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Summary of Druckman v. Ruscitti, 130 Nev. Adv. Op. 50

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FAMILY LAW: CHILD CUSTODY AND RELOCATION

Summary

The Court determined two issues: (1) the child custody rights of unmarried parents when the father's paternity has been established pursuant to statute; and (2) whether the district court abused its discretion when it awarded primary physical custody of the child to the mother and granted the mother's relocation request.

Disposition

When determining the best interest of a child in relocation proceedings, the district court must incorporate the five *Schwartz* factors into its analysis. Moreover, in the interest of fairness, the district court should not consider any factors from the child's time in the new state in the best interest determination.

Factual and Procedural History

Audria Ruscitti ("Ruscitti") and Ian Druckman ("Druckman") had a child together but were not married. After Druckman established paternity under NRS 126.053, Druckman and Ruscitti attempted to live together and parent the child but they did not have a judicial child custody order.

Druckman and Ruscitti separated and Ruscitti relocated with the child to California to pursue better job opportunities without Druckman's knowledge or consent. After learning of the move, Druckman filed a motion in Nevada district court for the child's immediate return and for an award of joint legal and primary physical custody.

Although the district court awarded joint legal custody, it granted Ruscitti's request for primary physical custody and granted her motion for relocation with the child outside of Nevada. The parties each appealed.

Discussion

Child custody for unmarried parents

The Court first looked at the issue of what custody rights exist when parentage has been established by statute between unmarried parents. Here, Druckman signed a voluntary acknowledgement of paternity, which is deemed to have the same effect as a judgment or order of a court determining that a parent-child relationship exists.²

The Court concluded "that unmarried parents have equal custody rights regarding their children, absent a judicial custody order to the contrary." The Court supported its conclusion by noting the state constitutional protections parents enjoy regarding the care,

¹ By Allison Vitangeli.

² NEV. REV. STAT. § 126.053(1) (2013).

custody, and control of their children³ as well as a parent's legal rights in making major decisions regarding his or her children.⁴ Accordingly, Ruscitti and Druckman appeared before the district court holding equal custody rights over the child.

Custody and relocation

Next, the Court determined the applicable standard for deciding the parties' motions for custody and Ruscitti's motion to relocate with the child to California.

*NRS 125C.200's applicability*⁵

The Court agreed with the district court's determination that NRS 125C.200 was inapplicable to this case. This statute is only applicable a parent has been granted primary physical custody and wants to relocate with the child out of Nevada.⁶ Because neither party here had been awarded primary physical custody of the child in this case, NRS 125C.200 did not apply.

Next, the Court utilized the policy behind the statute as a guide to determine the issues presented in this case. The Court noted that NRS 125C.200 was designed to preserve a parent's rights and familial relationship with his or her children.⁷ Moreover, the Court held "that when parents have equal custody rights over their child, one parent may not relocate his or her child out of state over the other parent's objection without a judicial order authorizing the move."⁸

In making the decision on the current motion to relocate, the Court found that a district court must base its decision on the best interest of the child.⁹ However, the requesting parent must show that there is a "sensible, good faith reason for the move" before the court considers the motion.¹⁰ Failure to do so would result in the denial of the request.

Next, the Court took the opportunity to clarify its holding in *Potter*.¹¹ The Court concluded "that the district court must incorporate the five *Schwartz* factors into its best-interest analysis."¹² Moreover, "[t]he circumstances and well-being of the parents are

³ *Rico v. Rodriguez*, 121 Nev. 695, 705, 120 P.3d 812, 818 (2005).

⁴ *See Rivero v. Rivero*, 125 Nev. 410, 421, 216 P.3d 213, 221 (2009); NEV. REV. STAT. 126.036(1) (2013).

⁵ NRS § 125C.200 governs the relocation of a child out of state by a custodial parent.

⁶ *Potter v. Potter*, 121 Nev. 613, 617–18, 119 P.3d 1246, 1249 (2005).

⁷ *See Schwartz v. Schwartz*, 107 Nev. 378, 381–82, 812 P.2d 1268, 1270 (1991).

⁸ The Court noted such a move could weaken the parent-child relationship, make visiting a child potentially quite expensive, and give a "stability interest" in favor of leaving the child in the new state. Characterizing these advantages to the relocating parent as "unfair," the Court held that a parent may not relocate without consent or judicial approval.

⁹ *See Potter*, supra note 6, 121 Nev. at 618, 119 P.2d at 1250; *see also* Nev. Rev. Stat. 125.480(4).

¹⁰ *Cook v. Cook*, 111 Nev. 822, 827, 898 P.2d 702, 705 (1995) (quoting *Jones v. Jones*, 110 Nev. 1253, 1266, 885 P.2d 563, 572 (1994)).

¹¹ In *Potter*, the Court indicated that the district court may consider, among other factors, whether one parent has de facto primary custody. 121 Nev. at 618, 119 P.2d at 1250.

¹² *See Schwartz*, supra note 7, 107 Nev. at 382–83, 812 P.2d at 1271 (factors include: (1) the extent to which the move is likely to improve the quality of life for both the child and the relocating parent, (2) whether the custodial rights of the relocating parent's motives are honorable and in good faith, (3) whether the relocating parent will comply with substitute visitation orders if relocation is approved, (4) whether the non-relocating parent's motives in resisting relocation are honorable, (5) whether there is a realistic

inextricably intertwined with the best interest of the child.”¹³ However, if the parent had already relocated the child over the objection of the other parent, and without proper judicial authorization, the district court should not consider any factors from the child’s time in the new state in the best-interest determination.

The Court found that the district court did not abuse its discretion in awarding Ruscitti primary physical custody and approving her relocation with the child to California because good cause existed for the move. Moreover, the Court held that the district court properly considered all relevant factors, including the *Schwartz* factors, when it determined that living with Ruscitti’s was in the child’s best interest. Finally, the Court noted that the district court did not incorporate any factors resulting from the child’s time in California into its decision.¹⁴

Conclusion

The Court affirmed the district court’s order awarding Ruscitti primary physical custody and allowing the child to remain with her in California.¹⁵

opportunity for the non-relocating parent to maintain an visitation schedule adequate to preserve the parent-child relationship).

¹³ See *McGuinness v. McGuinness*, 114 Nev. 1431, 1433, 970 P.2d 1074, 1076 (1998).

¹⁴ The Court also found that reasonable ground existed for Druckman’s motion to stay the order pending appeal because he sought stability for his child. Therefore, the district court’s order for sanctions was reversed and remanded for reconsideration

¹⁵ Justices Saitta and Cherry dissented arguing that Ruscitti’s removal of the child from the state without Druckman’s approval was wrongful and that the majority did not give adequate weight to her unlawful move in favor Druckman, an otherwise active and involved parent. The dissent expressed concern that this decision will set an unwanted precedent for other unmarried parents to relocate a child without the other parent’s knowledge or consent in an effort to create an unfair advantage in a custody determination.