

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAMELA O'BREMSKI,

Appellant,

vs.

ROBERT O'BREMSKI,

Respondent.

No. 35643

FILED

FEB 06 2001

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

ORDER OF REVERSAL AND REMAND

This is an appeal from an order denying a motion for permission to relocate outside the state with a minor child.

Appellant Pamela O'Bremski contends that the district court erred by denying her motion to relocate on the basis that she articulated a legitimate purpose for her proposed move.

Pursuant to NRS 125C.200 (formerly NRS 125A.350), a custodial parent who wishes to move with a child to a location outside of Nevada must attempt to obtain the other parent's written consent. If the other parent refuses to consent to the move, the parent planning to move must petition the district court for permission to move with the child. Id.

In considering a request for permission to move, the district court must first determine whether the custodial parent has demonstrated a sensible, good-faith reason for the move. See Davis v. Davis, 114 Nev. 1461, 1466, 970 P.2d 1084, 1087 (1998) (citing Trent v. Trent, 111 Nev. 309, 315, 890 P.2d 1309, 1313 (1995)). Once the custodial parent satisfies the threshold requirement of a good faith reason for the proposed move, the district court must weigh the five factors articulated in Schwartz v. Schwartz, 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991): "(1) the extent to which the move is likely to improve the quality of life for both the children

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and 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 noncustodial parent'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; (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." Id. at 383, 812 P.2d at 1271. Decisions as to child custody rest within the sound discretion of the district court and will not be disturbed absent a clear abuse of that discretion. See Culbertson v. Culbertson, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975); see also Mason v. Mason, 115 Nev. 68, 975 P.2d 340 (1999) (recognizing that a district court's findings concerning the Schwartz factors are to be upheld if supported by substantial evidence).

Here, denying the relocation motion, the district court failed to issue written findings of fact and conclusions of law addressing the Schwartz factors. Additionally, the district court did not make oral findings or hold an evidentiary hearing from which this court can discern the district court's rationale for denying the relocation motion.

This court has held that in the absence of express findings it will imply findings where there is substantial evidence to support the judgment. See Gorden v. Gorden, 93 Nev. 494, 569 P.2d 397 (1977). In this case, we cannot infer the necessary findings because the district court's comment

that the parties had several evidentiary hearings in the last few years suggests that it based its decision, at least in part, on previous dealings with the parties which are not a part of the record on appeal. While it is not improper for the district court to consider the entire case file in its decision, there is no evidence in the record before this court to support the district court's decision.

Accordingly, we reverse the district court's order denying the relocation motion and remand this matter to the district court for entry of written findings of fact and conclusions of law and any further proceedings that the district court deems necessary and appropriate.

Young J.
Young

Rose J.
Rose

Becker J.
Becker

cc: Hon. Gerald W. Hardcastle, District Judge,
Family Court Division
Frances-Ann Fine
Fitzgibbons & Anderson
Clark County Clerk