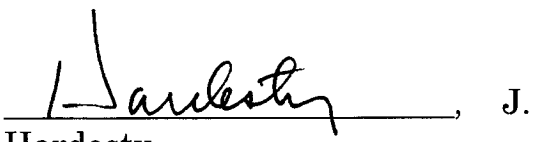

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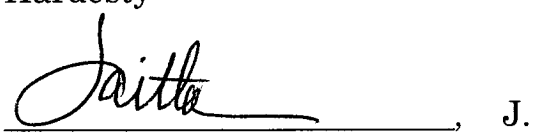

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Saitta

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