

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICKIE LYNN CONNELLY,  
Appellant,  
vs.  
RAYMOND EUGENE CONNELLY,  
Respondent.

No. 37930

**FILED**

JAN 08 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a final divorce decree. Appellant Vickie Connelly obtained a temporary protective order against respondent Raymond Connelly. After a hearing, the district court granted an extended order. Thereafter, Vickie sought an ex parte continuation of the extended order, which the district court denied.

Shortly after obtaining the temporary protective order, Vickie filed for divorce. She requested to relocate with the children from Elko to Auburn, California, providing these reasons: (1) family support, including Raymond's family; (2) her medical insurance was based in California; and (3) the dramatic decline of the economy in Elko and surrounding counties.

Following a bench trial, the district court entered an order, judgment, and final decree of divorce concerning relocation, separate property, and the division of community property. Concerning an inheritance that Vickie commingled with community funds, the district court found, with two exceptions, that the commingling was so extensive that Vickie failed to sustain the burden of proof demonstrating that her separate property had not transmuted to community property.

Vickie first argues that the district court erred in denying her ex parte continuation of the extended order. Because a district court can

only grant an extended order after a hearing, pursuant to NRS 33.020(3), we conclude the district court did not err.

Vickie also argues that the district court abused its discretion in denying her request to relocate. In Schwartz v. Schwartz<sup>1</sup> and its progeny, this court developed several factors a district court must consider in determining whether to permit a parent to relocate out of the state with a child.<sup>2</sup>

The court must first determine whether the custodial parent has demonstrated that an actual advantage will be realized by both the children and the custodial parent in moving to a location so far removed from the current residence that weekly visitation by the noncustodial parent is virtually precluded.<sup>3</sup> The advantage “need not be a substantial advantage but one based on a sincere and genuine desire of the custodial parent to move and a sensible good faith reason for the move.”<sup>4</sup>

We conclude that the district court did not abuse its discretion in determining that Vickie failed to make a threshold showing of an actual advantage. Vickie did not specify, which, if any, family members resided in or near Auburn. She did not indicate that her medical benefits were any greater in California than in Nevada. While she claimed the Elko

---

<sup>1</sup>107 Nev. 378, 812 P.2d 1268 (1991).

<sup>2</sup>Id. at 382, 812 P.2d at 1271.

<sup>3</sup>Id.

<sup>4</sup>Jones v. Jones, 110 Nev. 1253, 1261, 885 P.2d 563, 569 (1994) (meaning one that is not designed to frustrate the visitation rights of the noncustodial parent) (quoting Cooper v. Cooper, 491 A.2d 606, 613 (N.J. 1984)).

economy had declined dramatically, she had a job available in Elko and only a job prospect in Auburn. Thus, we conclude the district court did not abuse its discretion in denying Vickie's request to relocate.

Finally, Vickie argues that the district court abused its discretion in not awarding her the entire amount of her inheritance as separate property. She argues that her inheritance essentially disappeared at Raymond's demand.

All property acquired during a marriage through inheritance is separate property.<sup>5</sup> However, once an individual commingles separate property funds with community funds, the individual assumes the burden of rebutting the presumption that all the funds in the account are community property.<sup>6</sup> The presumption that commingled funds are community property may be rebutted by directly tracing the source of a particular purchase to the separate property portion of an account.<sup>7</sup> Direct tracing required Vickie "to establish that the timing and amounts of separate property deposits and withdrawals . . . clearly indicate that the payments came from separate property funds."<sup>8</sup>

In this case, Vickie initially deposited a portion of her inheritance into a separate, individual account and invested it separately. By doing so, she demonstrated her ability to make decisions regarding maintaining her inheritance as separate property. We conclude that the

---

<sup>5</sup>NRS 123.130.

<sup>6</sup>Malmquist v. Malmquist, 106 Nev. 231, 246, 792 P.2d 372, 381 (1990).

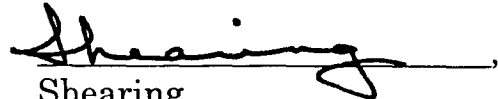
<sup>7</sup>Id.


<sup>8</sup>Id.

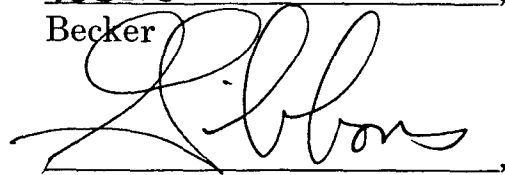
district court did not err in determining that substantial evidence rebutted Vickie's assertion that Raymond used force and coercion to convert her inheritance into community property.

According to Vickie's own tracing of the inheritance funds, she spent the funds on community debt, such as credit card debt, home improvements, and a family vacation. Thus, we conclude the district court did not abuse its discretion in not awarding Vickie the entire amount of her inheritance as separate property.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
Shearing, C.J.

  
Becker, J.

  
Gibbons, J.

---

<sup>9</sup>Having considered Vickie's other arguments regarding the second temporary protective order, NRCP 65 restraining order, specific findings of fact, the Seaboard account, and division of community property, we conclude they are without merit.

<sup>10</sup>Having considered Raymond's motion for leave to file supplemental points and authorities in support of his answering brief, we deny his request for leave.

cc: Hon. Richard Wagner, District Judge  
Stringfield Law Offices  
Marvel & Kump, Ltd.  
Elko County Clerk