

IN THE SUPREME COURT OF THE STATE OF NEVADA

Lisa M. Eorio,

Appellant,

vs.

Joel E. Eorio,

Respondent.

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Supreme Court Case No. 83132
Elizabeth A. Brown
District Court Case No. D-20-
Clerk of Supreme Court
608267-D

CHILD CUSTODY FAST TRACK STATEMENT

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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. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

Pecos Law Group: Bruce I. Shapiro, Esq., and Shann D. Winesett, Esq.

Cordel Law L.L.P.: Jessica M. Friedman, Esq.

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3. If litigant is using a pseudonym, the litigant's true name: None.

DATED this 21st day of October 21

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/s/ Shann Winesett

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CHILD CUSTODY FAST TRACK STATEMENT

1. FILING PARTY:

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3. APPEALED FROM:

Eighth Judicial District Court (Family Division), Clark County, Case No.
D-20-608267-D.

4. JUDGE ISSUING DECREE:

Honorable Bryce C. Duckworth.

5. LENGTH OF HEARING:

One day.

6. WRITTEN JUDGMENT APPEALED FROM:

Decree of Divorce.

7. DATE OF SERVICE OF NOTICE OF ENTRY:

June 15, 2021.

8. DATE OF TOLLING MOTION:

None.

9. DATE OF NOTICE OF APPEAL:

June 15, 2021.

10. RULE GOVERNING TIME FOR FILING THE NOTICE OF APPEAL:

NRAP 4(a).

11. RULE GRANTING THIS COURT JURISDICTION TO REVIEW:

NRAP 3A(b)(1).

12. PENDING AND PRIOR APPELLATE PROCEEDINGS:

None.

13. PROCEEDINGS RAISING SAME ISSUES:

None.

14. PROCEDURAL HISTORY:

Joel Eorio (“Joel”) initiated divorce, child custody and relocation proceedings against Lisa on June 1, 2020. JA001. After an initial hearing on August 26, 2020, the parties stipulated that Joel would vacate the marital home on November 22, 2020. JA135-36. The parties also stipulated that, upon Joel moving out, they would share temporary joint and equally shared physical custody of their children on an alternating weekly basis. JA136. By the time of trial, the parties had settled almost all issues pertaining to their divorce except for Joel’s request for permission to relocate with the children to New Mexico. JA374-377, 443-44. The district court held a trial on the remaining issues on

April 1, 2021, after which it granted Joel permission to relocate. JA397, 440. This appeal followed.

15. STATEMENT OF FACTS:

When Joel announced that he would marry Lisa in 2005, his parents were upset. JA513. Joel's father, Michael Eorio, did not think Lisa was a "good enough woman" for his son. JA513. At the news of Joel marrying Lisa, Joel's father "kicked his son out" of the family's home in Las Cruces, New Mexico. JA513, 594. Notwithstanding his parents' scorn for Lisa, Joel and Lisa did get married on April 29, 2006. JA002. Joel and Lisa now have three children, namely, Harley (born March 8, 2007), Hayden (born October 24, 2009), and Gianni (born October 17, 2015). JA002.

Although Joel's parents did not like Lisa, she nonetheless supported, and continues to support, their relationship with the children. JA 587, 594-95. While Joel and Lisa appreciated the childcare assistance Joel's parents sometimes provided, Lisa's relationship with Joel's parents was a "strained" and "rocky" one. JA513, 594. Rearing their own children became a struggle around Joel's parents because his parents would coddle and spoil the children. JA594, 607. Joel's parents would control how the children would be disciplined and override the rules Joel and Lisa set in their household. JA594. Joel's parents would even

get upset if Joel and Lisa ever told them that they could not see the children for some reason. JA594.

Eventually, in 2018, the parties moved to Alamogordo, New Mexico away from Joel's parents. JA515, 560, 609. But even in Alamogordo (which is an hour away), Joel's parents were suffocating, so, after a year in Alamogordo, Joel and Lisa decided to move to Las Vegas where Lisa had a good job offer. JA 055-57, 189, 420, 594. A large part of moving to Las Vegas was to "get out from under the shadow" of Joel's parents and away from their manipulation and control. JA 055-57, 189, 420, 594. The couple wanted to distance themselves from Joel's "helicopter parents" who tended to create a toxic family environment and were "suffocating them from a social perspective." JA055-56, 419, 594.

