February 2024

Nevada Bar Exam

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FEBRUARY 2024

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Amy recently graduated from law school and passed the Nevada bar exam in February 2023, but was waiting for her bar application to be approved before she could be sworn in. While waiting, Amy started her own law practice specializing in criminal defense. During law school, Amy had participated in a legal clinic and worked on criminal cases involving minor criminal charges. Amy was always supervised by a faculty member.

Amy's neighbor, Bruce, was accused of first-degree murder. Bruce approached Amy to represent him in the criminal matter. Amy assured Bruce that she passed the Nevada bar exam and would be admitted to practice before his trial commenced, and that she had previously handled dozens of criminal cases at the law school's legal clinic.

Amy told Bruce that she would charge a legal fee in the amount of $2,000,000 only if Bruce was acquitted. She would require Bruce to pay a cost retainer in the amount of $400,000 to cover expenses of his case. The cost retainer would be: (a) paid up front; (b) non-refundable; and (c) deemed fully earned by Amy when paid. Bruce retained Amy and they signed a written fee agreement. Bruce paid Amy the full amount of the retainer, which Amy immediately deposited in her general bank account. Amy withdrew the funds to pay for expenses related to establishing her law office.

Prior to trial, Amy received approval on her bar application and was sworn-in as an attorney.

The District Attorney's Office communicated a plea bargain to Amy, but she declined the plea bargain offer without first discussing it with Bruce because she strongly believed she would prevail at trial. During trial, several eyewitnesses testified that they saw Bruce shoot and kill the victim, which was the first time Amy became aware of this fact as she had not spoken with the eyewitnesses. Bruce was convicted of first-degree murder.

Please fully discuss all ethical issues arising under the Nevada Rules of Professional Conduct.

Paradise Inc., a Nevada corporation, was constructing a high-end apartment complex in Las Vegas, Nevada. In May of 2023, Paradise emailed a purchase order to Smart Home ("Smart") for control pads to control temperature, lighting and video surveillance in each apartment. Paradise ordered 500 control pads at a price of $3,000 per unit. Paradise's purchase order indicated that it needed the control pads delivered and installed by August 1, 2023, as tenants would be occupying apartments later that month.

Smart responded to Paradise's email by calling Paradise to indicate it would begin to specially manufacture the control pads as it did not have an off-the-shelf product with all the features Paradise requested. A Paradise representative responded, "sounds great."

Two weeks later, Paradise learned that it could purchase a similar product from Budget Home ("Budget") for half the price and sent an email to Smart cancelling its order. Smart had already manufactured 100 control pads by the time it received the Paradise email and responded demanding payment for the control pads.

In response to a purchase order email from Paradise seeking 500 control pads, Budget's e-mail indicated that it would deliver and install them by August 1, 2023. Budget's e-mail also stated: "**THERE ARE NO WARRANTIES EXPRESSED OR IMPLIED, AND PARTICULARLY, THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE MADE BY BUDGET IN CONNECTION WITH THE SALE OF THIS PRODUCT**."

In late July, Budget's delivery truck was involved in an accident while en route to the Paradise complex and all the control pads were destroyed. Budget was delayed in obtaining replacement control pads and was unable to deliver and install them until September 1, 2023. At the time of delivery, a Paradise representative signed a receipt from Budget accepting the goods.

Over the next six months, Paradise experienced numerous problems with the control pads and resulting lease terminations. Paradise communicated to Budget that it wished to return the control pads and be refunded the purchase price. Budget refused, pointing to its reply to the Paradise email ordering the units. Paradise kept the control pads in its inventory. Concerned about losing more tenants, Paradise purchased 500 control pads from another supplier for $2,500 per unit.

Please fully discuss the following:

1. Did Paradise and Smart have a contract and, if so, what claims and arguments can they raise against each other?

2. Is there a contract between Paradise and Budget and what are the terms?

3. What claims, defenses, and damages can Paradise and Budget raise against each other?

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QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Bob was very tired as he was driving home after working a double shift at a Eureka County, Nevada gold mine. He failed to notice the stop sign at the intersection of the state route and the county road upon which he was traveling. Max was riding his motorcycle on the state route in excess of the posted speed limit. When he saw Bob enter the intersection, Max locked his brakes, laid the bike on its side, and skidded onto the shoulder in a cloud of dust.

