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IN THE SUPREME COURT OF NEVADA

YOAV EGOSI, Appellant, vs. PATRICIA EGOSI, Respondent.	Case. No.: 76144 Dist. Ct. Case. No.: D-16-540174-D **APPELLANT'S SECOND AMENDED OPENING BRIEF**

APPEAL

From the Eighth Judicial District Court, Clark County, Nevada

The Honorable Bryce Duckworth, District Court Judge, Family Division

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Statement of the Issues Presented for Review

1. Should the district court have validated the parties' prenuptial agreement?
2. Should this Court adopt California's rules regarding petitions to relocate with minor children when one parent has sole legal and sole physical custody?
3. Did the district court commit legal error or abuse its discretion when considering the facts adduced at the evidentiary hearing and NRS 125C.006, 125C.0065, & 125C.007?

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NRAP 26.1 Disclosure

The undersigned counsel of record certifies that the following are persons and entities, as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal: 1) Parent Corporation: None; 2) Publicly held company that owns 10% or more of the party's stock: None; 3) Law firms who have appeared or are expected to appear for YOAV EGOSI: Alex B. Ghibaudo, PC

Attorney's Certificate of Compliance Pursuant to NRAP 32(a)(9)

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman.
2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 10,637 words.
3. Finally, I certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed

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for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

4. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 21st day of February, 2019.

/s/ Alex Ghibaudo

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Routing Statement

This case should be retained by the Supreme Court in accordance with NRAP 17(a)(10) and NRAP 17(a)(11) because it involves a principal issue of first impression – i.e., whether to adopt California's rules governing petition's to relocate with minor children by parents having sole legal and sole physical custody of a minor child(ren) and a matter raising as a principal issue a question of statewide importance (i.e., what rule to apply when a parent with sole legal and sole physical custody petitions to relocate with a minor child).

DATED this 21st day of February, 2019.

/s/ Alex Ghibaudo

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Jurisdictional Statement

This is an appeal from the district court's order granting Respondent's motion to invalidate the prenuptial agreement and the district court's order denying Appellant's motion to relocate with the minor child. On September 4th, 2018 notice of entry occurred as to the district court's order partially invalidating the prenuptial agreement. On September 7th, 2018 notice of entry of order occurred as to the district court's denial of Appellant's motion to relocate. Appellant timely filed his notice of appeal from both orders. Both orders are final judgments.

DATED this 21st day of February, 2019.

/s/ Alex Ghibaudo

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Statement of the Case

The genesis of this litigation is a divorce action filed by Respondent Patricia Egosi ("Patricia"). At issue is a prenuptial agreement the parties executed in Georgia[1] and Appellant Yoav Egosi's ("Joe") petition to relocate with the minor child to Israel, where Joe was born.[2]

The parties married on the 28th of September, 2008 in Georgia. They have one minor child, Benjamin Egosi ("Ben"), born January 14th, 2014. The matter of custody was decided on September 8th, 2017 where Joe was awarded sole legal and sole physical custody of Ben. At the time of the Evidentiary Hearing on custody, Patricia was incarcerated at the Clark County Detention Center for repeatedly violating a temporary protection order against domestic violence. Patricia also previously failed to complete the OPTIONS program (Patricia has been diagnosed with a severe drug addiction – Methamphetamines).

On June 6th, 2018 Joe filed a motion to relocate with Ben to Israel. On August 31st, 2018 an evidentiary hearing was conducted on Joe's petition. On September 7th, 2018 the district court denied Joe's petition despite the fact that Joe continues to enjoy sole legal and sole physical custody, due in

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[1] See Appellant Appendix ("AA") Vol. 1 at pages 001-014.
[2] See AA Vols. 6-10 – pages 419-730.

large part to Patricia's continued failure to complete the OPTIONS program.[3]

On June 13th and 14th, 2017 an evidentiary hearing was conducted on Patricia's motion to invalidate the prenuptial agreement the parties previously executed. At the conclusion of that hearing the district court found that there was no fraud, duress, mistake, changed circumstances, and the agreement was not unconscionable.[4] The district court, therefore, validated the prenuptial agreement.

Under Georgia law, which the parties chose as the State whose laws govern the enforcement of the prenuptial agreement,[5] the district court, "sitting in equity", may invalidate the agreement in whole, accept it in whole, or accept it in part. Invoking that rule, the district court here only validated the agreement in part, refusing to consider an after acquired business as falling within the purview of the prenuptial agreement, which would otherwise be protected according to the terms of the prenuptial agreement.

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[3] See AA Vol. 6 at pages 417-418.
[4] See AA Vol. 6 at page 412 – line 26 (through page 414 – line 14).
[5] See AA Vol. 1 at page 005 – paragraph 25.

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Joe now challenges both decisions. Joe contends that the district abused its discretion in denying his petition to relocate to Israel with Ben and the district court erred in its decision concerning the prenuptial agreement by failing to establish any equitable grounds for relief and fundamentally misapprehending equity jurisdiction.

Statement of Facts

I. FACTS CONCERNING THE PRENUPTIAL AGREEMENT.

On June 13th and 14th of 2017, the district court held an evidentiary hearing concerning the prenuptial agreement the parties executed in Georgia. At the conclusion of that hearing, the district court made its findings of fact and rendered its conclusions of law, ruling that the prenuptial agreement was enforceable, but only electing to enforce it in part. In coming to that conclusion, the court found no fraud, duress, or mistake of fact, stating:

> *So as I look at the [Shere] prongs, the -- the factors that I'm required to consider, I -- I have to determine first whether the antenuptial agreement -- well, and -- and the -- the burden of proof is that the Plaintiff -- or the Defendant needs to prove that the antenuptial agreement was not the result of fraud, duress, mistake, misrepresentation, or non-disclosure or material facts.*

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> ***I don't find based on the testimony and my evaluation regarding the credibility of the witnesses that there was any fraud or duress, mistake, or misrepresentation***. *(Emphasis Added).*[6]

On the last point made, Patricia testified that (a) she did not "speak, read, write English", (b) that the first time she saw the prenuptial agreement was on the day she signed it, (c) that she had no idea what a prenuptial agreement was at the time she was presented it, and (d) that she had no time to review it with counsel was simply not true.[7] Indeed, Plaintiff speaks and understands English just fine, she saw the prenuptial agreement some 6 months prior to signing it, she in fact knew exactly what the prenuptial agreement was, and she did have an opportunity to discuss the terms of the prenuptial agreement with a licensed attorney, all contrary to her testimony under oath.

