

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

2-24-2022

### Monahan v. Hogan, 138 Nev. Adv. Op. 7 (Feb. 24, 2022)

Alyssa Williams

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>

---

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

FAMILY LAW: INTERPRETTING THE CHILD’S “BEST INTERESTS” OF RELOCATION  
BY CONSIDERING THE CUSTODY “BEST INTEREST” FACTORS

**Summary**

The Nevada Court of Appeals interpreted the best interests provision of Nevada’s child relocation statute, NRS 125C.007(1). The Court questioned the relevant application of the custody best interest factors, as well as the applicable evidentiary standard. Because neither legislative history nor Nevada Supreme Court jurisprudence provided answers, the Court construed legislative intent based upon reasonability. The Court concluded that (1) the threshold relocation statute requires district courts to make specific findings regarding whether relocation is in the best interests of the child, to include the custody best interest factors, and tie those findings to its ruling; and (2) the appropriate burden of proof is preponderance of the evidence.<sup>2</sup>

**Background**

In 2012, M.M. was born to Amanda Kaitlyn Hogan and Anthony Jacob Monahan. In 2015, M.M.’s parents stipulated to, and the district court ordered, joint legal and physical custody. But when her stepfather, a Navy lieutenant, was assigned to Naval Air Station Fallon, M.M. relocated an hour away from Monahan. Hogan then moved the district court to modify custody to reflect her de facto primary custody status.<sup>3</sup> In March 2019, the district court granted Hogan primary physical custody. The order found that the custody best interest factors favored M.M.’s move, further noting that her stepfather’s work may require future relocations. Seven months later, the district court held a hearing to determine exact parenting time. The court’s November order did so, while “incorporat[ing] by reference in its entirety” its March 2019 primary custody order.

In June 2020, Hogan moved to relocate with M.M. again. This time, to Virginia Beach where her husband had been reassigned. Monahan opposed the motion. Three months later, the district court held an evidentiary hearing. Monahan, applying the custody best interest factors, argued that it was not in M.M.’s best interests to relocate under NRS 125C.007(1)(b). Hogan objected to the custody factors’ relevance, contending they were inapplicable because the hearing concerned relocation. The district court allowed the argument because threshold statute’s second provision includes the term “best interests.” But after hearing the evidence, the district court ruled that the custody best interest factors did not change the relocation analysis.

In October 2020, the district court granted Hogan’s motion to relocate. The order analyzed each NRS 125C.007(1) provision and each NRS 125C.007(2) relocation factor and made relevant findings. The district court incorporated by reference and reevaluated its best interest findings from its November 2019 order to find that relocation did not modify any prior best interest factor findings. As such, it was in M.M.’s best interest to relocate to Virginia. Monahan appealed.

On appeal, Monahan claimed that the district court abused its discretion by incorporating its previous orders’ custody best interest findings to satisfy NRS 125C.007(1)(b) in its October

---

<sup>1</sup> By Alyssa Williams.

<sup>2</sup> To reflect exact statutory language, the Court used “best interests” when referring the relocation statute and “best interest” when referring to the custody factors. *Compare* NEV. REV. STAT. 125C.007(1)(b), *with id.* § 125C.0035(4).

<sup>3</sup> That relocation was not disputed in this case.

2020 order. That is, Monahan argued that the statute’s inclusion of “best interests” required the district court to analyze the custody factors anew when considering relocation. Hogan countered that because she was already the primary physical custodian and she moved for relocation under a statute that did not require a custody determination, the custody factors were unneeded to determine the child’s best interests.<sup>4</sup> Hogan also emphasized that the district court *did* consider the custody factors and its relocation decision remained unaffected. Because both interpretations of how to determine the “best interests of the child” under NRS 125C.007(1)(b) were reasonable, the Nevada Court of Appeals had to decide how this phrase, in this context, must be applied.

## Discussion

### *Background of Nevada’s child relocation statutes*

Relocation of children following the dissolution of the parents’ relationship is one of the most difficult issues that courts resolve. Courts must balance the custodial parent’s interest in freedom of movement, the nonrelocating parent’s rights and relationship with the child, and the state’s interest in protecting the child’s best interests.<sup>5</sup> Efforts to balance these considerations have manifested in various statutes.

NRS 125C.200 replaced Nevada’s original relocation statute, NRS 125A.350.<sup>6</sup> The former narrowed the latter’s applicability to custodial parents who sought relocation.<sup>7</sup> Later, the legislature added three more relocation statutes. NRS 125C.006 and NRS 125C.0065 expanded the scope of relocation to include both custodial parents and joint custodians. And NRS 125C.007 essentially codified factors district courts were already required to consider when deciding on relocation.<sup>8</sup>

NRS 125C.007 was disputed here; namely, the second provision of the threshold test. The plain language of NRS 125C.007(1)(b) requires that the district court must find relocation itself is in the child’s best interests.<sup>9</sup> But the statute does not define “best interests of the child” or specify the sufficient burden of proof. And it does not clarify, as debated here, whether the district court must apply and make specific findings as to each custody best interest factor in NRS 125C.0035(4) when making an NRS 125C.007(1)(b) decision.

