

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHANIE COTTO,
Appellant,
vs.
GERALD PURDUM, II,
Respondent.

No. 68909

FILED

FEB 05 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's motion to relocate with the parties' minor child to California. Second Judicial District Court, Family Court Division, Washoe County; Cynthia Lu, Judge.

On appeal, Appellant Stephanie Cotto contends the district court abused its discretion by denying her motion to relocate. Stephanie and Respondent Gerald Purdum have a minor child, Jayden, eight years old. The parties share joint legal custody and Stephanie has primary physical custody. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

We review a district court's decision denying a motion to relocate for abuse of discretion. *Flynn v. Flynn*, 120 Nev. 436, 440, 92 P.3d 1224, 1227 (2004). We presume the district court properly exercised its discretion in determining a child's best interest. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996) (citing *Culbertson v. Culbertson*, 91 Nev. 230, 233, 533 P.2d 768, 770 (1975)). Thus, even though we may not agree with a court's decision, we will not substitute our judgment for that of the district court where substantial evidence supports the district court's decision. See, e.g., *Flynn*, 120 Nev. at 440, 92 P.3d at 1227 ("we will uphold the district court's determination if it is supported by substantial evidence").

As Stephanie had primary physical custody when the motion was filed, we proceed under NRS 125C.200 and *Schwartz v. Schwartz*, 107 Nev.

378, 812 P.2d 1268 (1991). *See id.* at 440-41, 92 P.3d at 1227. We review the district court's application of the *Schwartz* factors de novo. *Id.* at 440, 92 P.3d at 1227.

NRS 125C.200 requires a custodial parent who intends to relocate to first attempt to obtain written consent from the noncustodial parent, and, if the noncustodial parent refuses consent, then to petition the court for permission. As a threshold requirement, the custodial parent must show a good faith reason for the relocation and that the parent and child will each realize an actual advantage by the relocation. *See id.*, at 442, 92 P.3d at 1228. The actual advantage may be based on "a sincere desire of the custodial parent to move and a sensible good faith reason for the move." *Jones v. Jones*, 110 Nev. 1253, 1261, 885 P.2d 563, 569 (1994) (internal citations omitted).

Once the custodial parent satisfies this requirement, the district court must then determine whether the five *Schwartz* factors favor the move, focusing on the availability of adequate alternative visitation. *Schwartz*, 107 Nev. at 382-83, 812 P.2d at 1271; *McGuinness v. McGuinness*, 114 Nev. 1431, 1437, 970 P.2d 1074, 1078 (1998). A court may not deny relocation "solely to maintain the existing visitation pattern, even if relocation entails a shift away from consistent day-to-day contact." *McGuinness*, 114 Nev. at 1437, 970 P.2d at 1078. If the custodial parent shows a good faith reason for relocating, and the noncustodial parent has reasonable alternative visitation options, the motion should be granted unless the noncustodial parent shows, through concrete, material reasons, that the move is not in the children's best interests. *Flynn*, 120 Nev. at 442, 92 P.3d at 1228.

Here, the district court found Stephanie had a good faith reason for the move, and that alternative visitation options were available. The district court also analyzed the *Schwartz* factors and generally concluded they favored Stephanie. The district court provided a detailed summary of

the evidence and made findings using the five *Schwartz* factors and permissible sub-factors. *See Schwartz*, 107 Nev. at 383, 812 P.2d at 1271 (holding a district court may consider additional factors beyond the five factors it must consider). The overarching concern expressed by the court was that the quality of life would improve for Stephanie if she lived with her boyfriend/fiancé in Sacramento, but life would not improve for Jayden, therefore a relocation was not in his best interest.¹


In light of the district court's analysis of the *Schwartz* factors and its careful consideration of additional factors affecting the child's best interest, we conclude that the district court did not abuse its discretion in

¹Specifically, the court noted or found the following facts supporting Gerald's position: (1) Jayden has a close relationship with his father; (2) Jayden has extended family and friends in Reno but has no family in Sacramento; (3) Jayden is progressing well in school in Reno; (4) Gerald is highly involved with Jayden's schooling and extracurricular activities and Sacramento is a 2 ½ hour drive from Reno; (5) Stephanie has adequate employment income in Reno and financial support from her parents; and (6) Gerald's employment allows him substantial time off that he can spend with Jayden and he is apparently in a stable marital relationship. The district court concluded that Jayden's close relationship with his father would be drastically reduced if Jayden moved (even though Gerald may actually have more time under Stephanie's proposed parenting time schedule). On the other hand, the facts supporting Stephanie's relocation were more nebulous: (1) the relationship between Jayden and Stephanie's fiancé is nascent; (2) the Sacramento school situation is unknown due to lack of evidence; (3) although Stephanie could apparently afford to be a stay-at-home mom if she relocated to Sacramento, she was only planning to avail herself of that opportunity until her new child reached eight weeks of age, then she would work outside the home or further her education; (4) if Stephanie secures employment, she would not earn significantly more than she earns in Reno; (5) she would face higher living costs and day care expenses as she would share expenses with her fiancé; and (6) it is unclear how she would support herself and her two children if the relationship with her fiancé ended.

denying the motion to relocate.² In determining whether such an abuse of discretion occurred, this court must view the evidence and all inferences most favorably to the party against whom the ruling is made. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 366, 212 P.3d 1068, 1080 (2009). An abuse of discretion occurs only “when no reasonable judge could reach a similar conclusion under the same circumstances.” *Leavitt v. Siems*, 130 Nev. ___, ___, 330 P.3d 1, 5 (2014). Thus, we do not resolve this appeal on what we would have done were we standing in the district judge’s shoes, but rather only upon whether what the district court did was wholly unreasonable and outside the bounds of her discretion. We cannot conclude that it was. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Cynthia Lu, District Judge, Family Court Division
Rodney E. Sumpter
Kaitlyn Miller Law, PLLC
Washoe District Court Clerk

²We have carefully considered Stephanie’s additional arguments and conclude they are without merit.