The district court took note of Patricia's lack of credibility in rendering its decision, making the following findings:

> *[The Court's] findings and conclusions are based on…[its] determinations regarding issues of demeanor and credibility.*[8]

[6] See AA Vol. 6 at page 383 – line 18.
[7] See AA Vol. 1 at page 036 – line 16.
[8] See AA Vol. 6 at page 394 – line 23.

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With respect to specific findings regarding credibility, the district court found as follows:

> *[The prenuptial agreement] was reprinted with changes that did not materially impact the underlying issues regarding the enforceability of the prenuptial agreement, that the Plaintiff had that in her possession, had the opportunity certainly to read it, to have it translated to the -- to the extent she felt it was warranted, had the opportunity to review it with an attorney, an attorney who advised against her signing the prenuptial agreement and who explained at least in general terms the meanings of the prenuptial agreement. I find that to be credible.*[9]

The district court further found:

> *Now I also find credible based on the testimony that's been offered that the Defendant was unaware that this advice was being sought. and so it's consistent with the fact that she viewed this somewhat objectively and said I would recommend against signing it.*[10]

[9] See AA Vol. 6 at page 384 – line 15.

[10] See AA Vol. 6 at page 385 – line 15.

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Thus, Patricia approached the signing of the prenuptial agreement independent of any influence on Joe's part, objectively, and under no duress or time pressure.

As to Patricia's intentions, the district court found that at the time, they were honorable and made out of love and affection for Joe, obviating the need to discover the true value of any of Joe's assets. In that respect, the district court made the following findings:

> *The testimony suggests to me that dollar value or not, the Plaintiff made it clear that that was irrelevant to her -- her intentions to both sign the premarital agreement and -- and get married. She was in love, wanted to prove her love to the Defendant, and that was inconsequential to her whatever value the Defendant had put on those assets, that was her testimony that she -- it was not material to her decision to sign or not sign.*[11]

Though the district court found that Patricia did not care to know the true value of any assets belonging to Joe, it also found she had enough information to come to a reasonable conclusion concerning Joe's assets due to her close involvement with Joe and his business(es):

[11] See AA Vol. 6 at page 387 – line 9.

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[T]he Plaintiff had been in the business enough, was familiar with what was being derived from the business because she was living the lifestyle that the business was able to generate and that she had access and the ability to obtain that information. It ultimately was disclosed on the date the prenuptial agreement was signed and it was listed as a specific asset. I don't find that the failure to include Plaintiff's assets, which I know that there's been some debate and discussion even during these proceedings that it wasn't listed in financial disclosure forms that have been filed with this court, that's not a fatal flaw or -- or a defective point that would create a basis for this Court to invalidate the prenuptial agreement and the -- the Defendant has acknowledged that that would be her sole and separate property and he's not trying to argue that -- that it wouldn't be because there was no disclosure form.[12]

Upon the aforementioned findings, among others, the district court rendered the following conclusions of law (though framed as findings):

*So I do find based on the [Sherer] factors that there was -- that -- **that the Defendant has satisfied his burden to demonstration***

[12] See AA Vol. 6 at page 388 – line 24.

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that the antenuptial agreement was not the result of fraud, duress, mistake, misrepresentation, or non-disclosure of material facts…Similarly, I -- I find that he's demonstrated that the agreement is not unconscionable. (Emphasis added).[13]

Despite this, however, the district court went on to conclude that:

What I do find and given the discretion that I do have ***is there should be a limiting aspect to the enforceability of the terms of the prenuptial agreement.*** *First, the only assets I view as being protected by the prenuptial agreement* ***are the four assets listed in the -- in the exhibit attached to the prenuptial agreement.*** *There has been debate and discussion about bank accounts not being disclosed on both sides. I -- I don't view -- and -- and so I don't view this prenuptial agreement and I would not apply it given that discretion that I have to approve in whole or part.* ***I don't view the agreement as protecting bank accounts or bank account information.*** *A -- and as far as the Court's division of assets and debts or view of what should be divided by the Court and the final -- final division of assets. It's limit – limited to the specific assets that -- that have been referenced and no other*

[13] See AA Vol. 6 at page 389 – line 17.

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assets are included as part of my -- the protection that's offered by the prenuptial agreement. (Emphasis added).[14]

The operative effect of this ruling was that any after acquired asset is presumed to be community property, essentially gutting the prenuptial agreement and neutering it.

The order from that hearing was not filed until after Joe's motion to reconsider was decided because prior counsel failed to prepare an order from that hearing. The district court directed Joe's counsel to prepare an order from that hearing. Undersigned counsel did so, submitted it to the district court, and more than two (2) months after the draft order was submitted, on September 4th, 2018 the district court authored its own "Findings of Fact, Conclusions of Law and Orders."[15]

In that decision, the district court put the burden of proof and persuasion to validate the contract on Joe, despite the fact that Patricia brought the motion. Additionally, ***despite having made no such findings after the June 13th and 14th, 2017 evidentiary hearing***, the district court found that:

[14] See AA Vol. 6 at page 392 – line 23.
[15] See AA Vol. 6 at page 406

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> *[a]dditional equitable factors include Defendant's superior financial position at the time of the marriage as well as the fact that, although Plaintiff sufficiently understood the agreement, Defendant had a superior grasp of the terms and language of the prenuptial agreement.*[16]

Based upon these "equitable factors" the district court limited the agreement to the preservation as separate property those assets that were specifically disclosed at the time the prenuptial agreement was executed.[17]

As the discussion below demonstrates, this is clear legal error which this Court should reverse – in part because the district court failed to state any equitable grounds upon which to base its exercise of discretion, aside from concluding that it can exercise discretion, which is not legally sufficient, and then, after being informed of its error, authoring an order which listed two (2) "equitable factors" justifying its decision, which the district court never uttered in its decision from the bench.

II. FACTS CONCERNING JOE'S PETITION TO RELOCATE WITH THE MINOR CHILD TO ISRAEL.

[16] See AA Vol. 6 at page 409 – starting at line 7.
[17] See AA Vol. 6 at page 415 – line 19.