The news of Joel and Lisa's planned move to Las Vegas did not go well. JA513-16, 543. When Joel's parents found out about the plan to move to Las Vegas, Joel's parents called the New Mexico child protective services under the auspices that the children were not being taken care of. *Id.* Even though Joel is now realigned with his parents, he admits that it was not appropriate for his parents to call CPS on him and his wife. JA543.

Lisa and Joel agreed as a couple that she should go to Las Vegas ahead of him to work full time and secure a home for the family. JA611, 615. Lisa left for

Las Vegas on May 1, 2019, and Joel and the children joined her three months later on August 1, 2019, after the children finished their school year. JA451, 615.

As noted above, Joel filed for divorce in June 2020, and when the parties' separated in November 2020, they stipulated to an equally-shared, alternating-weekly custody schedule. JA135. Lisa took this transition in stride and, with the help of her mother, easily balanced her work schedule with her custodial responsibilities. JA593. Lisa resigned from her position at IHOP and took a job at Emerald Island Casino as an assistant restaurant manager. JA463, 466, 592-593, 603. 466. While her salary is lower at Emerald Island, her job is stable and her hours are much more conducive to her duties as the children's physical custodian. JA474, 593. Emerald Island also provides her an opportunity for professional growth. JA593.

In Lisa's home the children all have their own bedrooms JA589. When the children are with Lisa, she wakes around 7:00 a.m. and ensures the children have breakfast before she leaves for work on the three days when she goes in at 8:00 a.m. JA590. Lisa is home by 3:00 p.m. and enjoys the remainder of the day with the children. JA590. Lisa makes sure the children go out at least once a week to enjoy a group activity. JA590. "Sometimes it's Mini Grand Pris, the Adventure Dome, the park, bowling whatever the case may be." JA591. The

children also spend time with friends and “do sleepovers constantly.” JA593. In warm weather they enjoy barbecues and swimming at Lisa’s aunt’s house. JA591

For his own part, Joel increased his work hours to 40 per week at AutoZone where he works from 1:00 p.m. to 10:00 p.m. five days per week. JA555. After the parties’ separation, Joel delegated most of his childcare responsibilities to his parents who would drive their camper trailer to Las Vegas during Joel’s week with the children. JA467, 507. Joel’s parents took care of the children (including their schoolwork) in their camper trailer for five of Joel’s seven days of custodial time including four overnights. JA507, 518-519.

At the time of the evidentiary hearing, the parties’ eldest child, Harley, was just embarking on a life in Las Vegas as a young adult. Harley had made friends and had earned her seat and won the lottery for admission into two magnet high schools. JA578, 590, 591, 578. One of the magnet schools focused on hospitality and the other on a premedical curriculum. JA591. Harley chose the pre-med magnet school. JA591.

Throughout the trial, Joel portrayed himself as a “house husband” and Lisa as the “bread winner.” JA470, 531. It is certainly true that Lisa sometimes worked two jobs or extra shifts while the parties were living in New Mexico. JA 453, 522, 562. Because she sometimes worked 60 plus hours per week and sometimes two jobs in New Mexico, Lisa did delegate some of the childcare tasks to Joel.

JA453. Due to his availability and intermittent unemployment, Joel was available to take the children to their appointments which Lisa set for children and delegated to Joel. JA453. Yet, Joel's own work schedule during the marriage often involved him sleeping until late morning, and Lisa was responsible for getting the children ready for the day. JA55, 186.

Even though Lisa worked very hard to provide the family with financial support -- "somebody had to make money"¹ -- Lisa was not an absentee parent, and Lisa has always been proactive in the children's school and activities. JA453. Indeed, Lisa was Harley's T-ball coach for four years in addition to holding two jobs. JA4543. It was Lisa who took the lead in arranging "life details" for the children. JA186 Lisa, not Joel, was the parent who attempted to get Hayden into counseling which both parents agreed was important. JA550. Lisa, not Joel, worked with Harley to attend magnet high schools in Las Vegas. JA187-188, 551-552, 578-579, 591, 615.

In sum, Lisa is a good mother and a good provider for the children. JA470, 617.²

¹ JA497

² In closing arguments Joel argued: "There's no question here that we have two good parents." JA617.

16. ISSUES ON APPEAL:

Did the court abuse its discretion when it concluded that Joel had met his burden of proving that the children's best interests would be served and their quality of life improved by relocating from Las Vegas into their paternal grandparent's house in Las Cruces, New Mexico?