Bob immediately stopped to check on Max. As he was walking toward the scene of the accident, Bob saw Max limping out of the dust cloud with a raised handgun. Max fired two shots in Bob's direction but did not hit him. Bob dropped to his knees with raised arms and pleaded with Max to stop shooting. With the gun pointed at Bob's head, Max said, "Look what you did to my ride. I should kill you! Give me your wallet and phone."

After handing over the wallet and phone, Bob was permitted to leave. When he got home, Bob noticed a bullet hole in the door of his truck. At that moment, the shock of the encounter with Max overwhelmed Bob. He began to shake and sob uncontrollably. It took Bob eighteen months of therapy before he could look at a motorcycle without suffering extreme anxiety.

Please fully discuss the civil claims Bob and Max have against each other and the defenses they may assert.

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QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Opal owned a duplex in Round Mountain, Nevada. She had operated a yarn store out of Unit #1 and a flower shop out of Unit #2 of the duplex since 1960. The hours of operation of both businesses were 9:00 a.m. to 5:00 p.m.

In 1970, the City of Round Mountain enacted a zoning ordinance designating the neighborhood containing the duplex as residential and specifying that residential use is the highest use of the real property.

Wishing to retire, in 2022, Opal sold Unit #1 to Ivan and Unit #2 to Posie for $150,000 per Unit. Ivan suggested that he and Opal enter into an Installment Contract of Sale ("Contract") so Opal could receive a stream of income. Posie agreed to do the same. Each Contract required the purchaser to make payments of $5,000 per month to Opal. The Contracts also provided, until paid in full, the real property could not be used in any illegal manner or cause a nuisance to the neighbors. Failure to comply with any provision in a Contract would result in termination of the Contract.

Ivan immediately rented Unit #1 to Max on a month-to-month basis. Max spent $50,000 to renovate Unit #1, turning it from a yarn store to a coffee shop catering to customers on first dates. Max installed new hardwood floors, window coverings, special blush hued lights and custom built-in booths with attached heart shaped tables. He named the business "Hearts" and began operating with business hours of 2:00 p.m. to 10:00 p.m.

Posie moved into Unit #2 and continued to operate it as a flower shop. She named her

business "Flowers" and began operating with business hours of 9:00 a.m. to 5:00 p.m.

After a few months, neighbors began to complain about the additional traffic, lack of parking, the pervasive smell of burnt coffee and the late-night noise of customers leaving the coffee shop. After several more months, the City of Round Mountain served notices of zoning violations on both Max and Posie, demanding they cease business operations, but giving them the opportunity to appeal.

Discouraged by the controversy, Max decided to close Hearts after the first year. He stopped paying rent and removed the lights and window coverings, and tore out the booths and attached tables, leaving scars on the floors and large holes in the walls.

Ivan continued to make his payments to Opal.

Opal informed Ivan that he had caused too much trouble in the neighborhood and therefore was terminating his Contract.

Please fully discuss:

1. **The City of Round Mountain's claims;**
2. **Ivan's claims and defenses against the City of Round Mountain;**
3. **Posie's claims and defenses against the City of Round Mountain;**
4. **Ivan's claims against Max;**
5. **Ivan's claims and defenses against Opal;**
6. **The neighbors' claims against Ivan.**

Bob worked as a bank teller for Bank of West Wendover in Nevada when Lynn came in with a cash deposit of $5,000 for her business account. During the transaction, while Lynn was distracted by her cell phone, Bob took half of the cash and tucked it away in his waistband. Lynn did not notice Bob hiding the cash and did not pay attention to her deposit slip that reflected only a $2,500 deposit in her account. Adam, the bank's security guard, saw Bob hide the money in his waistband. He approached Bob and said, "I saw you take the customer's money and if you want me to keep quiet about it, you need to give me half." Bob, not wanting to get caught, agreed and gave Adam the money.

