IN THE SUPREME COURT OF THE STATE OF NEVADA

HELEN TALBOT BAHNEMAN,
Appellant,
vs.
SCOTT J. BAHNEMAN,
Respondent.

No. 36938

FILED

JUL 25 2003

ANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order establishing custody, and denying appellant's motion to relocate. In this case, we are asked to decide whether the district court abused its discretion in ordering joint physical custody and denying appellant's request to relocate with her three children. We conclude that the district court did not abuse its discretion in so ruling and affirm the judgment.

In 1986, appellant Helen Bahneman and respondent Scott Bahneman married in Sacramento, California. The couple and their three children lived in the Sacramento area until the family moved to Incline Village, Nevada in 1996. Helen and Scott separated in February 1998, and Scott filed for divorce in February 1999.

On October 29, 1999, the district court granted joint physical custody on an alternating week basis in response to Scott's motion for temporary custody. In January 2000, the district court entered a decree of divorce. Helen and Scott had agreed to an equal division of their marital assets, which totaled more than $10 million. The district court retained jurisdiction over child custody, visitation, and support matters.

In August 2000, the district court held a custody hearing at which the main issue was Helen's desire to relocate with her children to California where the family had previously resided and where Helen

owned the former family home. The court heard testimony from Scott, Helen, and a court-appointed allergy specialist. The court also considered two reports by Dr. Earl Nielsen, a clinical psychologist selected by Helen and Scott to evaluate the family for the custody and visitation determination.

Dr. Nielsen's first report recommended joint legal and physical custody of the children. Subsequently, Dr. Nielsen prepared a second report in response to Helen's concern that the first report did not adequately address her request to relocate. In this second report, Dr. Nielsen again stated that joint legal and physical custody remained in the children's best interests. Dr. Nielsen also concluded that the children's best interests favored only by "the slimmest margin" the proposed move to California. He further stated that the children had more opportunities in either location than could be experienced by most children in a lifetime.

Helen testified that she agreed with Dr. Nielsen's recommendation that joint physical custody was in her children's best interests, but contended that it would be much better for the children if she and Scott shared custody in California. She also testified that relocation to California was in her and her children's best interests because of better weather, the opportunity for a variety of year-round sporting activities, the support of family, friends, and church, better schools, and a substantially lower cost of living.

The district court found that joint legal and physical custody was in the children's best interests, denied Helen's request to relocate and ordered continuing alternate week sharing of physical custody. Helen appeals.

The district court has discretion to make child custody determinations which will not be disturbed on appeal absent a clear abuse of that discretion.[1] When one parent wishes to relocate before child custody is determined, the district court must consider the parent's desire to relocate in conjunction with the child custody determination.[2] Here, the record reveals that the district court considered the appropriate factors in making its decision as to the children's best interests, as required by NRS 125.480(1).

The district court stated that it was applying NRS 125A.350 on the question of relocation, even though it had been repealed and replaced by NRS 125C.200.[3] However, the district court accurately

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[1]Hayes v. Gallacher, 115 Nev. 1, 4, 972 P.2d 1138, 1140 (1999).

[2]McGuinness v. McGuinness, 114 Nev. 1431, 1435, 970 P.2d 1074, 1077 (1998).

[3]NRS 125A.350, in effect until October 1999, stated:

> If custody has been established and the custodial parent or a parent having joint custody intends to move his residence to a place outside of this state and to take the child with him, he must, as soon as possible and before the planned move, attempt to obtain the written consent of the other parent to move the child from the state. If the noncustodial parent or other parent having joint custody refuses to give that consent, the parent planning the move shall, before he leaves the state with the child, petition the court for permission to move the child. The failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the noncustodial parent or other parent having joint custody.

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pointed out, that the statute does not change the legal analysis in this case. Both permanent custody and the relocation request had to be decided in the same proceeding and both factors had to be considered simultaneously under the standard always applied – the children's best interests. No mechanical approach of looking at either custody or relocation first is feasible under these circumstances. They are inextricably intertwined.

The policy of this state continues to be expressed in NRS 125.480(1) that "[i]n determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child." The state policy is also expressed in NRS 125.460(1) and (2) which provide that the policy of the state is to ensure "that minor children have frequent associations and a continuing relationship with both parents after the parents have become separated or have dissolved their marriage; and . . . [t]o encourage such parents to share the rights and responsibilities of child rearing." Often, when one parent desires to relocate with the children without the other parent, these policies are in conflict with one another and courts must find the appropriate balance between them. That is why the district courts are granted great discretion, as long as the appropriate factors are considered and the findings are supported by the evidence.

The instant case illustrates the balancing problem. In this case, the determination of custody could not be separated from the determination of the relocation issue. While the parents are living in the

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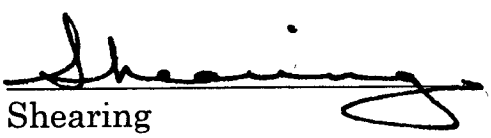
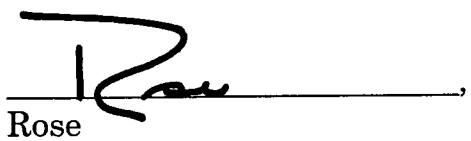
. . . *continued*
On October 1, 1999, NRS 125C.200 replaced NRS 125A.350 removing the phrase "or a parent having joint custody."

same locale, sharing physical custody is feasible. However, if the mother were to move to California, as requested, this arrangement would not be feasible. The district court made findings that recognized that there are advantages to the children under both options, particularly in this situation where there is virtually no limitation in economic resources. The district court weighed the advantages and disadvantages of each option, considering the factors this court articulated in Schwartz v. Schwartz,[4] and concluded that the best interests of the children were served by maintaining the present sharing of physical custody and denying the request for relocation. We do not find this conclusion an abuse of discretion. Therefore, we

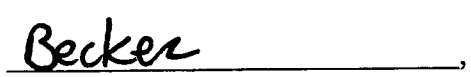
ORDER the judgment of the district court AFFIRMED.



_____, J.
Shearing



_____, J.
Rose



_____, J.
Becker

cc: Hon. Scott Jordan, District Judge,
Family Court Division
Nick A. Moschetti Jr.
D.G. Menchetti, Ltd.
Washoe District Court Clerk

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[4]107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991).