17. LEGAL ARGUMENT:

A. Standard of Review

This court reviews child custody and child support orders for an abuse of discretion.³ While “[m]atters of custody and support of minor children rest in the sound discretion of the trial court,”⁴ substantial evidence must support the court's findings, which is “evidence that a reasonable person may accept as adequate to sustain a judgment.”⁵ “Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to legal error or to findings so conclusory they may mask legal error.”⁶ This court must also be satisfied that the district court's determination was made for the appropriate reasons.⁷

³ *Lewis v. Lewis*, 132 Nev. 453, 458 (Nev. 2016).

⁴ *Wallace v. Wallace*, 112 Nev. 1015, 1019 (1996).

⁵ *Ellis v. Carucci*, 123 Nev. 145, 149 (2007).

⁶ *Davis v. Ewalefo*, 131 Nev. 445, 450 (2015).

⁷ *Sims v. Sims*, 109 Nev. 1146, 1148 (1993).

B. Summary of Argument

The paternal grandparents in this appeal have a good relationship with their grandchildren, but they have a poor, strained relationship with the children's mother. The grandparental involvement in the children's lives is excessive, to the extent that the parties relocated from New Mexico to Las Vegas to start a new life and get out from under the control of the grandparents. Notwithstanding these facts, the district court granted the father's request to relocate back to New Mexico where the paternal grandparents would become their *de facto* primary physical custodians. In doing so, the court ignored the "warnings" and "red flags" that the relocation to Las Cruces would place the children with a family who would refuse to foster "frequent associations and a continuing relationship" with their mother. The district court, therefore, ignored a cornerstone factor in determining a child's best interest and erroneously determined that the father had met his burden of proving that the children would benefit from an actual advantage and that their quality of life would be enhanced by the move.

C. Nevada statutes provide a two-pronged approach for relocating parents.

Under Nevada's newly revised relocation statutes, the district courts are instructed to conduct a two-pronged analysis when deciding whether to permit relocation. Pursuant to NRS 125C.007(1), a parent desiring to relocate from Nevada with minor children must first demonstrate that:

(a) There exists *a sensible, good-faith reason for the move*, and the move is not intended to deprive the non-relocating parent of his or her parenting time;

(b) The *best interests of the child are served* by allowing the relocating parent to relocate with the child; and

(c) The child and the relocating parent will *benefit from an actual advantage* as a result of the relocation. (Emphasis added.)

If the relocating parent demonstrates the foregoing, then the court moves on to the second prong of the relocation analysis. Pursuant to NRS 125C.007(2) the district court must then weigh the following factors and the impact of each on the child, the relocating parent and the non-relocating parent, including, without limitation, the extent to which the compelling interests of the child, the relocating parent and the non-relocating parent are accommodated:

(a) The extent to which the relocation *is likely to improve the quality of life for the child* and the relocating parent;

(b) Whether the motives of the relocating parent are honorable and not designed to frustrate or defeat any visitation rights accorded to the non-relocating parent;

(c) Whether the relocating parent will comply with any substitute visitation orders issued by the court if permission to relocate is granted;

(d) Whether the motives of the non-relocating parent are honorable in resisting the petition for permission to relocate or to what extent any opposition to the petition for permission to relocate is intended to secure a financial advantage in the form of ongoing support obligations or otherwise;

(e) Whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted; and

(f) Any other factor necessary to assist the court in determining whether to grant permission to relocate.

D. The relocating parent bears the burden of proof.

In passing NRS 125C.007(3), the legislature specifically provided that the *burden of proving that relocation would be in a child's best interests is on the relocating parent.*⁸ Because the burden of proof was important enough for the legislature to include in the statute, it should be important to the courts who are tasked with implementing it. A preponderance of the evidence requires that the evidence lead the fact-finder to conclude that “the existence of the contested fact is more probable than its nonexistence.” *In re Parental Rts. as to M.F.*, 132 Nev. 209, 217 (2016). Where a case involves a close call and the evidence comes down equal on both sides, then the statutory burden of proof is not met. Much like in baseball where “a tie goes to the runner,” the children stay in Nevada when the case is a “close call” and the relocating parent has failed to meet his burden of proof.⁹

As will be discussed below, Joel, in no way, met his burden of proof on the relocation issue. Joel entirely failed to show that (1) the relocation to New Mexico was in the children's best interest, (2) that the children would benefit

⁸ NRS 125C.007(c).

⁹ See *Inland Rivers Serv. Corp. v. Hartford Fire Ins. Co.*, 418 N.E.2d 1381, 1385 (Ohio Sup. Ct. 1981) explaining the burden of proof in the setting of civil litigation.

from an actual advantage in relocating to New Mexico, and (3) that relocation to New Mexico would improve the children's quality of life.