Later, Bob approached Adam and said how easy it would be for someone to rob the bank if Bob and Adam were in on it. Adam said his friend Hal would do it and they could split the money three ways. Adam arranged for Hal to go to Bob's teller window the next day and demand money from Bob while showing him a gun. The next day, when Hal got to Bob's window and demanded the money, Bob panicked and told Hal, "Put the gun away and let's forget this. I've changed my mind and don't want to do this." Undeterred, Hal said, "Too late Bob, give me the money if you don't want anyone to get hurt." Afraid of what Hal might do, Bob gave Hal the money in his teller drawer.

After he fled the bank, Hal went home and hid his gun and the money from the bank in his bedroom closet locked with a padlock. Hal decided to lay low for a while, so he left his apartment and took the padlock key with him. Shortly afterward, the police arrived at Hal's

apartment and told Hal's roommate that Hal was the prime suspect in a bank robbery. When police asked Hal's roommate for permission to search Hal's room and the locked closet, the roommate responded, "Go ahead, it's not my room." After cutting the lock off the closet, the police found thousands of dollars and a gun matching the description of the one shown by Hal at the bank.

Please fully discuss:

1. **The crimes committed by Bob.**
2. **The crimes committed by Adam.**
3. **The constitutional arguments Hal could make at trial regarding the admissibility of the items found in his closet.**

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NEVADA BAR EXAM

QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

Wendy and Hal were engaged in May of 2013. On July 1, 2013, just before leaving to go to a wedding chapel on Las Vegas Boulevard to get married, Wendy asked Hal to sign an agreement that provided in the event of a divorce, Wendy's home and some inherited jewelry would be her separate property. Hal, who had no separate property, agreed to sign the agreement so long as Wendy agreed if she had an annual income exceeding $250,000, he would not be required to pay child support and that Wendy would waive alimony. She agreed, they both signed the revised agreement, and went into the chapel and got married.

A few days later, Wendy and Hal opened a joint bank account. Both parties would deposit one-half of their monthly salaries into the joint account that was used to pay household and family expenses. Wendy deposited the rest of her salary into a bank account held in her name alone, while Hal deposited the rest of his salary into a bank account held in his name alone. Wendy and Hal each used their respective accounts to pay their own personal expenses, such as equipment for hobbies, sporting event tickets, and shopping. Wendy had $6,000 in her account at the time of marriage. By the time Wendy decided to end her marriage to Hal, her bank account balance was $100,000.

After getting married, Hal moved into Wendy's home in Las Vegas, Nevada. The home was purchased in 2012 using a mortgage loan and the home title remained in her name alone upon purchase and throughout her marriage to Hal.

During Wendy and Hal's marriage, they used funds from their joint account to make the monthly mortgage payments. The home appreciated in value during the marriage.

In 2015, Wendy's grandmother gave her $50,000 in cash for her birthday. Wendy deposited the birthday funds into her individual bank account. The day following the deposit into her account, she spent $49,000 from the account to buy a boat and trailer, both titled in her name, so she could take Hal and their two children water skiing.

In March 2022, Wendy discovered that, while she and Hal were engaged, he was involved with another woman who had become pregnant with Hal's child. In July 2023, after much stress and loss of trust in the relationship, Wendy told Hal the marriage was not going to work out and demanded that he move out of her home. He agreed and moved into an apartment. While separated, Hal started depositing his payroll check into his own account. Two months after separating, Hal won a $1,000,000 slot machine jackpot at a Las Vegas casino.

In January 2024, Wendy contacted a lawyer and told her that she wanted to seek an annulment of the marriage because Hal defrauded her by not telling her that he was seeing the other woman who was pregnant with his child.