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On November 1, 2016, a hearing was held on Patricia's motion for primary physical and joint legal custody of the minor child. At that hearing, the district court issued an order for an outsourced evaluation. Also, at that hearing, Patricia was ordered to have her visitation supervised and restricted in time after allegations of rampant drug use and mental health issues were identified and hardly disputed by the Patricia. In addition, Patricia was ordered to submit to a drug test which she subsequently failed to complete (on May 29, 2018 Patricia was ordered to restart the PATCH program through OPTIONS and to submit to a random drug test at ATI – the results are pending).

On February 1, 2017 Patricia submitted to a custody evaluation by Dr. John Paglini, Psy.D. The results of that evaluation are shocking. In her evaluation, Patricia reported to Dr. Paglini that "[she] did every drug you can imagine…I did coke, some crack, GHB, shrooms, mollies, and meth." She also reported that she began to snort/smoke (but not shoot up) methamphetamines in October 2012 and continued through August 2016, though she reports that she took a break when she was pregnant.

Patricia's last drug test results, reported by the OPTIONS program, indicate she tested positive for methamphetamines and alcohol as late as May of 2017. In addition, in its risk assessment OPTIONS determined that

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the Plaintiff has a 78% chance of relapse related to drugs (identified as a "problem risk"). The Plaintiff reported daily methamphetamine use that kept her up for days in a row, caused multiple and violent instances of domestic violence that she perpetrated against Joe (as well as Joe's father, Yariv, the child's nanny Mayra Riveiro de Almeida, and the minor child – and in the minor child's presence), and resulted in extreme emotional outbursts, out of control rage, anger, violence, and jealousy, and, generally, behavior that is extreme and clearly out of control.[18] The Plaintiff's rage is so out of control she was once involuntarily committed in 2016 after chasing Joe around the house, threatening to kill him multiple times, and launching a 30 pound safe against a door over 20 times to get to Joe and Yariv. In that incident, she also struck Yariv and pulled a knife on responding officers.

Based on his extensive evaluation, Dr. Paglini diagnosed the Plaintiff with: 1) severe amphetamine use disorder, 2) severe cocaine use disorder, 3) major depressive disorder, 4) unspecified anxiety disorder, and 5) borderline/histrionic disorder[19] – number 1 and 2 was identified as in

[18] See, generally, Dr. Paglini's May 9, 2017 report.

[19] Borderline personality disorder is a mental illness marked by an ongoing pattern of varying moods, self-image, and behavior. These symptoms often result in impulsive actions and problems in relationships. People with borderline personality disorder may experience intense episodes of anger,

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"partial remission", number 3 "in remission." In addition, Dr. Paglini identified numerous risk factors related to the Plaintiff's ability to parent her child, including: 1) long-term and repetitive use/experimentation with drugs, 2) low involvement with her oldest child Nedson, 3) violent history (self-reported) while high on drugs, particularly methamphetamines, 4) history of mental health issues that contribute to violent outbursts and erratic behavior (bashing her head against the wall, need for sex multiple times per day every day, severe insecurities, eating disorders, masturbating daily, violent outbursts and chronic drug use, self-destructive behavior, and impulsivity).

Based in part upon that evaluation, Patricia currently enjoys supervised visitation three times per week for a four (4) hour block of time –

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depression, and anxiety that can last from a few hours to days. Borderline personality disorder has historically been viewed as difficult to treat. See National Institute of Mental Health –

https://www.nimh.nih.gov/health/topics/borderline-personality-disorder/index.shtml.

Studies have found that children of mothers with borderline personality disorder are considered a high-risk group given the wide array of poor psychosocial outcomes that have been found in these children. See commentary "Methodological Challenges in Identifying Parenting Behaviors as Potential Targets for Intervention: Commentary on Stepp et al. (2011)" in Personal Discord, volume 8 on page 95.

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a recommendation made by her own evaluator, Kathleen Berquist, LCSW. Mrs. Berquist made that recommendation after concluding that "Patricia has, and is likely to continue to have, difficulty with emotional volatility without active and sustained treatment" in addition to expressing concern with the Plaintiff's penchant for becoming "emotionally dysregulated and violent even when Benjamin was in the home."

In addition to that, on January 20, 2017 Patricia was charged with a violation of a temporary protective order, a misdemeanor charge (Case No. 17M00678X – Las Vegas Justice Court). On May 2, 2017 the Plaintiff pleaded no contest to that charge and was sentenced to the following: no contact with Joe and the minor child, stay out of trouble for one (1) year, and a 180 day suspended sentence. On April 17, 2017 the Plaintiff was charged with yet another misdemeanor count for violating a temporary protective order (Case No. 17M08379X – Las Vegas Justice Court). On August 15, 2017 the Plaintiff was adjudicated guilty of violating the no contact order in the previous matter, mentioned above, and sentenced to 6 months in custody at the Clark County Detention Center.

As indicated above, as of her release from custody this year, the Patricia enjoys supervised visitation three times a week, every week, for four

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(4) hours a day.[20] Since Patricia does not have a valid driver's license or transportation, Joe facilitates these visits and has arranged for a supervisor recommended by the Israeli Embassy to watch the child while he is in his mother's care and custody. Other than her very minimal and supervised visits, Joe has taken on the role of primary caregiver for every facet of Ben's life, including emotional and financial support.

Based upon Dr. Paglini's evaluation and Patricia's incarceration for violating multiple temporary protective orders against domestic violence, on September 8th, 2017, an evidentiary hearing was conducted on Patricia's motion. Patricia was not present because she was incarcerated. Joe was awarded sole legal and sole physical custody of Ben.[21] Patricia subsequently moved to modify custody but that motion was denied in part because Patricia failed to restart and complete court ordered drug testing through the OPTIONS program.

On August 31st, 2018, an evidentiary hearing was held on Joe's motion to relocate with the minor child to Israel. On September 7th,

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[20] See AA Vol. 6 at pages 417-418.
[21] See AA Vol. 6 at page 418 – line 5.

2018, the district court entered an order denying Joe's motion. Joe now appeals that decision, alleging that the district court made various legal errors and abused its discretion in reaching its decision, as detailed below.