E. While it was sensible for Joel to want to move back into his parent's home in New Mexico, it is not in the children's best interest that they move in with him.

As a preliminary matter, the district court was required to assess whether there was a sensible, good faith reason for Joel to relocate. NRS 125C.007(1)(a). As the district court noted, the reason parents typically relocate from Nevada is that the parent has received a lucrative career opportunity or promotion outside the state. JA650.

In this case, Joel admittedly had no lucrative job offer or promotion. All Joel had waiting for him, as far as employment is concerned, was a job at AutoZone just like the job he had at AutoZone in Las Vegas. JA417-18, 529. As the district court itself noted, Joel's job in New Mexico was a lateral move. JA650. Joel's hourly wage was even the same. JA650. In this regard, the only reason for Joel to move back to New Mexico after three years in Nevada was to live rent free at home with his parents. JA396, 553.

While Joel moving back in with his parents might be a sensible decision for himself, it by no means follows that it is in the best interest of the children to do so. In its Decree, the district court dedicated a total of 50 words to its findings

regarding the children's best interest. The district court's findings read, in full, as follows:

Relative to the best interest of the subject minor children, most of the factors do not apply; however, the factors that do apply are equal to both parents absent the fact that Plaintiff was able to spend more time with the children as Defendant was the historical primary wage earner. JA396.

According to the foregoing analysis, all best interest factors were equal except that Lisa worked outside the home more than Joel. But the mere fact that Lisa worked outside the home more than Joel should not, indeed, cannot, be the deciding factor when it comes to making life-altering decisions for the children.

Lisa submits that the district court's best interest analysis really does not explicitly address the facts informing its conclusion that the children's best interests are served by relocating to New Mexico. The fact that one parent spent more time with the children during marriage, in and of itself, does not support the conclusion that the children should be uprooted and relocated 700 miles away from the other parent especially when it is undisputed that both parties are good and capable parents. JA617, 640, 642.

The deficiencies in the district court's best interest analysis violate Nevada law, which, as the Nevada Supreme Court has held, "requires express findings

as to the best interest of the child in custody and visitation matters.’”¹⁰ As in *Davis*, the district court’s best interest analysis in the present case leaves this court “in doubt whether ‘the district court’s determination was made for appropriate reasons.’”¹¹

In resting its decision on the fact that Lisa was the historical primary wage earner and Joel spent more time with the children, the district court ignored the reality of the parties’ post-separation lives. When parents separate, especially when young couples separate, the breadwinner must evolve into a physical custodian and the stay-at-home parent must learn to earn a living. In this case, the parties did just that. Now that the parties are divorced and living separately, Lisa is fulfilling her role as the children’s physical custodian and Joel is working fulltime outside the home. Indeed, at the time of trial, Joel was working 40 hours per week and heavily relied on his parents to care for the children five days out of the seven that the children were with him. JA518-19, 544.

Lisa, on the other hand, had taken a job conducive to her duties as a joint physical custodian. JA474, 593. While the children have relatives in Las Vegas

¹⁰ *Davis v. Ewalefo*, 131 Nev. 445, 450–51, (2015).

¹¹ *Id. citing Rico v. Rodriguez*, 121 Nev. 695, 701 (2005).

that can assist Lisa with supervision, Lisa structured her employment to minimize her need to rely on others to care for the children. JA590-94. Unlike Joel, Lisa described a litany of activities in which she and the children engaged. JA590. Joel provided no testimony in this regard. Joel's father seemed more engaged with the children on a day to day basis than Joel himself. JA518-19. In other words, the parties' historical roles, in this case, do not inform the parties' future and certainly do not provide the necessary facts to support a relocation.

1. *Most of the statutory best interest factors are neutral or inapplicable.* Lisa agrees with the district court that most of the statutory best interest factors set forth in NRS 125C.0035(4) are inapplicable or neutral. There is no history of abuse or neglect, domestic violence, or abduction, nor is the nomination of a guardian relevant to this case.¹² JA043. The parents are physically and mentally healthy.¹³ Neither party introduced competent evidence

¹² NRS 125C.0035(4)(b)(j)(k) and (l).

