

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANI ROBERT SAVELLY,

No. 35457

Appellant,

vs.

PEGGY KIT YEE SAVELLY,

Respondent.

FILED

FEB 22 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's motion for change of custody and granting respondent's motion for permission to relocate outside the state with the parties' minor child.

Appellant contends that the district court abused its discretion because no reasonable, alternative visitation is available if respondent is permitted to relocate to Hong Kong with their daughter. Appellant argues that the proposed move constitutes changed circumstances requiring a change of custody.

The district court has broad discretionary powers in determining questions of child custody, and this court will not disturb the district court's determination absent a clear abuse of discretion.¹ In considering a request for permission to relocate, the district court must first determine whether the custodial parent has shown a sensible, good faith reason for the move.² Once the custodial parent satisfies this threshold requirement, the district court must weigh the following five factors: "(1) the extent to which the move is likely to improve the quality of life for both the child and

¹Culbertson v. Culbertson, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975).

²Jones v. Jones, 110 Nev. 1253, 1266, 885 P.2d 563, 572 (1994).

the custodial parent; (2) whether the custodial parent's motives are honorable, and not designed to frustrate or defeat visitation rights accorded to the noncustodial parent; (3) whether, if permission to remove is granted, the custodial parent will comply with any substitute visitation orders issued by the court; (4) whether the noncustodian's motives are honorable in resisting the motion for permission to remove, or to what extent, if any, the opposition is intended to secure a financial advantage in the form of ongoing support obligations or otherwise; and (5) whether, if removal is allowed, there will be a realistic opportunity for the noncustodial parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship with the noncustodial parent."³

In weighing and balancing the five factors, the district court should focus on the availability of adequate, alternative visitation.⁴ If the relocation would substantially obliterate the possibility of traditional alternative visitation for the noncustodial parent, the proposed move constitutes substantially changed circumstances and the district court must reexamine custody based on the best interests of the child.⁵ The primary physical custodian should be allowed to relocate with the child so long as the move is for a legitimate purpose and to a location that is reasonable in light of that purpose.⁶ A move with a legitimate purpose is reasonable unless its purpose is

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

⁴Trent v. Trent, 111 Nev. 309, 315-16, 890 P.2d 1309, 1313 (1995).

⁵Hayes v. Gallacher, 115 Nev. 1, 6-7, 972 P.2d 1138, 1141 (1999).

⁶Id. at 6, 972 P.2d at 1141 (citation omitted).

substantially achievable without moving, or by moving to a location that is substantially less disruptive of the noncustodial parent's relationship to the child.⁷

The record in this case reveals substantial evidence to support the district court's determination. Specifically, the district court properly weighed the five Schwartz factors, followed the principles articulated in Hayes, and determined that, although respondent's proposed move constitutes substantially changed circumstances requiring a reexamination of custody, it is in the child's best interests to remain in the primary physical custody of respondent. Accordingly, we conclude that the district court did not abuse its discretion by denying appellant's motion for change of custody and granting respondent's motion for permission to relocate to Hong Kong with the parties' minor child.

Affirmed.

Maupin, C.J.
Maupin

Young, J.
Young

Shearing, J.
Shearing

Agosti, J.
Agosti

Rose, J.
Rose

Leavitt, J.
Leavitt

Becker, J.
Becker

⁷Id.

cc: Hon. Scott Jordan, District Judge, Family Division
Carucci, Bowers and Thomas
Zeh, Spoo, Quade and Hearne
Washoe County Clerk