


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YVONNE OLLERTON,
Appellant,
vs.
RIGOBERTO AYALA,
Respondent.

No. 86370-COA

FILED

JUN 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Yvonne Ollerton appeals from a district court order denying a motion for relocation in a child custody action. Eighth Judicial District Court, Family Division, Clark County; Charles J. Hoskin, Judge.

Yvonne and respondent Rigoberto Ayala were never married, but have two minor children together: D.O., born in August 2008, and X.A., born in October 2009. In 2015, Rigoberto initiated a complaint for paternity and custody seeking sole legal and primary physical custody. Yvonne filed an answer and counterclaim noting that Rigoberto had historically committed domestic violence against her. Thereafter, in 2016, the district court awarded the parties joint legal custody and awarded Yvonne primary physical custody of the minor children. Rigoberto's parenting time was set every other Friday at 6:00 p.m. through Sunday at 6:00 p.m., with additional parenting time two days per week from 3:30 p.m. through 7:30 p.m.

In December 2022, Yvonne filed a motion for permission to relocate to Ohio with the two minor children in July or August 2023. Specifically, Yvonne asserted that she was requesting permission to relocate due to her safety and well-being, and that the parties have

struggled with coparenting. She further asserted that two separate domestic violence incidents occurred where she had to physically defend herself from Rigoberto in the presence of the minor children in August 2020 and August 2021. She alleged that Rigoberto was arrested in September 2022 for the August 2021 dispute, and there was a no-contact order in place once he was released in October 2022. She argued that the relocation would serve the minor children's best interest as they would not have to witness their mother go through emotional turmoil. She further argued that Ohio had a better education system than Nevada and lower cost of living, but she primarily asserted that it was better for her to get away from Rigoberto due to the history of domestic violence. Attached as exhibits to her motion were an affordable housing print out to show a rent and cost of living comparison between Columbus, Ohio and Las Vegas, Nevada. Yvonne emailed Rigoberto to obtain his written permission to relocate, but he did not respond. In her email, she explained that she was seeking to relocate with the minor children because Ohio was safer, had a lower cost of living, lower cost of housing, and better education system.

In February 2023, Rigoberto filed his opposition to Yvonne's motion arguing that he did not believe Yvonne had good reasons for seeking relocation, as her reasons were personal to her rather than in the best interest of the minor children. However, he did acknowledge that domestic violence occurred and stated, "for the domestic [violence] I will hold myself accountable." Subsequently, the district court held a hearing on the motion in March. The district court noted at the onset that the hearing was to determine whether Yvonne had established adequate cause to hold an evidentiary hearing, and based on her motion, the court did not think she had satisfied adequate cause as to whether the best interest of the children

would be served and whether the children would receive an actual advantage from the relocation. Yvonne argued that it was better for her mental health and well-being and that the children should not be exposed to the domestic violence. Rigoberto argued that Yvonne's request for relocation should be denied as she was proffering reasons that were personal to her rather than the children. However, he acknowledged that the domestic violence occurred, and admitted that he was "definitely in the wrong." Nevertheless, Rigoberto asserted that Yvonne was attempting to take advantage of the situation in seeking relocation. He further argued that relocation was not warranted as the minor children had an existing support system in Las Vegas, including adult siblings and extended family.

Ultimately, the district court found that Yvonne had sensible good faith reasons for seeking relocation, but the court was not convinced that she established adequate cause that the children would receive an actual advantage from the relocation or that the children's best interest would be served, pursuant to NRS 125C.007. Thus, the district court entered a written order denying Yvonne's motion. Yvonne now appeals.

On appeal, Yvonne argues that the district court erred in not conducting an evidentiary hearing on her motion to relocate. Specifically, Yvonne contends the district court erred in finding that she did not allege a prima facie case for relocation as her motion detailed domestic violence incidents that occurred in August 2020 and August 2021. She argues that domestic violence is relevant when considering the best interest of the minor children and that it is not in the children's best interest to observe domestic violence acts perpetuated against her. She contends that she sufficiently met the requirements of demonstrating that relocation would provide the children with an actual advantage as she explained that Ohio

provided better education, cheaper cost of living, and cheaper housing. She further argues that the district court erred in denying her motion as there was no option to leave the children in Nevada with Rigoberto in light of NRS 125C.0035(5)'s presumption against granting physical custody to a perpetrator of domestic violence. Thus, Yvonne argues that the district court order should be reversed for the district court to either conduct an evidentiary hearing or to grant her motion for relocation. We note that Rigoberto failed to file a responsive brief in this matter, despite the Nevada Supreme Court's order to file the same.¹

This court reviews a district court's decision resolving a motion for relocation for an abuse of discretion. *Monahan v. Hogan*, 138 Nev. 58, 69, 507 P.3d 588, 596 (Ct. App. 2022). We also review a district court's denial of a motion to modify custodial orders without holding an evidentiary hearing for an abuse of discretion. *Myers v. Haskins*, 138 Nev., Adv. Op. 51, 513 P.3d 527, 531 (Ct. App. 2022). A district court abuses its discretion only when "no reasonable judge could reach a similar conclusion under the same circumstances." *Id.* (quoting *Matter of Guardianship of Rubin*, 137 Nev. 288, 294, 491 P.3d 1, 6 (2021)). In matters related to child custody, a district court has discretion to deny a motion to modify physical custody without conducting an evidentiary hearing unless the movant has demonstrated "adequate cause." *See id.* at 531 (quotation marks omitted). "Adequate cause arises if the movant demonstrates a prima facie case for modification" within the movant's affidavit and pleadings. *Id.* at 531-32 (quotation marks omitted). "To demonstrate a prima facie case, a movant must show that '(1)