¹³ NRS 125C.0035(4)(f). Lisa anticipates that Joel will argue that Lisa is unstable because of entries she wrote in a journal six years ago while she was pregnant with Gianni who is not Joel's biological child. JA496. In her journal, Lisa wrote that she had thought about taking her own life "to spare everyone the trouble of killing me slowly by picking me apart piece by piece." JA492. 454, 456, 496. Contrary to Joel's hollow assertions, Lisa had no intention to commit suicide during this difficult time. JA460. Lisa was merely venting in her journal knowing that Joel was going through her things and would probably read how genuinely unhappy she was and perhaps receive "a little bit of support and understanding on his part." JA460-61. Bottom line, Lisa is not suicidal (JA491), and apart from taking her journal entries out of context, Joel produced no

regarding the wishes of the children or that they were of sufficient age and capacity to form an intelligent preference as to their physical custody.¹⁴ The parties each stipulated that they are both good parents, and, but for the custody litigation, the level of conflict between the parties is low.¹⁵ JA538, 622. And neither parent desires that the children be separated. JA624.¹⁶

2. *Joel's parents, to whom the district court granted de facto primary physical custody, will not foster Lisa's continuing relationship with the children.*

evidence whatsoever that Lisa suffers from any mental health issue. Joel introduced no psychological evidence either by witness or documents. As the district court noted, there was no expert testimony or reports that would suggest that either party had any mental incapacity that would impair their ability to care for the children. JA655. In this regard the district court found both parents were “very capable of providing for [the] care” of their children. JA643. Given that both parents stipulated to temporary joint and equally shared physical custody pending the evidentiary hearing (JA131), both parents acknowledge that they are each mentally and physically healthy and that this best interest factor is neutral.

¹⁴ NRS 125C.0035(4)(a). The children did not testify by alternative means in this case, and the district court expressly found that no child interview had been conducted. JA658. While Joel will argue that he snuck in a hearsay statement that one of the children wanted to return to New Mexico (JA624), this hearsay comment was entirely rebutted when Lisa testified “No, sir” to the question “you know your kids want to move back to New Mexico, right?” The district court also correctly found that children did not want to be in the middle of their parent’s custody dispute. JA658. In sum, no competent evidence was presented as to the children’s wishes on the custodial issues. Joel certainly did not meet his burden of proof on this best interest factor. It is, therefore, inapplicable to this case.

¹⁵ NRS 125C.0035(4)(d) and (h).

¹⁶ NRS 125C.0035(4)(i).

There are a couple of best interest factors which the district court entirely overlooked in its 50 word analysis. In particular, the district court made no express findings in its decree regarding which “parent is more likely to allow the children to have frequent associations and a continuing relationship with the noncustodial parent,”¹⁷ nor did the district court specifically address in the Decree “the ability of the parents to cooperate to meet the needs of the child.”¹⁸

Based upon the evidence at trial, it is clear that upon relocation to New Mexico, Joel’s parents will become the children’s *de facto* physical custodians. At trial, Joel’s father stated: “Well, my wife and I can provide a stable home for them, a home where they can enjoy themselves.” JA505. In rendering its decision, the district court itself recognized the extent to which Joel relies on his parents to provided Joel with significant child-care assistance.

And part of the testimony provided to the Court indicates that for some time, I believe it was since December, the paternal grandparents have travelled here on a very regular basis to provide care even to the point that the children spend nights per week during Dad’s week to help and assist care for the children. JA648.

In fact, the testimony was that the children spent five out of seven days and four out of seven nights with paternal grandparents during Joel’s custodial time with

¹⁷ NRS 125C.0035(4)(c).

¹⁸ NRS 125C.0035(4)(e).

children. JA507, 518-19. While the district court might trust Joel to foster Lisa's relationship with the children and while the district court might trust Joel and Lisa to cooperate with each other regarding the needs of their children, there was ample evidence presented at trial that Joel's parents are not so inclined.

Remarkably, even though Lisa and Joel engaged in adversarial custody proceedings, they did not denigrate each other or resort to the *ad homonym* attacks so common in family court litigation. Instead, Lisa and Joel candidly agreed that they each were good parents and loved their children dearly. The only person to take potshots at either parent during trial was Joel's father who opined that "Lisa has proved that she's not a good mom." JA523.

Normally such comments can be dismissed as so much grandparental cheerleading. But in this case, the paternal grandparent's attitude toward the mother is highly significant. First, a major reason for the parties moving to Las Vegas in the first place was to get out from under the control of Joel's parents who were suffocating them. JA055-57, 419, 515, 560, 594, 609. Second, Joel's father was unflinching in his assessment that Lisa was "not good enough" for his son. JA513, 594. Third, Joel's father and mother called CPS on Joel and Lisa because they did not want the family to move to Las Vegas. JA513-16, 543. It is into the home of these grandparents that the district court has ordered the children to go.