Please discuss fully the following:

1. **Whether Wendy may terminate the marriage by annulment; if not, whether Wendy has grounds for divorce in Nevada?**
2. **Whether the agreement Wendy and Hal entered into prior to their marriage is a valid and enforceable premarital agreement.**

3. Assuming there is no valid premarital agreement, discuss the rights and obligations of Wendy and Hal with respect to:

   A. The money in the bank account held in Wendy's name.

   B. The equity in Wendy's home.

   C. The boat and trailer.

   D. The slot machine jackpot.

NEVADA PERFORMANCE TEST (NPT)

The NPT is a 2-hour exam designed to test the ability to complete a common legal task that a beginning lawyer would be expected to perform. You are required to use necessary legal skills in a real-life scenario.

You will be provided with a File. The File will contain source documents that will set forth the facts of the case and other background information. These materials may include interview transcripts, correspondence, investigative reports, client records, pleadings, internal memorandum, newspaper articles, legislative materials, medical records and correspondence between counsel. All facts recited are not relevant, and maybe incomplete, ambiguous or conflicting. You are expected to recognize what facts are relevant and to identify when facts are ambiguous and how such ambiguities could be resolved.

The second component of the exam materials is the Library. The Library may contain cases, statutes, administrative regulations and other legal authority commonly cited in a legal memorandum or used for reference. All legal sources are based on Nevada law. You may use abbreviated titles and omit page references when citing cases found in the Library.

The NPT is not a test of your knowledge of substantive law. The NPT is designed to evaluate your fundamental lawyering skills. Your answer will be evaluated on the content, thoroughness, and organization of your document based on these criteria:

- Ability to determine relevant factual details, to distinguish relevant from irrelevant facts, and to resolve potentially conflicting facts;
- Analysis of source legal authorities to determine applicable principles of law;
- Application of the controlling law to the relevant facts and circumstances;
- Effective communication in writing;
- Performing task in a timely matter; and
- Ability to follow the directives provided.

In preparing your written document, it is important that you concentrate on the materials in the File and Library, which provide the specific materials from which you should use. Use your general legal knowledge to assist you with analyzing the issues presented.

FILE

MEMORANDUM

To: Applicant

From: Senior Firm Partner

Re: Research and Memorandum Request

Date: February 29, 2024

Please review the cases in the file and the rules in Chapters 233B and 630 of the Nevada Revised Statutes.

Also consider the following information regarding settlement amounts imposed by the Nevada Board of Medical Examiners in other cases:

> CASE #1 – Physician charged with multiple violations of Malpractice, Failure to Maintain Proper Medical Records, and Violation of Standards of Practice by Writing Prescriptions for Controlled Substances in a manner that deviates from Model Policy. Costs and expenses assessed in the amount of $4,504.34, and fines in the amount of $4,500.
>
> CASE #2 – Physician charged with multiple violations of Malpractice, Failure to Maintain Proper Medical Records, and Violation of Patient Trust and Exploitation of Physician and Patient Relationship for Financial or Personal Gain. Costs and expenses assessed in the amount of $6,870.43, and fines in the amount of $3,000.

Based on your review, please prepare a memorandum setting forth Dr. Houser's legal rights in light of his concerns and in response to the actions taken by the Board of Medical Examiners, including:

1. The procedural options that Dr. Houser has to challenge the Board's actions, and a list of the next steps that should be taken to exercise those options, with applicable statutory references.
2. Each of the legal arguments that Dr. Houser could make under NRS 233B.135 based on his concerns and in response to the actions taken by the Board.

SUMMARY OF CLIENT INTERVIEW

To: File

From: Senior Firm Partner

Re: Interview with Dr. Douglas Houser

Date: February 26, 2024

I met with a new client, Dr. Douglas Houser, on February 26, 2024. He was extremely upset because the Nevada Board of Medical Examiners had just suspended his medical license for a period of 6 months and placed him on probation for three years. They also fined him $30,000 and ordered him to pay costs and expenses in the amount of $40,000.