In reaching its decision, the district court proceeded under a rule designed to consider relocation where a parent enjoys primary physical custody. The district court stated:

> *The controlling custody Order (Sep. 20, 2017) provides Defendant with sole legal and sole physical custody of the parties' child. NRS 125C.006 refers to a primary physical custody arrangement.* ***This Court concludes that the same factors should be weighed in considering Defendant's relocation request based on the impact his proposed relocation would have on Plaintiff's visitation rights…[t]hus, this Court concludes that it is Defendant's burden to satisfy the elements of relocation based on the factors set forth in NRS 125C.007***.[22]

The district court also noted that Joe relied on and argued the same factors and analysis in his Relocation Motion and his Pretrial Memorandum (Aug. 29, 2018).[23] Though that is true, Joe also mentioned at the initial

[22] See AA Vol. 10 at page 736 – line 1.
[23] See AA Vol. 10 at page 736 – line 7.

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hearing on this matter that because he has sole legal and sole physical custody, he arguably need not seek either Patricia's or the district court's approval for the move. In abundance of caution, and to avoid costly litigation AFTER a move, Joe opted to seek relocation pursuant to the rules available in Nevada.

The district court's reliance on a statute referring to a primary physical and joint legal custody arrangement when one parent actually enjoys sole legal and sole physical custody is clear legal error and an abuse of discretion that substantially prejudiced Joe and caused the result now complained off. Joe now requests this Court reverse the decision and remand the matter for further consideration under rules designed to consider a petition to move when one party enjoys sole legal and sole physical custody of the minor child.

III. LEGAL ANALYSIS

a. The district court should have validated the prenuptial agreement in whole.

i. The district court abused its discretion and committed legal error when it made contradictory findings, i.e., that there was no fraud, mistake, duress, changed circumstances, or unconscionability in the formation

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or substance of the prenuptial agreement, while at the same time exercising its "equitable powers" to invalidate the agreement in part – that is, the district court found that the agreement was fairly negotiated and the terms were fair but that it was unfair such that the district court utilized its "equitable powers" to reform the agreement.

Prenuptial agreements are valid in Georgia.[24] When a trial court in a divorce matter is forced to address the validity of such an agreement,

> *the trial judge should employ basically three criteria in determining whether to enforce such an agreement in a particular case: (1) was the agreement obtained through fraud, duress or mistake, or through misrepresentation or nondisclosure of material facts? (2) is the agreement unconscionable? (3)[h]ave the facts and circumstances changed since the agreement was executed, so as to make its enforcement unfair and unreasonable?*

[24] *Scherer v. Scherer*, 249 Ga. 635, 640(2), 292 S.E.2d 662 (1982).

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Scherer v. Scherer, 249 Ga. 635, 641(3) (1982). Whether an agreement is enforceable in light of these criteria is a decision made in the trial court's sound discretion.[25] But in determining whether to enforce a prenuptial agreement, the trial court "essentially ***sits in equity*** and has discretion to 'approve the agreement in whole or in part, or refuse to approve it as a whole.'"[26] (Emphasis added) On the issue of equity, the Georgia Supreme Court previously held that:

> *[a] superior court judge presiding over a divorce case exercises all of the traditional powers of chancellor in equity,[27] except as otherwise provided by law…we have not only adopted the whole system of English jurisprudence, Common Law, and Chancery, suited to our condition and circumstances, but that we have framed the necessary judicial machinery to give to that system a practical and beneficial effect, and that such is the office and duty of a Court of Equity, and such was the object of the*

[25] See *Adams v. Adams*, 278 Ga. 521, 522-523(1), 603 S.E.2d 273 (2004).

[26] *Allen v. Allen*, 260 Ga. 777, 778(2)(b), 400 S.E.2d 15 (1991).

[27] "Chancery is ordained to supply the Law, not to subvert the law." – Lord Bacon.

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> *Legislature of 1799, in conferring Equity powers upon the Superior Courts.*

Jones v. Dougherty, 10 Ga. 273, 281 (1851).

Despite that description, it is not clear what "sitting in equity" means, whether in Georgia or Nevada – it seems that the notion has been swallowed by time and what was once well understood is now reduced to the word "equity" which few lawyers today can articulate. Actually, lawyers have struggled with the concept of equity for centuries, especially in this country. Justice Joseph Story of the United States Supreme Court recognized the problem in his commentaries on equity jurisprudence, saying:

> *[i]t cannot be disguised, that an imperfect notion of what, in England, constitutes Equity Jurisprudence, is not only common among those, who are not bred to the profession; but that it has often led to mistakes and confusion in professional treatises on the subject.*

Commentaries on Equity Jurisprudence: As Administered in England ..., Volume 1. Another commentator described the nebulous and vague nature of equity as follows:

> *Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is*

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> *Chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure we call a foot, a Chancellor's foot; what an uncertain measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: 'tis the same thing in a Chancellor's conscience.*

J. Selden, Table Talk; quoted in Evans, Michael; Jack, R Ian, eds. (1984), Sources of English Legal and Constitutional History, Sydney: Butterworths, pp. 223–224, ISBN 0409493821.

The district court's decision in this matter illustrates the point. After a two-day evidentiary hearing, the district court made specific findings that the prenuptial agreement at issue was not unconscionable, was not obtained through fraud, duress, mistake, misrepresentations of fact, or failure to disclose material facts, and that there was no material change in circumstances rendering the agreement unfair or unreasonable. At the same time, the district court, "sitting in equity," approved the agreement only in part – that is, the district court reformed the parties' agreement by exercising its equitable powers. In other words, the district court reformed an agreement it found unfair and unreasonable, after finding the agreement was fair and reasonable.

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In short, the district court upheld a valid and enforceable agreement by applying the law as the law was enunciated in the Sherer case and subverted the law by exercising its equitable powers. The district court's nonsensical decision is the result of its failure to comprehend equity jurisprudence. Specifically, in this case, the district court failed to understand the equitable remedy of contract reformation. There is no doubt the district court reformed the parties' prenuptial agreement, which is nothing more than a contract between the parties. That is, the parties reached an agreement on how property and assets would be divided upon divorce and the district court decided that the parties' agreement needed to be reformed. This result was reached through a fundamental misunderstanding or misapprehension of the equitable remedy of reformation and cancellation.