Given the extensive, indeed, meddlesome, involvement of Joel's parents, the district court expressed the following concern:

There's a line that can't be crossed and I think *there's a legitimate concern that's been raised about how involved they are to the determinant of one parent*. It is undisputed, and Dad acknowledged this in his testimony, that there was a CPS report that was made by the paternal grandparents against [Mom and Dad] And Dad acknowledged in his testimony that that wasn't right. It should have never been made." JA648 (Emphasis added).

In this case, the district court abused its discretion and ignored the best interests of the children when it issued an order which effectively granted *de facto* primary physical custody to Joel's parents who dislike and disdain Lisa. Placing the children primarily in the home of Joel's parents is clearly not in the children's best interest as the members of that home do not respect Lisa's role as the children's mother, nor can they be expected to foster her relationship with the children. Joel's parents likewise cannot be expected to cooperate with Lisa in meeting the needs of the children.

Because the district court's order has the practical effect of placing Joel's parents in the role of the primary physical custodians, the best interest factors of subsection (c)¹⁹ (i.e., fostering a continuing relationship with the noncustodial

¹⁹ NRS 125C.0035(4).

parent) and subsection (e)²⁰ (the ability of the parents to cooperate in meeting the needs of the children) are not neutral in their applicability to this case. Although these two best interest factors weigh heavily in Lisa's favor, the district court failed to even address them in its best interest analysis in the Decree. JA396. Had the district court given appropriate deference to these two best interest factors, it would have reached the conclusion that relocation of the children into the home of Joel's parents who despise Lisa, can, in no way, be in their best interest.

3. *Joel did not prove that the children would benefit from an actual advantage by relocating to New Mexico.* Before the district court reaches the second prong of the relocation analysis, Joel must demonstrate that the children would benefit from "an actual advantage" as a result of the relocation. NRS 125C.007(1)(c). The district court's analysis of "actual advantage" in the Decree consists of 38 words and is even more cursory than its best interest analysis. According to the district court:

The actual advantage is that the children are returning to their lifelong home, both parties are from New Mexico, there are positive family connections in New Mexico, and there is financial stability and support in New Mexico.

²⁰ *Id.*

Notably the district court provides no facts as to why returning to “their lifelong home” is an actual advantage. Just because someone lived someplace for a long time does not mean it would be an “actual advantage” to return there.

As for positive family connections, the children’s family connections in New Mexico are Joel’s parents and his brother who, as far as Lisa knows, is estranged from the family. JA189. This brother has two children. JA451. In referencing the family connections in New Mexico, the district court entirely disregarded the fact that the children have extended family in Las Vegas as well. Lisa’s mother and sister live with her in Las Vegas, and Lisa also has her Uncle Skip, her Aunt Sandy, and her husband. JA468, 492. The children have a strong bond with Lisa’s mother, and Harley also has a close bond with Lisa’s sister. JA493. Lisa also has cousins in Las Vegas with whom they try to get together on a monthly basis. JA492. These bonds are just as important as maintaining the bonds with Joel’s side of the family. JA493.

As far as financial stability is concerned, Lisa is financially stable. The district court even described her as a “go getter.” JA650. According to the district court, “She’s going to survive financially. She’s going to go out and get a good paying job.” JA651. The district court is absolutely correct in this regard. Lisa has a steady job with room for advancement with hours conducive to her responsibilities as a physical custodian to the children. JA463, 466, 474, 592-593,

603. 466. Additionally, Lisa's mother is living with her and, therefore, can provide supervision for the children when it is needed. JA593. In other words, Lisa is stable in both her home and her finances. Joel, therefore, did not meet his standard of proof that the children would gain an "actual advantage" by returning to New Mexico.

F. The facts adduced at trial do not support the conclusion that the children's relocation to Las Cruces is likely to improve their quality of life.

As noted above, Joel did not meet his standard of proof on the requirements in NRS 126C.007(1). Even if he did, however, Joel did not meet his burden of proof in demonstrating that the relocation to New Mexico is likely to improve the quality of life for the children. For its part the district court's findings in the Decree as to the quality of life were excessively short (36 words) and entirely conclusory:

Dad and the children's lives will improve as there will be improved housing, financial stability, and neither party has significant ties to Las Vegas, Nevada; however, both parties have significant ties to Las Cruces, New Mexico.

