IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK G. VANNOZZI, Appellant, vs. LESLIE L. VANNOZZI, Respondent.	No. 35227
PATRICK G. VANNOZZI, Appellant, vs. LESLIE L. VANNOZZI, Respondent.	No. 35918

FILED
DEC 05 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from an order of the district court granting respondent's motion to relocate with the minor children to Texas and from an order denying appellant's motion to set aside the order granting respondent permission to relocate the children.

Appellant contends that the family court abused its discretion in: (1) giving respondent permission to relocate the children to Texas; (2) ruling that Nevada would yield jurisdiction over custody in one year; and (3) failing to set aside the order granting respondent permission to relocate. We disagree.

NRS 125C.200 (codified as 125A.350 at the time of these proceedings) provides that a custodial parent intending to relocate a minor child outside the state must:

> "as soon as possible and before the planned move, attempt to obtain the written consent of the noncustodial parent to move the child from this state. If the noncustodial parent refuses to give that consent, the custodial parent shall, before he leaves this state with the child, petition the court for permission to move the child."

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Under Schwartz v. Schwartz[1] and its progeny, a custodial parent requesting court permission to remove minor children from the state must make a two-part threshold showing: that the move will be an actual advantage for both the moving parent and the children; and that the moving parent has a good faith reason, meaning that the reason is "not designed to frustrate the visitation rights of the noncustodial parent."[2] Once this threshold showing is made, the trial court must also consider five other factors: (1) how likely it is that the move will improve the moving parent and children's quality of life; (2) whether the moving parent's motives are honorable; (3) whether the moving parent will comply with the court's visitation orders; (4) whether the non-moving parent's motives for resisting the move are honorable; and (5) whether, if the move is approved, the non-moving parent will have a realistic opportunity to exercise visitation such that the non-moving parent's relationship with the children will be adequately fostered.[3] In considering these additional factors, the family court should place particular emphasis "on the availability of adequate, alternate visitation."[4] As with all decisions regarding child custody, the decision whether to grant permission to relocate rests "within the sound discretion of the district court and will not be disturbed absent a clear abuse of that discretion."[5]

We conclude that the family court did not clearly abuse its discretion in granting respondent's motion to relocate or in leaving its decision intact despite respondent's moving to a different place. Both decisions were based on conflicting evidence, which the family court is better suited to resolve than this court.[6] Therefore, to the extent that appellant's arguments rely on the conflicting evidence favorable to him,

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[1]107 Nev. 378, 812 P.2d 1268 (1991).

[2]Davis v. Davis, 114 Nev. 1461, 1466, 970 P.2d 1084, 1087 (1998); see also Trent v. Trent, 111 Nev. 309, 315, 890 P.2d 1309, 1313 (1995); Jones v. Jones, 110 Nev. 1253, 1261, 885 P.2d 563, 569 (1994); and Schwartz, 107 Nev. 378, 812 P.2d 1268.

[3]Davis, 114 Nev. at 1466, 970 P.2d at 1087.

[4]Id. (citing Trent, 111 Nev. at 316, 890 P.2d at 1313).

[5]Id. at 1465, 970 P.2d at 1087.

[6]See Barelli v. Barelli, 113 Nev. 873, 880, 944 P.2d 246, 250 (1997) (stating that a determination by the trial court, sitting without a jury, which is "predicated upon conflicting evidence . . . will not be disturbed on appeal where supported by substantial evidence").

they lack merit. We also conclude that appellant's argument that this court need not defer to the family court's weighing of conflicting evidence is contrary to established authority which requires that deference be given absent an abuse of discretion.[7]

Appellant also argues that the family court abused its discretion when it denied appellant's motion for reconsideration. Appellant claims he is entitled to reconsideration because respondent lied at the evidentiary hearing on her motion to relocate about where she would relocate in Texas. It is for the trial court, not this court, to determine issues of credibility. Nothing in the record necessarily indicates that she did not intend to move to Gunter at the time of the evidentiary hearing. Therefore, we further conclude that appellant's argument is unsupported by the record and that the trial court did not abuse its discretion.

Finally, we note that the issue regarding Nevada's relinquishment of jurisdiction over custody is moot, since the family court indicated that it would reverse its previous order which provided that jurisdiction would be yielded to Texas after one year.

Having considered all of appellant's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Gloria S. Sanchez, District Judge, Family Court Division
Bruce I. Shapiro
Leslie L. Vannozzi
Clark County Clerk

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[7]Davis, 114 Nev. at 1466, 970 P.2d at 1087.