¹Although Yvonne is represented by pro bono counsel in this matter, because Rigoberto is proceeding pro se and has not filed a brief as part of this appeal, no oral argument will be scheduled.

the facts alleged in the affidavits are relevant to the [relief requested]; and (2) the evidence is not merely cumulative or impeaching.” *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017) (alteration in original) (quoting *Rooney v. Rooney*, 109 Nev. 540, 543, 853 P.2d 123, 125 (1993)). In *Myers*, this court provided guidance concerning the proper application of the prima-facie-case prong of the adequate cause standard. 138 Nev., Adv. Op, 51, 513 P.3d at 529-30, 532. *Myers* explained that the district court may generally only consider “the properly alleged facts in the movant’s verified pleadings, affidavits, or declarations” and “must accept the movant’s specific allegations as true” when determining whether a movant has established a prima facie case for modification requiring an evidentiary hearing. *Id.*

With respect to relocation, a primary physical custodian who wishes to relocate his or her residence outside the state of Nevada and to take the children with him or her without the noncustodial parent’s written consent must petition the district court for permission to relocate with the child. NRS 125C.006(1). In evaluating such petitions, the district court must first determine whether the relocating parent has established that there is a sensible, good faith reason for relocating, which is not intended to deprive the non-relocating parent of parenting time; that the best interest of the children is served by allowing the relocation²; and that the relocation will result in an actual advantage benefiting the children and relocating parent. NRS 125C.007(1). If this threshold standard is met, the district

²See *Monahan*, 138 Nev. at 67-68, 507 P.3d at 595 (describing that when making a best interest determination under the relocation statute, district courts should consider the enumerated NRS 125C.0035(4) factors as well as any other nonenumerated factor that may be applicable).

court must then consider the following: (1) whether the move will likely improve the quality of life for the children and relocating parent, (2) whether the relocating parent's motives are to frustrate the non-relocating parent's parenting time, (3) whether the relocating parent will comply with parenting time orders, (4) whether the non-relocating parent's opposition to the move is honorable, and (5) whether there is a realistic opportunity for the non-relocating parent to maintain a parenting time schedule that preserves and fosters the non-relocating parent's relationship with the children. NRS 125C.007(2); *Monahan*, 138 Nev. at 59, 507 P.3d at 589-90.

Here, Yvonne presented facts that were relevant to relocation and not merely cumulative or impeaching, which at a minimum, demonstrated adequate cause for an evidentiary hearing. *See Arcella*, 133 Nev. at 871, 407 P.3d at 345; *Pelkola v. Pelkola*, 137 Nev. 271, 272, 487 P.3d 807, 809 (2021) (reversing an order granting the primary physical custodian's petition for permission to relocate and remanding for the district court to hold an evidentiary hearing and issue findings required under NRS 125C.007). Specifically, Yvonne's motion argued that she and Rigoberto had difficulty coparenting. *See* NRS 125C.0035(4)(d), (e) (providing that the level of conflict between the parents and their ability to cooperate are two factors relevant to determining what is in the best interest of a child). She also argued that relocation to Ohio would benefit both her and the minor children as it would allow her a greater ability to provide for the children, due to the lower cost of living and housing. *See Monahan*, 138 Nev. at 67, 507 P.3d at 595 (noting that "[o]ther nonenumerated factors—such as the parent's greater ability to provide for the child in the new location—may also be applicable"). Despite this, the district court summarily denied Yvonne's motion without an evidentiary hearing and without specific

findings concerning the relocation factors and whether relocation was in the children's best interest. *See id.*; *Druckman v. Ruscitti*, 130 Nev. 468, 473, 327 P.3d 511, 515 (2014) (holding that a decision on a motion to relocate a child must be based on the child's best interest).

Moreover, it does not appear that the district court considered the domestic violence incidents committed by Rigoberto, which Rigoberto acknowledged occurred at the motion hearing, in resolving Yvonne's motion to relocate. *See* NRS 125C.0035(4)(k) (considering whether either parent has engaged in an act of domestic violence against a parent or other person residing with the children); *see also, e.g., Nance v. Ferraro*, 134 Nev. 152, 162, 418 P.3d 679, 687 (Ct. App. 2018) (stating that the district court further abused its discretion when it failed to consider domestic violence evidence when the court granted the father primary physical custody of the minor child and granted the father's motion to relocate the minor child). The district court did not explain how relocation, in light of the undisputed domestic violence incidents, would not benefit the minor children and be in their best interest. *See McGuinness v. McGuinness*, 114 Nev. 1431, 1436, 970 P.2d 1074, 1078 (1998) (observing that a child's best interest does not exist in a vacuum and "the well-being of a parent, which could be heightened by relocation, may have a substantial effect on the best interest of the child"). Thus, the district court abused its discretion in denying Yvonne's motion to relocate without conducting an evidentiary hearing.

Based on the foregoing, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Charles J. Hoskin, District Judge, Family Division
McFarling Law Group
Rigoberto Ayala
Eighth District Court Clerk

³To the extent Yvonne raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do either do not present a basis for relief or need not be reached given the disposition of this appeal.