On their face, the district court's findings are insufficient. As will be discussed in greater detail below, the district court made no findings as to how housing in Las Cruces would improve in comparison to Lisa's housing in Nevada. The only information presented to the district court regarding housing was that Joel's parents' home has four bedrooms. But so does Lisa's home in Las Vegas.

As noted above, the district court's "finding" regarding financial stability also lacks evidence in the record. The only evidence regarding financial stability is that Joel can live rent free with his parents. Joel's parents did not testify as to their financial means, nor did they submit a financial disclosure form. We do know, however, that Lisa has been employed full time since her arrival in Nevada and has supported her family the whole time.

Without elaboration, the district court found that "neither party has significant ties to Las Vegas." Conversely, the district court found that the parties have significant ties to Las Cruces, New Mexico. Of course, the district court does not provide any facts whatsoever that support its conclusion that the children have "significant ties" to Las Cruces. It is also fair to note that, when the parties left New Mexico, they were not even living in Las Cruces. They had left Las Cruces to get out from under the control of Joel's parents. JA 055-57, 189, 420, 594. The only "ties" to Las Cruces identified at trial were Joel's parents who are retired and are capable of traveling to Las Vegas any time they want to. JA519. And, as noted above, Lisa has her own family ties in Las Vegas including her mother and sister.

In other words, when the district court stated that it was in the children's best interests to "return to their lifelong home" in Las Cruces, the district court made no specific factual findings as to why. Without factual support, the

statement about the children’s “lifelong home” is nothing more than an unsubstantiated conclusion.

Even though the Nevada legislature substantially revamped its relocation statutes, the Nevada Supreme Court’s case authority is still instructive in the relocation setting. In analyzing the extent to which the relocation is likely to improve the quality of life for the children, the district court should still consult the Nevada Supreme Court’s seminal decision in *Schwartz v. Schwartz*²¹ which holds that, in weighing and balancing the quality of life factor, district courts should consider:

(1) whether positive family care and support, including that of the extended family, will be enhanced; (2) whether housing and environmental living conditions will be improved; (3) whether educational advantages for the children will result; (4) whether the custodial parent's employment and income will improve; (5) whether special needs of a child, medical or otherwise, will be better served; and (6) whether, in the child's opinion, circumstances and relationships will be improved.

Looking at this relocation case through the lens of the *Schwartz* factors it becomes apparent how thin Joel’s case actually is. With regard to whether positive family care and support will be enhanced, we have already established that family support will be enhanced in Nevada just as much as it would be

²¹ 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991).

enhanced in New Mexico. Lisa will have her mother, sister, and other family members in Las Vegas and Joel will have his mom and dad in Las Cruces.

Based upon the record before it, the district court had no basis upon which to base a conclusion that the children's housing and living conditions would improve. Lisa's home has four bedrooms just like Joel's parents' home in Las Cruces. Joel provided no additional evidence of the environmental living conditions in Las Cruces nor did he suggest how they would be enhanced over the home the children share with Lisa in Las Vegas.

Apart from the number of bedrooms in Joel's parents' home, the district court has no idea what the children's living conditions actually are like in Las Cruces. Is Joel's parent's home in a safe environment? Is the home in disrepair? Apart from being near a park, what other recreational amenities are available to the children in Las Cruces? The record in this case is silent as to such facts. Indeed, the only factual finding the court made regarding the living conditions in Las Cruces is that Joel can live "rent free."

For her part Lisa testified, that the children are active with her in Las Vegas. Lisa testified about visiting the Mini Grand Pris, the Adventure Dome, the park, bowling, barbeques, and swimming at her aunt's house. JA590-91. Of course, the district court, residing in Las Vegas, can take judicial notice of all the other amenities Las Vegas has to offer such as hiking Red Rock or Mount

Charleston or recreating at Lake Mead. Joel, however, presented no similar or competing facts to the district court about Las Cruces.

Joel also entirely failed to provide any evidence which would demonstrate that educational advantages for the children would result from relocation. Indeed, the only mention at trial of education in Las Cruces came from Joel's father who merely stated that "there's a school right down the street" and Harley "could take the bus" to school. JA506. The caliber of these schools or the advantages they provide the children is anyone's guess. Lisa, on the other hand, produced evidence that Harley had won the lottery and earned her way into two magnet schools in Las Vegas. JA591. Lisa testified that Harley had selected and was enrolled in the magnet school which promoted her interest in premedical studies. JA591. Given that Joel provided no evidence regarding educational advantages in New Mexico, it is no wonder that the district court made no findings whatsoever in this regard.

