THE SUPREME COURT OF THE STATE OF NEVADA

SUZANNE VARA,
Appellant,
vs.
STEPHEN BARLAS,
Respondent.

No. 56058

FILED

APR 01 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying appellant's motion to relocate with the parties' minor child to New Jersey.[1] Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin, Judge.

The parties were never married and have a five-year-old child. Pursuant to the parties' child custody agreement, appellant had primary physical custody of the parties' child and respondent had liberal visitation. In August 2009, appellant moved the district court to enter an order adopting the parties' child custody agreement and granting her permission to relocate with the child to New Jersey. Appellant based her relocation motion on the fact that her business in Las Vegas was failing, her extended family is located in New Jersey, and she intended to live rent-free with her sister while she pursued employment. Respondent opposed the motion and filed a countermotion for joint physical custody. Following an evidentiary hearing, the district court entered an order adopting the

[1]Pursuant to NRAP 34(f), we have determined that oral argument is not necessary in this appeal.

parties' child custody agreement and denying appellant's motion to relocate.[2] Appellant has appealed from the order.

On appeal, appellant contends that the district court abused its discretion in denying her motion to relocate because she established a good-faith reason for the relocation and respondent failed to demonstrate that it was not in the child's best interest to relocate with appellant to New Jersey.

In reviewing a relocation 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. Davis v. Davis, 114 Nev. 1461, 1466, 970 P.2d 1084, 1087 (1998). If this threshold requirement is met, the district court must next weigh the factors outlined in Schwartz v. Schwartz, 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991), focusing on the availability of adequate, alternative visitation. 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). Under the Schwartz factors, when determining whether to grant a parent's motion to relocate with the parties' child, the court must consider: (1) whether the move will likely improve the custodial parent and child's quality of life; (2) whether the custodial 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 the noncustodial parent will have a realistic opportunity to exercise visitation,

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[2]The district court denied respondent's countermotion for joint physical custody. Respondent did not appeal.

if the move is approved, so that the parent's relationship with the child will be adequately fostered. 107 Nev. at 383, 812 P.2d at 1271.

In the present case, after finding that appellant met the threshold burden of demonstrating a sensible, good-faith reason to move, the district court weighed the Schwartz factors and determined that the only factor that appellant did not satisfy was the reasonable alternative visitation schedule.[3] In particular, the district court found that the proposed visitation schedule would not provide an adequate opportunity for respondent to maintain and foster a relationship with the minor child. The district court stated that respondent's "almost daily contact with [the child], cannot be replaced by the substitute visitation schedule proposed by [appellant]." It also found that there were insufficient funds to transport the child cross country regularly enough to maintain the relationship between respondent and the child.

A "district court may not deny a parent's motion to relocate simply because the proposed move will disturb the existing custody or visitation arrangement." McGuinness v. McGuinness, 114 Nev. 1431, 1437, 970 P.2d 1074, 1078 (1998). This court has recognized that a father's preference for daily contact with the child may not serve as a basis to "chain" the mother to the state. Trent v. Trent, 111 Nev. 309, 317, 890 P.2d 1309, 1313-14 (1995) (citing In Re Marriage of Zamarripa-Gesundheit, 529 N.E.2d 780, 783 (Ill. App. Ct. 1988)). Moreover, a

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[3]While the district court found that appellant's lack of searching for a legal position in Las Vegas raised questions about her motives in relocating, there is no requirement that appellant exhaust all possible job opportunities in this state before being allowed to relocate. Moreover, in the underlying proceedings, appellant testified that she had a job offer in New Jersey.

parent's physical separation from his child does not preclude the parent from maintaining or fostering a meaningful parent-child relationship because alternate forms of communication are available:

> There is also no question that if one parent moves away, the opportunities for daily or weekly physical contact are lessened. However, even though there may be a preference for joint physical custody in our law, other factors must also be considered. Physical separation does not preclude each parent from maintaining significant and substantial involvement in a child's life, which is clearly desirable. There are alternate methods of maintaining a meaningful relationship, including telephone calls, e-mail messages, letters, and frequent visitation. Also, the well-being of a parent, which could be heightened by relocation, may have a substantial effect on the best interest of the child.

McGuinness, 114 Nev. at 1436, 970 P.2d at 1077-78. Some of these methods include telephone calls, letters, e-mail messages, and video conferencing. See id. Appellant testified to the availability of these other means of communication and extended an alternative visitation schedule that exceeds the number of hours that respondent currently has with the child.

As to the parties' ability to transport the child cross country, the district court found that there were insufficient funds to do so. A "lack of funds," however, does not necessarily serve as a basis for denying a motion to relocate. Schwartz, 107 Nev. at 385, 812 P.2d at 1272; Jones v. Jones, 110 Nev. 1253, 1263-64, 885 P.2d 563, 570 (1994). Here, respondent verified that his gross monthly income is $7,994.40. His child support obligation is $727 a month. His financial disclosure demonstrates that he is able to meet his monthly obligations, including child support, with money to spare each month. Testimony was presented that a round-

trip airline ticket between New Jersey and Las Vegas ranges between $340 and $500, depending on the time of year and whether there is a special airfare advertised. Appellant offered to offset or reduce a portion of child support in exchange for respondent purchasing the airfare.

We conclude that the district court abused its discretion in finding that respondent's daily contact with the child takes preference over appellant's ability to relocate and that there are insufficient funds available for transporting the child to facilitate visitation. Wallace v. Wallace, 112 Nev. 1015, 922 P.2d 541 (1996) (reviewing a district court's child custody decision for an abuse of discretion). Accordingly, we reverse the district court's order denying appellant's motion to relocate and remand this matter to the district court to enter an order granting appellant's motion and establishing a child custody arrangement.

It is so ORDERED.

_____, J
Hardesty

_____, J
Parraguirre

SAITTA, J., concurring:

I concur in the result only.

_____, J.
Saitta

cc: Hon. Charles J. Hoskin, District Judge, Family Court Division
Robert E. Gaston, Settlement Judge
Pecos Law Group
Marquis & Aurbach
Eighth District Court Clerk