

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT LEE VASAITIS,
Appellant,
vs.
MELISSA ANN MATUSKA,
Respondent.

No. 69851

FILED

DEC 02 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a fast-track child custody appeal from a district court order granting a motion for relocation. Eighth Judicial District Court, Family Court Division, Clark County; Rebecca Burton, Judge.

In 2013, the district court granted a motion filed by respondent to relocate to Indiana with the parties' child. Appellant appealed that decision and this court reversed and remanded the matter for the district court to conduct an evidentiary hearing and consider the *Schwartz v. Schwartz*, 107 Nev. 378, 382-83, 812 P.2d 1268, 1271 (1991), relocation factors. In the meantime, respondent had relocated with the child to Indiana. On remand, the district court considered evidence from the period when respondent was residing in Indiana before granting the relocation motion again. This appeal followed.

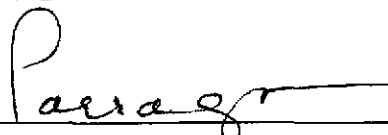
Having considered the parties' arguments and the record on appeal, we conclude that the district court did not abuse its discretion in granting respondent's motion to relocate. *See id.* at 385, 812 P.2d at 1272 (reviewing a decision concerning a motion to relocate for an abuse of discretion). The district court considered all of the *Schwartz* factors on remand and substantial evidence supports the district court's factual findings. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (providing that this court will not set aside the district court's

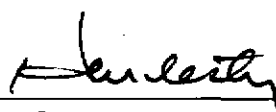
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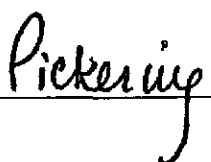
factual findings unless they are clearly erroneous or not supported by substantial evidence).

Further, it was not an abuse of discretion for the court to consider evidence of the period when respondent and the child were residing in Indiana because respondent had lawfully relocated, and the court must consider evidence pertaining to the child's best interest. *See In re J.D.N.*, 128 Nev. 462, 468, 283 P.3d 842, 846 (2012) (explaining that this court reviews the admission of evidence for an abuse of discretion); *cf. Druckman v. Ruscitti*, 130 Nev., Adv. Op. 50, 327 P.3d 511, 516 (2014) (providing that a court cannot consider post-move evidence after an *unlawful* relocation); *Wraight v. Wraight*, 71 So. 3d 139, 142-43 (Fla. Dist. Ct. App. 2011) (recognizing that "[i]t seems inevitable, even necessary, for the court to take into account the events of a temporary relocation (good and bad) in evaluating" relocation factors). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Pickering

cc: Hon. Rebecca Burton, District Judge, Family Court Division
Carolyn Worrell, Settlement Judge
Hitzke & Associates
Brewer Blau Law Group
Eighth District Court Clerk

¹To the extent appellant's additional arguments are not addressed herein, we conclude they do not warrant reversal.