The *Schwartz* case also requires the district court to consider "whether the custodial parent's employment and income will improve." The evidence demonstrated that Joel's employment in New Mexico would not improve. In Las Cruces, Joel would be working in the same position at AutoZone at the same hourly wage. JA555. Even the district court noted that "there's nothing here that blows me out of the water in terms of a job opportunity in New Mexico ... we're

talking about a lateral move by Dad where he's not going to be making any more money." JA650 Clearly, Joel's relocation to New Mexico does not improve Joel's employment and income. Relocation only provides Joel the opportunity to move back in with his parents possibly forever. JA653.

Joel likewise provided no evidence as to whether the medical needs of the children or otherwise would be better served in New Mexico. Lisa did however provide evidence that she had attempted to get Hayden in to counseling in Las Vegas which both parties acknowledged that she needed. JA550.

The last factor of the Schwartz analysis (i.e., the child's opinion) is not applicable to this case. As discussed in footnote 14 above, the district court received no competent evidence regarding the children's wishes. The district court even noted that the children did not want to be "put in the middle" of their parents. JA658.

On the whole, the district court ignored most of the *Schwartz* factors when it concluded that the children's quality of life would improve by relocating to Las Cruces. When such factors are assessed against the district court record, however, it becomes apparent that Joel did not meet his burden of proof on the quality of life factor and it was an abuse of discretion for the district court to have concluded that he did.

F. Why Las Vegas? The Answer: Joel's Parents.

In granting relocation, the district court referenced subsection (f) of NRS 125C.007(2), which permits the district court to consider “any other factor necessary to assist the court in determining whether to grant permission to relocate.” With regard to this factor, the district court posed the following question at both the preliminary motion hearing as well as at trial: Why Las Vegas? JA414, 641.

Although it posed this question, the district court ignored entirely Lisa's answer to it. The parties came to Las Vegas to get out from under the suffocating thumb of Joel's parents. JA515, 560, 609. As Lisa testified, a large part of moving to Las Vegas was to “get out from under the shadow” of Joel's parents and away from their manipulation and control. JA 055-57, 189, 420, 594. The couple wanted to distance themselves from Joel's “helicopter parents” who tended to create a toxic family environment and were “suffocating them from a social perspective.” JA055-56, 419, 594.

In rendering its decision, the district court noted its concern that the level of involvement of Joel's parents in the lives of the children “is perhaps above and beyond what is normal” and “probably exceeds what most grandparents do.” JA657. In this regard, the district court stated the following:

And I'll tell you right now, some of the worst offenders that I've seen as I've had experience here on the bench are

grandparents ... grandparents can sometimes be the worst offenders when it comes to making negative remarks about the other parent ... So there's some red flags that have gone out there and ... those perhaps are some warning signs.” JA656-657.

The district court itself raised red flags regarding Joel's parents' involvement in the children's lives and the propensity for harm that such involvement can cause the children. Notwithstanding these stated concerns, the district court allowed the children to be relocated from Las Vegas into the grandparents' home where the grandparents would become the children's *de facto* primary physical custodians. As discussed above, the district court made this ruling on the basis of a flimsy record and conclusory findings regarding the children's best interest. Knowing full well that Joel's parents dislike Lisa and do not respect her as a mother, it was an abuse of discretion for the district court to permit the children to be relocated into their home where Lisa will now be systematically excised from their lives.

In answering the district court's rhetorical question “why Las Vegas?”, Lisa would point the district court to its own “red flags” and “warning signs”: “*Grandparents can sometimes be the worst offenders.*” JA657 (Emphasis added).

18. ROUTING STATEMENT / ISSUES OF FIRST IMPRESSION. This appeal is presumptively assigned to the Court of Appeals per NRAP 17(b)(5) because it involves an issue of family law.

DATED this 21st day of October, 2021.

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VERIFICATION

1. I hereby certify that this fast track statement 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:

☒ This fast track statement has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14 point Times New Roman type style; or

☐ This fast track statement has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 6,954 words. This word count excludes this Verification and the NRAP 26.1 Disclosure as provided in NRAP 32(a)(7)(C); or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains 7,267 words or 693 lines of text: or

☐ Does not exceed 16 pages.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track statement and that the Supreme Court of Nevada may impose

sanctions for failing to timely file a fast track statement, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

DATED this 21st day of October, 2021.

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