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Chris Orme
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***Potter v. Potter*, 119 P.3d 1246 (Nev. 2005)¹**
DOMESTIC RELATIONS--CUSTODY

Summary

Nevada's relocation statute does not apply to parties that share joint custody of minor children. If a parent with joint custody rights wants to move outside of Nevada with a minor child, then that parent must file a motion with a district court judge to determine whether moving is in the best interests of the child or whether staying with the nonmoving parent is in the best interests of the child.

Disposition/Outcome

A parent with joint custody that desires to move outside of Nevada must file a motion for change of custody under NRS 125.510(2) so that a court can determine whether the best interests of the child would be to move with the moving parent or stay with the nonmoving parent.

Factual and Procedural History

Thomas Potter and Svetlana Potter, now Svetlana Eveleigh, were married in 1994. They had a child in 1995. After the child was born they divorced. Thomas and Svetlana shared joint physical custody of their child, with Svetlana having primary physical custody of the child. In 2003, Svetlana received a job offer in California. She filed a petition under NRS 125C.200 to relocate the child. Thomas opposed the petition on the basis that Svetlana could not file a relocation petition unless she (1) moved for primary custody pursuant to the amended version of NRS 125C.200 and (2) could show it was in the best interests of the child to move with the moving parent. The district court decided in favor of Svetlana, but failed to apply the amended version of NRS 125C.200.

Discussion

Originally, NRS 125A.350 specifically applied to parents who shared joint physical custody. The legislature, however, in 1999 amended NRS 125C.200 excluding the term joint custody. As a result, NRS 125C.200 does not apply to a parent sharing joint physical custody, like in the case of Svetlana and Thomas. Instead, Nevada requires a parent with joint custody who desires to move outside of Nevada to file a motion for change of custody under NRS 125.510(2). The purpose of the motion is to ask the court whether the best interests of the child would be to move with the moving parent or stay with the nonmoving parent.

Conclusion

Nevada requires a parent with joint custody that desires to move outside of Nevada to file a motion for change of custody under NRS 125.510(2) so that a court can determine whether the best interests of the child would be to move with the moving parent or stay with the nonmoving parent

¹ By Chris Orme