Equity will reform a written contract where, through mutual mistake, or the mistake of one of the parties, induced or accompanied by the fraud of the other, it does not, as written, truly express the agreement of the parties. ***This is commonly referred to as the equitable jurisdiction of reformation.*** Equity, which always regards the intention of the parties, rather than the form in which they have expressed it, did not hesitate, from the earliest times, to rectify written contracts and other instruments to make them correspond with the real meaning and intention of the parties. That being

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said, ***the exercise of this jurisdiction must be grounded in mistake or fraud – the purpose being to compel the parties to abide by the terms of an instrument which, through mistake or fraud, does not express their real intention such that enforcing an agreement in whole would carry into operation the mistake or fraud.***

Equity will not reform a written instrument, unless: a) The mistake is one made by both parties to the agreement, so that the intentions of neither are expressed in it; or b) There is a mistake of one party, by which his intentions have failed of correct expression, and there is fraud the other party in taking advantage of that mistake, and obtaining a contract with knowledge that the one dealing with him is in error in regard to what are its terms.[28] To justify a reformation of a written instrument on the ground of mistake, unmixed with fraud, the mistake must be mutual or common to both the parties and the mistake must be in regard to a matter which is material to the contract. The phrase "mutual mistake," as used in equity, means a mistake common to all the parties to a written contract or instrument, and it usually relates to a mistake concerning the contents or the legal effect of the contract or instrument. A written instrument will not be reformed for mistake or fraud

[28] *Bryce v. Insurance Co.*, 55 N.Y. 240, 243, 14 Am.Rep. 249, per Folger, J.

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unless clear, positive, and convincing evidence be produced showing the existence of such mistake or fraud.

On this issue, i.e., when contract reformation is appropriate, Georgia and Nevada law are in accord. Under Georgia law, mutual mistake of fact is required to invoke the equitable remedy of contract reformation. "A mutual mistake in an action for reformation means one in which both parties agree to the terms of the contract, but by mistake of the scrivener the true terms of the agreement are not set forth."[29] In Nevada, in *NOLM, LLC v. County of Clark*, 120 Nev. 736, 100 P.3d 658 (Nev., 2004), this Court held that reformation of a contract requires mutual mistake. Where there is a unilateral mistake, the other party must be aware of it and bring it to the innocent party's attention. In that case, this Court noted that "[m]ost of the western states are in accord with these rules and allow for reformation of an instrument where one party makes a unilateral mistake and the other party knew about it but failed to bring it to the mistaken party's attention."

[29] *Cox v. U.S. Markets, Inc.*, 628 S.E.2d 701, 278 Ga. App. 287 (Ga. App., 2006).

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In reaching its decision, this Court relied on the *Restatement* (Second) of Contracts to base its decision. Section 166 of the *Restatement* provides that:

> *If a party's manifestation of assent is induced by the other party's fraudulent misrepresentation as to the contents or effect of a writing evidencing or embodying in whole or in part an agreement, the court at the request of the recipient may reform the writing to express the terms of the agreement as asserted,*
>
> *(a) if the recipient was justified in relying on the misrepresentation, and*
>
> *(b) except to the extent that rights of third parties such as good faith purchasers for value will be unfairly affected.*

As this Court noted, "[t]he commentary to *Restatement* section 166 clarifies that the rule also applies when one party is mistaken and the other party, aware of the mistake, remains silent, because his silence "is equivalent to an assertion that the writing is as the other understands it to be." Furthermore, section 161 of the *Restatement* provides that a party's silence regarding a fact is tantamount to a declaration that the fact does not exist:

> *(b) where he knows that disclosure of the fact would correct a mistake of the other party as to a basic assumption on which that*

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party is making the contract and if non-disclosure of the fact amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing.

(c) where he knows that disclosure of the fact would correct a mistake of the other party as to the contents or effect of a writing, evidencing or embodying an agreement in whole or in part.

In this case, the district court made specific findings that there was no mistake of fact. Having made such a finding, the district court should not have reformed the parties' agreement on the grounds that the remedy of contract reformation was appropriate because that remedy requires a finding that there was a mistake of fact in the formation of the contract, which the district court found did not occur. In rendering such a decision, the district made a fundamental error of law and abused its discretion.

b. <u>The district court erred and abused its discretion in denying Joe's petition to relocate with Ben to Israel.</u>

i. Rules on review

The appellate court will not disturb the trial court's determination of child custody issues absent a clear abuse of discretion in light of the best

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interest of the child.[30] "A trial judge has wide discretion in all cases involving care, custody, maintenance and control of a minor child, and [the judge's] exercise of discretion will not be disturbed on appeal unless there is a clear case of abuse."[31] A district court properly exercises its discretion where it gives appropriate, careful, correct and express consideration of the factual and legal circumstances before it.[32]

ii. California law addresses petitions to relocate by parents with sole legal and sole physical custody which this Court should adopt.

When determining whether to allow a parent to relocate with a child to another state, the rules differ depending on the custody designation at the time a motion to relocate with the minor child(ren) is filed. See NRS 125C.006 & NRS 125C.0065. These rules contemplate a parent either having primary physical custody of a minor child(ren) (NRS 125C.006) and the parents sharing joint physical custody of minor children (NRS

[30] *Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

[31] *Noble v. Noble*, 86 Nev. 459, 464, 470 P.2d 430, 433 (1970).

[32] *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93-94, 787 P.2d 777, 780 (1990).

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125C.0065). Neither rule addresses or contemplates a situation where a parent has sole physical and sole legal custody of the minor child(ren). Indeed, neither rule contemplates whether it matters what the legal custody designation is at all. Here, the district court conducted the analysis required under NRS 125C.006, which contemplates a parent having primary physical custody of the minor child(ren). After a full day evidentiary hearing, the district court denied Appellant's petition to relocate with the minor child to Israel.

In California, the appellate courts have enunciated rules designed to address a situation where a parent has sole physical custody of the minor child(ren). There, if a parent with sole physical custody seeks to relocate with a child, that parent has the presumptive right to do so and does not have to prove that such a move is necessary.[33] To prevent relocation, the noncustodial parent bears the initial burden to show that changed circumstances require the court to reevaluate the child's custody—in other words, that the proposed relocation would be detrimental to the child.[34] Only

[33] *In re Marriage of LaMusga*, 32 Cal.4th 1072, 1078 (2004); *In re Marriage of Burgess*, 13 Cal.4th 25, 37-38 (1996); § 7501, subd. (a).

