

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFFORD G. BENOIT,

Appellant,

vs.

TAMARA L. BENOIT, N/K/A TAMARA L.  
VERHOLTZ,

Respondent.

No. 35711

**FILED**

**MAY 08 2001**

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying the motion of a custodial parent, Clifford Benoit, to relocate with four minor children outside the State of Nevada. After conducting an evidentiary hearing, the district court denied the motion, concluding that the proposed visitation plan was too expensive for the noncustodial parent, Tamara Benoit, would substantially harm her bond with the children, and was subject to manipulation by Clifford's controlling behavior that would increase family tension.

On appeal, Clifford Benoit argues that the district court abused its discretion by denying his motion to relocate because it: (1) did not address the required threshold issue of whether Clifford had shown a good-faith basis for his requested out-of-state move, and (2) failed to evaluate available, adequate, alternative visitation arrangements. We conclude that these arguments lack merit and, therefore, affirm the district court's order denying Clifford's relocation request.

A parent, who is the primary physical custodian of a minor child, can relocate with the child out of state with the

written consent of the noncustodial parent.<sup>1</sup> Absent such consent, the custodial parent may petition the district court for permission to move the child.<sup>2</sup> In reviewing such a petition, the district court must apply a two-step process.<sup>3</sup> First, 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.<sup>4</sup> If this threshold is met, the district court must next weigh the Schwartz factors, focusing on the availability of adequate, alternative visitation.<sup>5</sup> This court defines reasonable, alternative visitation as visitation that would provide an adequate basis for preserving and fostering the child's bond with his or her noncustodial parent if the relocation were allowed.<sup>6</sup>

This court grants broad discretion to district courts in determining questions of child custody, including a custodial parent's petition to move a child out of state, and we will not disturb a district court's judgment absent a clear abuse of discretion.<sup>7</sup> If a trial court, sitting without a jury, makes a finding of fact predicated upon conflicting

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<sup>1</sup>NRS 125C.200.

<sup>2</sup>Id.

<sup>3</sup>Hayes v. Gallacher, 115 Nev. 1, 5, 972 P.2d 1138, 1140 (1999).

<sup>4</sup>Id.

<sup>5</sup>Id.; see Schwartz v. Schwartz, 107 Nev. 378, 382-83, 812 P.2d 1268, 1271 (1991); Jones v. Jones, 110 Nev. 1253, 1262, 885 P.2d 563, 570 (1994) (modifying the first Schwartz factor); 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).

<sup>6</sup>McGuinness v. McGuinness, 114 Nev. 1431, 1437, 970 P.2d 1074, 1078 (1998) (citing Jones, 110 Nev. at 1263, 885 P.2d at 570).

<sup>7</sup>See Hayes, 115 Nev. at 4, 972 P.2d at 1140.

evidence, this court will not disturb that finding if it is supported by substantial evidence.<sup>8</sup> It is the prerogative of the trial court, not the appellate court, to evaluate the credibility of witnesses and to determine the weight of their testimony.<sup>9</sup>

We conclude that the district court's findings were supported by substantial evidence;<sup>10</sup> namely, that Clifford's controlling behavior would inhibit effective preservation of Tamara's bond with the children and that no reasonable, alternative visitation plan was offered.

Moreover, Clifford's failure to rebut the district court's finding about his controlling behavior is fatal to his appeal. Controlling behavior by the custodial parent that increases family tension undermines the family law policy of preserving and fostering the child's bond with his or her noncustodial parent should a relocation be approved.<sup>11</sup>

Although the record contains conflicting evidence on both issues raised by Clifford as well as on Clifford's controlling behavior, we conclude that the district court acted within its discretion in denying the motion to relocate. Accordingly, we conclude that the district court did not abuse its discretion.

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<sup>8</sup>Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1031, 923 P.2d 569, 573 (1996).

<sup>9</sup>Douglas Spencer v. Las Vegas Sun, 84 Nev. 279, 282, 439 P.2d 473, 475 (1968).

<sup>10</sup>Although the district court did not expressly state that Clifford made a sensible, good faith reason for his requested move, we conclude that this finding can be inferred because the district court moved on to the second step of the Hayes analysis. That is, the district court expressly addressed the Schwartz factors, focusing on the availability of adequate, alternative visitation.

<sup>11</sup>See McGuinness, 114 Nev. at 1437, 970 P.2d at 1078.

Having considered Clifford's contentions on appeal and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Maupin, C.J.  
Maupin

Young, J.  
Young

Shearing, J.  
Shearing

Agosti, J.  
Agosti

Rose, J.  
Rose

Leavitt, J.  
Leavitt

Becker, J.  
Becker

cc: Hon. J. Michael Memeo, District Judge  
Stringfield Law Office  
Nancy L. Porter  
Elko County Clerk