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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

YOAV EGOSI,

Appellant,

vs.

PATRICIA EGOSI,

Respondent.

Case No.: 76144

Dist. Ct. No. D540174

APPELLANT'S REPLY BRIEF

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APPEAL

From the Eighth Judicial District Court, Clark County

The Honorable Bryce Duckworth, District Court Judge, Family Division

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Attorney's Certificate of Compliance

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 1537 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 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.

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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 22 day of October, 2019.

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Certificate of Service

Persuant to NRAP 25, on October 22, 2019 **APPELLANT'S REPLY BRIEF** was served upon each of the parties to appeal 76144 via electronic service through the Supreme Court of Nevada's electronic filing system. Specifically, service was effectuated upon:

John Blackmon, Esq.
Attorney for Respondent

/s/ Alex Ghibaudo

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An Employee of Alex B. Ghibaudo, PC

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MEMORANDUM OF POINTS AND AUTHORITIES

This Court will presume that the district court properly exercised its discretion in determining the best interests of the child. *Flynn v. Flynn*, 120 Nev. 436, 440 (Nev. 2004). "Matters of custody and support of minor children of parties to a divorce action rest in the sound discretion of the trial court, the exercise of which will not be disturbed on appeal unless clearly abused." *Id*. Additionally, this Court will uphold the district court's determination if it is supported by substantial evidence. *Id*. However, "[t]his court conducts a de novo review of the district court's conclusions of law." Id.; see also, *SIIS v. United Exposition Services Co.*, 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

However, this Court must be satisfied that the district court's determination was made for the appropriate reasons. *Sims v. Sims*, 109 Nev. 1146, 1148 (Nev. 1993). In determining custody of a minor child, the sole consideration of the court is the best interest of the child. *Id*. As an example, in *Sims v. Sims*, this court found an abuse of discretion where the custody determination was made, “not because it was in the best interests of the child, but because the mother admittedly did not obey a questionable, if not absurd, court order.” *Id*.

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Furthermore, an abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or disregards controlling law. *NOLM, LLC v. Cnty. of Clark*,120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that "are clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)); *Bergmann v. Boyce*,109 Nev. 670, 674, 856 P.2d 560, 563 (1993) (disregarding rules or principles of law to substantial detriment of a party litigant constitutes abuse of discretion); *Cooter Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) ("A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law . . . ."); *Bergmann v. Boyce*, 109 Nev. 670, 674 (Nev. 1993); *Gakiya v. Hallmark Properties, Inc.*, 722 P.2d 460, 463 (Haw. 1986) (disregarding rules or principles of law to substantial detriment of a party litigant constitutes abuse of discretion).

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Finally, this Court has previously held that "[t]o constitute an abuse of discretion, it must be established that the trial court 'clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant.'" *Gakiya v. Hallmark Properties, Inc.*, 68 Haw. 550, 554-55 (Haw. 1986); citing *Title Guaranty Escrow Services, Inc. v. Powley*, 2 Haw. App. 265, 270, 630 P.2d 642, 645 (1981) (quoting *State v. Sacoco*, 45 Haw. 288, 292, 367 P.2d 11, 13 (1961)).

To be clear, Appellant alleges that the district court "clearly exceeded the bounds of reason" when it rendered its decision partially invalidating the prenuptial agreement. It is illogical to find that there was no mistake of fact, duress, or fraud, or find that the prenuptial agreement was fairly negotiated and fair in substance, while at the same time, almost in the same breath, find that it was "unfair" such that the same prenuptial agreement was invalidated in part. To the extent that the result is illogical, and harmed Appellant, the district court abused its discretion.

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With respect to the relocation analysis, Appellant alleges that the district court disregarded the law of relocation and based its denial of Appellant's petition to relocate on inappropriate reasons. As an example, with respect to the former, the district court found that Appellant's decision to relocate to Israel was not "sensible" because, in its view, there was no tangible economic benefit to the move (though there was).

However, in *Jones v. Jones*, 110 Nev. 1253 (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. That decision, therefore, to the extent it ignores settled and clear law, is an abuse of discretion. Another example of an illogical decision made by the district court is found in its determination that there is no realistic opportunity for Appellant to maintain any meaningful visitation schedule with the minor child while finding, again in the same breath, that the alternative visitation schedule offered by Appellant is "quantitively" better than the schedule Respondent currently has.

Similarly, the district court found that Respondent's visitation with her child is "tenuous" at best but that giving her more time would not preserve what is already a tenuous relationship. These decisions are illogical and demonstrate that the district court's concern was Respondent's feelings, not the child's best interest or what the law of relocation requires, which is an improper reason to deny Appellant's petition.

As to the latter, another example of the district court basing its decision on an inappropriate reason is found in its decision denying Appellant's petition out of concern for Respondent's existing visitation with the child, not Appellant's motives for the move. This is an abuse of discretion.

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CONCLUSION

In short, Appellant's opening brief focuses on the district court's illogical decisions, the inappropriate reasons the decisions were reached, and its erroneous view of existing and controlling law, all of which is an abuse of discretion as more fully set forth in Appellant's opening brief. To reiterate, as to the prenuptial agreement, the findings and decision defy logic. Concerning the relocation decision, the district court misapplied law and made similarly illogical decisions. However, in that case, the decision was reached for an improper reason: concern for the Respondent's visitation rights, not the child's best interests or the requirements of the law of relocation.

DATED this 22nd day of October, 2019.

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