[34] *LaMusga*, at p. 1079; Burgess, at pp. 37-38.

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if the noncustodial parent makes that initial showing of detriment must the trial court "perform the delicate and difficult task of determining whether a change in custody is in the best interests of the children."[35] Furthermore, the California Supreme Court has held that there is no reason for imposing a specific additional burden of persuasion on either parent to justify a choice of residence as a condition of custody."[36]

In *LaMusga*, the California Supreme Court reasoned that the rule in sole custody cases promotes a child's "paramount need for continuity and stability in custody arrangements" and minimizes "the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker."[37] Concomitantly, under California law, a court should not rely upon the detriment to the child's relationship with the non-custodial parent that would be caused by the proposed move, because "[t]here is inevitably a significant detriment to the relationship between the child and the noncustodial parent" whenever the custodial parent relocates with the children. California Courts have observed that "if evidence of some

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[35] *Id.*, at 1078.

[36] *Burgess*, 13 Cal.4th at p. 34, 51 Cal.Rptr.2d 444, 913 P.2d 473.

[37] *Id.*

detriment due to geographical separation were to mandate a change of custody, the primary custodial parent would never be able to relocate."[38]

Furthermore, in rejecting the argument that a parent who wishes to change the residence of a child bears the burden of proving the move is "necessary," the *Burgess* Court noted that such a rule would encourage costly litigation and would "require the trial courts to `micromanage' family decision making by second-guessing reasons for everyday decisions about

[38] *In re Marriage of LaMusga*, 88 P.3d 81, 12 Cal.Rptr.3d 356, 32 Cal.4th 1072 (Cal., 2004); *In re Marriage of Abrams*, 105 Cal.App.4th 979, 988, 130 Cal.Rptr.2d 16 (2003) ("it is not enough to show the child has a meaningful relationship with the noncustodial parent and will be `negatively impacted' by the custodial parent's good faith decision to move. If this were sufficient to support denial of a move-away order, no primary custodial parent would ever be able to secure such an order"); *In re Marriage of Lasich*, 99 Cal.App.4th 702, 711, 121 Cal.Rptr.2d 356 (2002) ("[affirming the trial court's ruling that "[r]elocation alone cannot prove detriment because no move-away request could succeed under that standard"); citing *In re Marriage of Edlund & Hales*, 66 Cal.App.4th 1454 (1998).

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career and family."[39] In a footnote, the *Burgess* Court observed that "the parties continue to dispute whether the mother's change of employment was merely a `lateral' move or was `career enhancing.' In *LaMusga*, the court stated that the point is immaterial.[40] Once the trial court determined that the mother did not relocate in order to frustrate the father's contact with the minor children, but did so for sound `good faith' reasons, it was not required to inquire further into the wisdom of her inherently subjective decision-making."[41]

Here, as stated in the district court's September 9th, 2018 order,[42] Joe had the initial burden to show a "sensible, good faith reason for the move." Under California law, Joe has the presumptive right to move and Patricia would bear the initial burden to show that changed circumstances require the court to reevaluate the child's custody. Since the district court properly ruled that a modification of custody was inappropriate in light of Patricia's failure

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[39] *In re Marriage of Burgess*, 51 Cal.Rptr.2d 444, 13 Cal.4th 25, 36, fn. 5, 913 P.2d 473 (Cal., 1996).

[40] *In re Marriage of LaMusga*, 88 P.3d 81, 12 Cal.Rptr.3d 356, 32 Cal.4th 1072 (Cal., 2004).

[41] *Burgess*, 13 Cal.4th at p. 36, 51 Cal.Rptr.2d 444, 913 P.2d 473.

[42] See AA Vol. 10 at pages 731-746.

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to so much as finish the district court ordered OPTIONS program, had the district court applied California law, as it is authorized to do, and as it should have done in the absence of Nevada law on point, the result would have been clear cut – Appellant would be permitted to relocate.

iii. The district court's finding that Joe's request was not "sensible" is an abuse of discretion.

In rendering its decision under NRS 125C.006 & 125C.007, the district court made the following findings: 1) that Joe is earning $3,183.00 less at the time of trial than he did at the time of filing his last financial disclosure form, over a year ago (which amounts to 35% less income); and 2) that Joe has employment opportunities in Israel that can afford him $5,000.00 but that he will also receive government benefits upon the move, including a grant, rent subsidies, free education and insurance.[43] On these uncontroverted facts, the district court stated it "is not persuaded that the financial benefits are materially superior to his historical earnings, or that it is sensible to move the child thousands of miles from the only place the child has known as home to be nearer to Defendant's family."[44] Because of

[43] See AA Vol. 10 at pages 737, lines 16-26.

[44] See AA Vol. 10 at pages 738, lines 7-22.

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that, the district court decided that Joe's proposed relocation was not "sensible."

In *Jones v. Jones*, 110 Nev 1253, 885 P.2d 563 (1994), this Court held that a custodial parent seeking permission for removal of a child does not need to show significant economic or other tangible benefit to meet the threshold showing now enshrined in NRS 125C.007 et seq. Rather, if the custodial parent shows a sensible, good faith reason for the move, the district court should evaluate other facts enumerated in the balancing test, focusing on the possibility of reasonable alternate visitation, and if reasonable alternative visitation is possible, the burden shifts to the noncustodial parent to show concrete, material reasons why the move is inimical to the child's best interests.[45]

Here, the district court equated sensible reasons for a move with tangible, or economic benefits. However, the *Jones* Court specifically stated that a custodial parent does not need to make such a showing. In addition, the district court's decision suggests that it believes Joe should not relocate, and that such a relocation is not sensible, because he "historically" made a better living in Nevada. Presumably, the district court took exception to

[45] *Jones* at 1266.

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Joe's lack of effort in finding a job that pays him a comparable income as he "historically" earned. However, the Nevada Supreme Court has made clear that there is no requirement that appellant exhaust all possible job opportunities in this state before being allowed to relocate.[46] The district court's focus on economic and tangible benefits to a move is an abuse of discretion that warrants reconsideration of the matter.

