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Pelkola v. Pelkola, 137 Nev. Adv. Op. 24 (May 27, 2021).

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CHILD CUSTODY: RELOCATION FROM A STATE OUTSIDE NEVADA TO ANOTHER STATE OUTSIDE NEVADA

Summary

A custodial parent sought to relocate from Arizona to Ohio with the children. The district court ruled that the custodial parent did not need to petition the court for permission to relocate with the children since the parent already obtained the court's permission to relocate from Nevada to Arizona years prior. The Court interpreted NRS 125C.006(1) to require the custodial parent to petition to the court for permission to relocate with the children even when the parent is already living outside Nevada with the children and moving to another state outside Nevada. In addition, the Court held that the district court is required to issue findings for all of the factors listed in NRS 125C.007(1) and NRS 125C.007(2) before granting a parent's petition to relocate with the children. Because the district court failed to issue findings for each of the factors listed in these statutes, the Court ruled that the district court abused its discretion in granting the custodial parent's petition to relocate with the children and reversed and remanded the case.

Background

Two divorced parents share legal custody of their three children. The wife retains primary custody over all three children. After the parents divorced, the wife wanted to move to Arizona from Nevada with the children, which required her to petition the district court to do so. The court granted the wife's petition to move the children to Arizona, and she later moved with the children. While living in Arizona, the wife petitioned the court to move the children to Ohio. The court ruled that the wife did not need to obtain permission from the court again since the court already granted permission for the wife to move with the children outside of the state, but nevertheless granted the wife's petition. The wife then moved her and the children from Arizona to Ohio. The husband claimed that the district court should have required the wife to petition the court permission to subsequently relocate anywhere outside Nevada, not just when the wife initially relocated outside Nevada. Therefore, the husband claimed that the wife was required to petition the court permission to relocate with the children from Arizona to Ohio. The husband claimed that the district court abused its discretion in failing to require the wife to petition the court permission to relocate from Arizona to Ohio with the children.

Discussion

NRS 125C.006(1) applies

NRS 125C.006(1) provides that if the custodial parent intends to relocate with the child to an area within Nevada or anywhere outside Nevada where maintaining the non-custodial parent's meaningful relationship with the child would become "substantially impaired," the custodial parent must: (1) receive written consent from the non-custodial parent to relocate with the child,

¹ By Holly Parr.

or (2) petition the court permission to relocate with the child if the non-custodial parent does not give written consent.²

The Court concluded that NRS 125C.006(1) does apply to the wife's move from Arizona to Ohio. Using statutory interpretation, the Court ruled that the plain meaning of the statute included any relocation outside Nevada, even those where the custodial parent is already living outside Nevada. Therefore, the wife was required to petition the district court for permission to relocate with the children from Arizona to Ohio.

The district court abused its discretion by issuing inadequate findings under NRS 125C.007

NRS 125C.007(1) provides that the district court must deliver findings if the district court is required to rule on a custodial parent's petition to relocate with the child.³ Because the Court ruled that NRS 125C.006(1) did apply to the wife's relocation in this case, the Court also stated that the district court should have issued its findings when deciding to grant the wife's petition.

The Court held that the district court abused its discretion by delivering inadequate findings when it granted the wife's petition to relocate with the children. A custodial parent wishing to relocate outside the state with the child is required to show: (1) there is a "sensible, good-faith reason" to relocate and that relocation is not intended to deprive the non-custodial parent time spent with the child, (2) it is in the child's best interest to relocate with the custodial parent, and (3) there is an "actual advantage" for the custodial parent and child to relocate.⁴ The district court must deliver findings for each of these requirements.⁵ The Court ruled that because the district court was silent as to any of these requirements when granting the wife's petition, the district court abused its discretion.

NRS 125C.007(2) provides that once the custodial parents proves all three requirements in NRS 125C.007(1), the district court must evaluate the impact of relocation and compelling interests on the custodial parent, non-custodial parent, and child(ren) using the following factors: (a) whether relocation will "improve the quality of life" for the custodial parent and child, (b) whether the relocation is intended to deprive the non-custodial parent visitation with the child, (c) whether the custodial parent will willingly comply with a modified visitation schedule or rights issued by a court, (d) whether the non-relocating parent's objection to the petition is intended to obtain a "financial advantage" through "ongoing support obligations," (e) whether the non-custodial parent will be able to maintain a meaningful relationship and visitation with the child, and (f) any other factor the court deems appropriate.⁶ The district court must deliver findings for each of these factors.⁷ The Court determined that the district court issued a finding for only one factor, which was whether the non-custodial parent can maintain a meaningful relationship and visitation with the children after relocation. However, because the district court did not issue a

² NEV. REV. STAT. § 125C.006(1) (2015).

³ NEV. REV. STAT. § 125C.007(1) (2015).

⁴ *Id.*

⁵ *Id.*

⁶ NEV. REV. STAT. § 125C.007(2) (2015).

⁷ *Id.*

finding for all of the factors, the Court held that the district court abused its discretion when granting the wife's petition to relocate with the children.

Conclusion

Under NRS 125C.006(1), a custodial parent is required to petition the court for permission to relocate with the child when the custodial parent is moving from Nevada to another state, and when the custodial parent is already living outside Nevada and moving to a different state. Therefore, the wife was required to petition the court for permission to relocate from Arizona to Ohio with the children. NRS 125C.006(1) applied to the wife's relocation. In addition, when NRS 125C.006(1) applies, the court is required to issue findings for each factor listed in NRS 125C.007(1) and NRS 125C.007(2). Since the district court failed to issue findings for each of the factors listed in the statutes, the district court abused its discretion. The Court reversed the case and remanded to the district court for the district court to weigh the factors in NRS 125C.007(1) and NRS 125C.007(2) and issue its findings.