

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL EVER,
Appellant,
vs.
AYELET EVER,
Respondent.

No. 48228

FILED

JAN 31 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order allowing a mother to relocate to Israel with the parties' minor child. Eighth Judicial District Court, Clark County; N. Anthony Del Vecchio, Judge.

Samuel and Ayelet Ever were married in Israel in September 2000, at which time both were Israeli residents. Their daughter was born on June 16, 2001. In 2002, the family moved to Las Vegas. The parties divorced on April 29, 2005, with the parties agreeing that each be granted joint legal and physical custody of the child. In November 2005, Samuel Ever left Las Vegas and eventually relocated to Alaska. On August 3, 2006, the divorce decree was modified to give Ayelet Ever physical custody of the child, with the parties retaining joint legal custody.

On July 5, 2006 Ayelet filed for permission to relocate with the child to Israel. Samuel opposed the motion on the grounds that Israel is too dangerous for a child, that visitation would be too expensive and time-consuming and that Ayelet's reasons for relocating were invalid.

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After a hearing, on September 27, 2006, the district court entered an order that (1) allowed Ayelet to relocate to Israel with the child; (2) awarded Samuel four weeks of visitation in the summer, with ~~Ayelet~~ ^{Samuel} to bear travel costs; (3) gave Samuel the option of a two-week winter visitation, with the parties to share the travel costs; (4) required the parties to share telephone contact costs; (5) required the parties to have web cam contact available at all times; and (6) reduced Samuel's obligation of child support to the minimum \$100 per month to offset travel expenses.

Samuel appeals from the relocation order on the grounds that Israel is too dangerous for his child and the costs involved in visitation are excessive and visitation must therefore be too infrequent.

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.¹ 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 noncustodial parent.² Absent such consent, the custodial parent may petition the district court for permission to move the child.³

¹See Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996).

²NRS 125C.200.

³Id.

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.⁴ If this threshold requirement is met, the district court must next weigh the factors outlined in Schwartz v. Schwartz,⁵ focusing on the availability of adequate, alternative visitation.⁶

On appeal, Samuel does not contest Ayelet's reasons for wishing to relocate to Israel, but in the trial court he did argue that the child would have more advantages in Las Vegas. Although the district court did not make a finding of Ayelet's good faith in desiring to return to Israel, the record clearly supports such a finding, which underlies the grant of permission to relocate. Ayelet is a native Israeli, and she came to the United States to be with her husband. All her family is in Israel, and she and her daughter will have support from family and friends. They will

⁴Davis v. Davis, 114 Nev. 1461, 1466, 970 P.2d 1084, 1087 (1998).

⁵107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991) (providing that the district court must consider (1) whether the move will likely 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 so that the parent's relationship with the child will be adequately fostered).

⁶Trent 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).

also have greater ease in maintaining their religious tradition. Since Ayelet's native language is Hebrew, she will have greater economic opportunities in Israel than she has in this country. She also presented detailed information about the education that her daughter will receive in Israel.

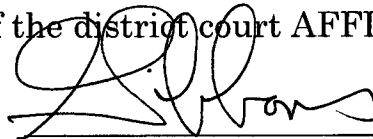
The district court found, after considering the evidence, that Israel is a safe place for the minor child. Additionally, the record supports a finding that any additional risk in Israel is outweighed by the fact that both mother and daughter are natural born Israeli citizens, and that there are considerable advantages to Ayelet and the child living in Israel. And, the additional cost to Samuel associated with visitation is partially offset by the reduction in child support to the minimum amount.

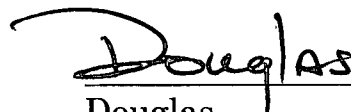
This court defers to the findings of the district court as long as the findings are supported by substantial evidence.⁷ In this case, the order granting permission to relocate is supported by substantial evidence; reasonable alternate visitation and continuous telephone and camcorder contact was provided to allow the father and daughter to maintain a relationship.

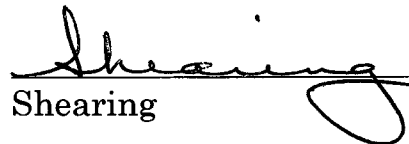
⁷See Shydler v. Shydler, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998) (recognizing that this court will not disturb, on appeal, district court rulings supported by substantial evidence); Schmanski v. Schmanski, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999) (noting that substantial evidence is that which a sensible person may accept as adequate to sustain a judgment).

Having reviewed appellant's civil appeal statement and the record, we conclude that the district court did not abuse its discretion when it granted respondent permission to relocate with the child to Israel, with appellant having visitation. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Gibbons


_____, J.
Douglas


_____, Sr. J.
Shearing

cc: Hon. N. Anthony Del Vecchio, District Judge, Family Court Division
Samuel Ever
Frances-Ann Fine
Clark County Clerk

⁸The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered on January 10, 2007.