Additionally, the district court indicated its concern that effectuating the proposed alternative visitation schedule was not "practical."[47] Presumably, the district court's concern was that Joe could not afford to put his plan into action. It is difficult to understand why this may be the case when Joe offered to reduce Plaintiff's child support obligation and offered to pick up the slack if Plaintiff's offset could not cover the expense. There was no reason to believe Joe could not do that: the uncontroverted testimony was that Joe would live rent free, would receive various grants and benefits from the State of Israel, and would receive an income of $5000.00, without the burden of paying for health insurance and private school expenses. Even then, Joe did not need to prove all that, though he did, because the Nevada

[46] *Vara v. Barlas*, 373 P.3d 970, footnote 3 (Nev., 2011).

[47] See AA Vol. 10 at page 738 – line 7.

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Supreme Court has held that lack of funds" to effectuate transportation does not necessarily serve as a basis for denying a motion to relocate.

iv. The district court abused its discretion in finding that the Joe's alternative visitation schedule was not sufficient.

The district court also found that the alternative visitation schedule proposed by Joe was "not practical."[48] In discussing this factor, the district court recognized that "Plaintiff's current visitation is limited in time…[t]hus the amount of visitation time proposed by Defendant may indeed exceed quantitatively her current visitation."[49] Nevertheless, the district court found that "[t]he schedule proposed by Defendant is not practical" without explaining why the district court thinks it is not practical, or what evidence suggests the same. Rather, the district court seems to indicate that Joe's failure to specify the costs associated with his proposed schedule proves that he cannot actually make the proposal happen, despite Joe's uncontroverted testimony that he can.

In *Schwartz*, the Nevada Supreme Court indicated that the visitation obstacles incident to distance and expense and their impact on the

[48] See AA Vol. 10 at page 738 – line 21
[49] See AA Vol. 10 at pages 738, lines 14-22.

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noncustodial parent's continued relationship with her children were appropriately identified as the most difficult and serious area of concern. However, as the district court concluded, an expanded visitation period during the summer may serve as an effective substitute for weekend visits that can provide a realistic opportunity to nurture and renew the mother-child bond.

The cases cited do not require a showing that any proposed schedule can actually be financially supported. Rather, the focus is on whether the proposed time adequately makes up for what time is lost under the current schedule. Here, the district court already found that the proposed schedule provides more time, yet, paradoxically, it also found that the schedule is impractical, without any reasons provided supporting that conclusion. Therefore, the district court's finding that the proposed schedule offers more time to Plaintiff while also finding that it is impractical, without any reasons to support that conclusion, is an abuse of discretion that warrants reconsideration of the matter.

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v. The district court abused its discretion in focusing on the effect of Joe's move on Patricia's limited visitation.

First, under the law, the analysis centers on Joe's reasons for the move. In this respect, the law requires that Joe's motives are honorable and not designed to frustrate or defeat any visitation. Rather than consider the facts from that perspective, the district court focused on the fact that the relocation would frustrate Patricia's visitation, without regard to Joe's motives for the move. This is clear legal error – if that were the analysis, then necessarily every petition to relocate would fail because every relocation frustrates the non-custodial parent's visitation – but not in this case because the proposed alternative visitation schedule offered quantitatively more time with the minor child (as the district court noted).

Second, the district court is not permitted to deny Joe's motion on the basis that Patricia's visitation will be disturbed. Indeed, this Court has held that a "district court may not deny a parent's motion to relocate simply because the proposed move will disturb the existing custody or visitation

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arrangement."[50] This Court has also recognized that a parent's preference for daily contact with a child may not serve as a basis to "chain" the other parent to the state.[51] In addition, this Court has held that a parent's physical separation from his/her child does not preclude the parent from maintaining or fostering a meaningful parent-child relationship because alternate forms of communication are available:[52]

> *There is also no question that if one parent moves away, the opportunities for daily or weekly physical contact are lessened. However, even though there may be a preference for joint physical custody in our law, other factors must also be considered. Physical separation does not preclude each parent*

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[50] *McGuinness v. McGuinness*, 114 Nev. 1431 1437, 970 P.2d 1074, 1078 (1998).

[51] *Trent v. Trent*, 111 Nev. 309, 317, 890 P.2d 1309, 1313–14 (1995) (citing *In Re Marriage of Zamarripa–Gesundheit*, 175 Ill.App.3d 184, 124 Ill.Dec. 799, 529 N.E.2d 780, 783 (Ill .App.Ct.1988)).

[52] *McGuinness*, 114 Nev. at 1436, 970 P.2d at 1077–78. Some of these methods include telephone calls, letters, e-mail messages, and video conferencing.

from maintaining significant and substantial involvement in a child's life, which is clearly desirable. There are alternate methods of maintaining a meaningful relationship, including telephone calls, e-mail messages, letters, and frequent visitation. Also, the well-being of a parent, which could be heightened by relocation, may have a substantial effect on the best interest of the child.

In *Vara v. Barlas*, the district court found that the Respondent's "almost daily contact with [the child], cannot be replaced by the substitute visitation schedule proposed by [appellant]" and that there were insufficient funds to transport the child to New Jersey. 373 P.3d 970 (Nev., 2011). Based on those findings, the district court denied the appellants motion. The Nevada Supreme Court reversed the decision concluding that "the district court abused its discretion in finding that respondent's daily contact with the child takes preference over appellant's ability to relocate and that there are insufficient funds available for transporting the child to facilitate visitation.[53] It is important to note, as to the parties' ability to transport the child cross country, in *Vara* the Nevada Supreme Court held that "lack of funds" to

[53] *Vara v. Barlas*, 373 P.3d 970 (Nev., 2011).

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effectuate transportation does not necessarily serve as a basis for denying a motion to relocate.[54]

The facts in *Vara* are very similar to this matter. In *Vara*, appellant moved the district court to enter an order adopting the parties' child custody agreement and granting her permission to relocate with the child to New Jersey. Appellant based her relocation motion on the fact that her business in Las Vegas was failing, her extended family is located in New Jersey, and she intended to live rent-free with her sister while she pursued employment. Respondent opposed the motion and filed a countermotion for joint physical custody. Following an evidentiary hearing, the district court entered an order adopting the parties' child custody agreement and denying appellant's motion to relocate.[55]

Here, Joe testified at the evidentiary hearing that he needs to relocate because his business failed (that testimony was uncontroverted), his extended family is located in Israel, and he intended to live rent free in his father's downstairs apartment (again, testimony that was uncontroverted and

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[54] *Vara v. Barlas*, 373 P.3d 970(Table) (Nev., 2011); citing *Schwartz*, 107 Nev. at 385, 812 P.2d at 1272; *Jones v. Jones*, 110 Nev. 1253, 1263–64, 885 P.2d 563, 570 (1994).