### *NRS 125C.007(1)(b)’s “best interests of the child”*

The “best interests of the child” standard underlies most judicial decision making in relevant family law matters. But the standard can have different meanings in different contexts. Here, the parties disputed the term’s meaning within NRS 125C.007(1)(b). On the one hand, as Monahan argued, “best interests” may require district courts to consider the custody best interest factors due to the statutes’ similar language and close proximity. On the other hand, as Hogan contends, the distinct language could indicate the legislature’s intent to allow district courts to decide relocation without requiring any particular factors. Because both parties had introduced

---

<sup>4</sup> See NEV. REV. STAT. § 125C.006.

<sup>5</sup> *Schwartz v. Schwartz*, 107 Nev. 378, 382, 812 P.2d 1268, 1270 (1991).

<sup>6</sup> *Trent v. Trent*, 111 Nev. 309, 315, 890 P.2d 1309, 1313 (1995) (“NRS 125A.350 is primarily a notice statute intended to prevent one parent from in effect ‘stealing’ the children away from the other parent by moving them away to another state and attempting to sever contact.”).

<sup>7</sup> See 1999 NEV. STAT., ch. 118, § 2, at 737–38.

<sup>8</sup> *Schwartz*, 107 Nev. at 383, 812 P.2d at 1271.

<sup>9</sup> NEV. REV. STAT. 125C.007(1)(b).

reasonable interpretations, the Court concluded the term lacked clear meaning. And because the statute was unclear, the Court interpreted what the legislature intended it to mean.

The Court referenced legislative history and Nevada Supreme Court jurisprudence to discern the term's meaning. Legislative history did not contain a connotation for relocation specifically; however, it implied that the statute was a codification of then-existing state case law.<sup>10</sup> And while the case law gave context to other NRS 125C.007(1)(b) language,<sup>11</sup> it did not clarify "best interests of the child." Because neither legislative history nor Nevada Supreme Court authority explained the "best interests of the child" in NRS 125C.007(1)(b), the Nevada Court of Appeals interpreted legislative intent in light of what was reasonable.

"Reasonably, every custody best interest factor need not be applied anew when the relocating parent is already a primary physical custodian." NRS 125C.0065 requires that joint custodians who seek relocation must also petition the court for primary custody to relocate. NRS 125C.006, the notice statute for primary custodians, does not. Mandating a custody best interest analysis for NRS 125C.007(1)(b) decisions would obscure the distinction between the two notice statutes, essentially forcing the primary custodian to prove why they should retain primary custody. The requirement would also result in a fourteen part threshold test before proceeding to an only six factor relocation analysis. The Court concluded that was unreasonable. But the Court noted that district courts *should* consider the custody best interest factors because it *shall* consider any factors it deems relevant concerning relocation.<sup>12</sup>

In any case, the district court is required to make specific findings and tie them to its conclusion regarding the child's best interests. In this case, the district court made findings of M.M.'s actual advantages of moving to Virginia under the third provision of the threshold relocation test. The Nevada Court of Appeals found that failure to restate those findings, which overlap with the child's best interests, under the second provision were not fatal to the best interests determination. As such, the district court did not abuse its discretion.

#### *NRS 125.007(1)'s burden of proof necessary*

The burden of proof necessary to satisfy the "best interests of the child" for relocation was not disputed by the parties. However, the Court chose to address the applicable evidentiary standard, because it is integrally related to interpreting the statute. The Court considered that because NRS 125C.007(1)(b) is a threshold provision, it may not require as rigorous an analysis as the six relocation factors. But preponderance of the evidence is the default evidentiary standard in family law unless the statute states otherwise.<sup>13</sup> Neither the statute itself nor legislative history discusses evidentiary burdens for any of the NRS 125C.007 provisions.<sup>14</sup> As such, the Court held that the relocating parent must prove all threshold provisions of NRS 125C.007(1) by a preponderance of the evidence.

---

<sup>10</sup> Compare, e.g., NEV. REV. STAT. 125C.007(1)(a), with *Jones v. Jones*, 110 Nev. 1253, 1261, 885 P.2d 563, 569 (1994) (good faith reason to relocate).

<sup>11</sup> E.g., *Jones*, 110 Nev. at 1260, 1262, 885 P.2d at 568, 570 (identifying collective circumstances that constitute an actual advantage for the threshold provision).

<sup>12</sup> See NEV. REV. STAT. 125C.0035(4) ("In determining the best interests of the child, the court shall consider and set forth its specific findings concerning, *among other things*: [list of factors]." (emphasis added)); see also *Pelkola v. Pelkola*, 137 Nev. Ad. Op. 24, 487 P.3d 807, 810 (2021) (concluding that the district court must make specific findings as to each of the NRS 125C.007(1) subfactors).

<sup>13</sup> See *Mack v. Ashlock*, 112 Nev. 1062, 1066, 921 P.2d 1258, 1261 (1996).

<sup>14</sup> Compare NRS 125C.0035(5), with NRS 125C.007(1), and NRS 125C.007(1)(3).

## **Conclusion**

The Nevada Court of Appeals clarified the indeterminate meaning of the “best interests of the child” within NRS 125C.007(1). To balance the custodial parent’s interest in pursuing life outside of the state and the noncustodial parent’s interest in maintaining a close relationship with the child, the Court ruled that district courts may use the custody best interest factors to make a relocation decision. That is, the Court affirmed the district courts’ discretion in how to determine the best interests of the child under NRS 125C.007(1)(b). Still, district courts must make specific “best interests” findings and tie those to its conclusion regarding relocation. The Court further specified that the findings for all three threshold provisions of Nevada’s child relocation statute must be made by a preponderance of the evidence.