[55] See AA Vol. 10 at pages 731-746.

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supported by several witnesses). As the Respondent in *Vara* did, Patricia opposed the motion and countered with a request to change custody. The district court in *Vara* was concerned with the inevitable disruption in the non-custodial parent's visitation schedule, as the district court did.

However, as more fully discussed above, this Court held that the non-custodial parent's visitation rights must yield to the custodial parent's right to move, so long as there is an alternative, reasonable, visitation schedule. In *Vara*, the Respondent had daily contact with the minor child and this Court still reversed Judge Charles Hoskins decision, placing primacy on appellant's right to relocate.

A final note on this point: the district court found that because the child's paternal grandfather testified that the distance has eroded his relationship with his grandson then necessarily the same will happen to Patricia's relationship. This is a logical fallacy – it is a comparison of apples and oranges and should not be used to support the district court's decision. Moreover, it is a given that Patricia's visitation, and hence her relationship, with the minor child will be disturbed – the discussion above more fully explains why that does not matter as much as the district court feels it does. More to the point, however, is that the proposed alternative visitation is actually greater than what visitation Patricia currently enjoys.

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vi. The district court's finding that the move conferred no "actual advantage" was an abuse of discretion.

As to "actual advantage," the district court found the proposed move would not confer an advantage because, in essence, the child is doing just fine in Las Vegas.[56] In *Gandee v. Gandee*, this Court held that an out-of-state move was improperly denied where the father had a greater family support system in Oregon, housing would improve, and his improved financial position and expanded career opportunities would benefit the children (letting him save for the kids' college education and provide better medical care for the handicapped child), education was "comparable," and both parties' motives were conceded to be honorable, and the father had been accommodating regarding visitation – in other words, facts similar to the instant case. 895 P.2d 1285 (1995).

Thus, as in *Gandee*, here there is in fact an actual advantage to the move. Indeed, the testimony was credible and uncontroverted that a myriad of benefits would be conferred on the child due to the move. The district court did not dispute that. Rather, the district court seems to believe that those benefits do not matter because the status quo is just fine. That is an abuse of discretion.

[56] See AA Vol. 10 at page 742 – line 14.

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vii. The district court's finding that Joe will not comply with a substitute visitation schedule was an abuse of discretion.

The district court also found that Joe would not comply with any substitute visitation schedule.[57] In considering this factor, the district court found that "[b]ased on the entire record before this Court, and taking into account this Court's determinations regarding demeanor and credibility, this Court is unable to find with confidence that orders will be complied with from such a distance."

It is difficult to understand why the district court would make such a finding. Indeed, the only example of Joe frustrating Patricia's visitation was one instance in November of 2016. Since then, Joe has dutifully complied with the district court's visitation orders despite the burden it imposes on him (Patricia does not have a vehicle or a driver's license, forcing Joe to do all the transportation, to Patricia's benefit). Joe testified as much and that testimony was uncontroverted. In recognition of that, presumably, the district court added that it simply does not believe that Joe will continue to comply with any visitation orders, which is an abuse of discretion as that finding is not based on any fact and is mere speculation.

[57] See AA Vol. 10 at page 744 – line 1.

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viii. The district court's finding that the level of conflict between the parents renders Joe incapable of cooperating to meet the needs of the child is an abuse of discretion.

Closely related to the district court's concern that Joe will not comply with any substitute visitation schedule is the district court's finding that the level of conflict between the parents is extremely high and there is no evidence that the parties are able to cooperate to meet the needs of the child.[58] In this respect, the district court neglects the obvious: Joe is not obligated to cooperate with Patricia concerning any legal custody provisions as he has sole legal custody of the minor child. Therefore, any finding that the level of conflict between the parties is high is irrelevant to the analysis as the parties need not cooperate until Patricia can demonstrate that she is fit to have joint legal custody, which the district court has found she does not.

[58] See AA Vol. 10 at page 740 – line 16.

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ix. The district court's finding that there is not a realistic opportunity for Patricia to maintain any meaningful visitation schedule or that Joe would not allow frequent associations and a continuing relationship between mother and child is an abuse of discretion.

Finally, the district court's finding that there is not a realistic opportunity for Patricia to maintain any meaningful visitation schedule or that Joe would not allow frequent associations and a continuing relationship[59] between mother and son is an abuse of discretion. Here, it is impossible for the district court to find that the proposed visitation schedule is "quantitatively" better than the visitation Patricia currently enjoys and, at the same time, the proposed visitation schedule will not foster and preserve Patricia's relationship with her child – which the district court already determined was "tenuous" at best – without abusing its discretion.

To be clear, Patricia's tenuous relationship with her child can only be improved by more time with the child, which the district court denied Patricia but Joe offered her. On those facts, the district court's determination is a clear abuse of discretion. Indeed, as more fully discussed above, Joe has gone to great lengths to do all the transportation to and from Plaintiff's home

[59] See AA Vol. 10 at page 744 – line 18.

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so child and mother can maintain a relationship, diligently, for the last two years.

IV. CONCLUSION

The district court misapprehended equity jurisdiction. In so doing, it deprived Joe of the benefit of a bargain fairly obtained. Now, Joe is mired in litigation over assets he rightfully thought were protected. As such, this Court reverse the district court's decision on the issue of the premarital agreement and instruct the district court what equity jurisdiction is and what grounds it has for invoking its equitable authority. Upon close consideration of the discussion concerning equity jurisdiction, supra, the district court must enforce the agreement in whole.

Furthermore, this Court should adopt California's rules concerning petitions to relocate with a child by parents having sole legal and sole physical custody. Finally, in the alternative, this Court should reverse the district court's decision for abusing its discretion, as more fully discussed above.

DATED this 21st day of February, 2019.

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CERTIFICATE OF SERVICE

Persuant to NRAP 25, on February 21st, 2019 APPELLANT'S OPENING BRIEF was served upon each of the parties to appeal 76144 via electronic service through the Supreme Court of Nevada's electronic filing system.

*/s/ Joslyne Simmons*_____

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