I obtained the following information in my interview with Dr. Houser:

1. He recently was a defendant in a malpractice action that was settled by his insurance company.
2. He has practiced medicine in Nevada for the past 20 years, has performed over 1,000 laparoscopic gall bladder surgeries without incident, is considered an expert in his field and, until now, has never before been subject to a malpractice suit or Board discipline.
3. The patient in the malpractice action complained to the Board of Medical Examiners who designated a committee to investigate the complaint. After investigation, the committee filed a formal Complaint against Dr. Houser. He received proper notice of a hearing, which was held on December 1, 2023, before a panel of two Board members and a hearing officer. Dr. Houser did not attempt to settle the matter informally prior to the hearing and participated in the hearing without counsel.
4. The Board of Medical Examiners met on February 1, 2024 to adjudicate the findings of the hearing panel and voted to suspend his medical license, put him on probation and fine him at that time. Although Dr. Houser brought me a copy of the Report of the Investigative Committee - Summary of Hearing and Recommendations, he has not yet received the final written order of the Board.

Dr. Houser is convinced he was "railroaded" and wants to challenge this outcome immediately. He told me that the Chairperson of the Board of Medical Examiners is a Family

Practice physician who did his surgical rotation under Dr. White at UCLA, the expert used by the Investigative Committee at the hearing. Another member of the Board is a surgeon whose group is competing with Dr. Houser for a lucrative on-call contract at a local hospital. Finally, one of the Board members who was on the investigative committee participated in the Board's adjudication on February 1st.

Dr. Houser also believes that the Board imposed harsher penalties on him compared to other physicians who have done worse things. Although he did not raise this at the hearing, and there will be no mention of this in the record, he now wants us to address this issue going forward.

Further, Dr. Houser is very concerned about delays, and incurring excessive costs and expenses. He is in the middle of a protracted divorce, worried about his reputation and does not want any negative impact on his practice. Therefore, he also wants us to try to settle this matter as quickly as possible, without incurring additional costs and expenses.

FILED DECEMBER 29, 2023

Nevada Board of Medical Examiners

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

In the Matter of Charges and Complaint Against DOUGLAS HOUSER, M.D., Respondent _________________________________	))))	CASE NO. 22-1234-1 Formal Hearing: December 1, 2023

REPORT OF INVESTIGATIVE COMMITTEE

SUMMARY OF HEARING AND RECOMMENDATIONS

A formal hearing on the case noted above was held by the Investigative Committee at the Northern Nevada office of the Board of Medical Examiners of the State of Nevada ("Board"), in Washoe County, on December 1, 2023. Don Jones, Counsel for the Board appeared on behalf of the Investigative Committee of the Board ("IC") at the Northern Nevada office along with the undersigned hearing officer, who is not a Board member, and two physician Board members. Dr. Houser appeared via video conference from the Board's Southern Nevada office in Clark County. Dr. Houser represented himself.

<u>Background</u>

Respondent is a medical doctor currently licensed in active status by the Board pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC) (collectively, the "Medical Practice Act") to practice medicine in Nevada. Respondent resides and practices medicine in Clark County, Nevada.

On November 1, 2023, in Case No. 22-1234-1, the IC filed a formal Complaint charging Respondent with violating the Medical Practice Act. Specifically, the Complaint alleged three counts: Malpractice (NRS 630.301(4)), Failure to Maintain Proper Medical Records (NRS 630.3062(1)(a), and Violation of Standards of Practice Established by Regulation (NRS 630.306(1)(b)(2). Respondent failed to use the reasonable care, skill or knowledge ordinarily

used under similar circumstances when he performed a laparoscopic gall bladder surgery on Patient A by failing to correctly identify Patient A's anatomy prior to cutting the common bile duct. In addition, Respondent failed to maintain timely, legible, accurate and complete medical records regarding the operation. Thus, Respondent was subject to discipline by the Board as provided in NRS 630.352.

Witnesses and Testimony at the Hearing

In support of the IC allegations, the IC called David White, M.D., a professor of surgical medicine at UCLA in California. Dr. White testified that, based on his review of the medical records provided by the IC, Respondent breached the standard of care by failing to properly identify the anatomy, and failing to take steps to avoid injury to the common bile duct. Dr. White testified that it is the standard of care for surgeons to perform cholangiography, an interoperative x-ray or cholangiogram, to visualize the vessels of the gall bladder during a laparoscopic procedure. Dr. White further testified that Respondent failed to perform a cholangiogram prior to cutting the common bile duct and failed to consult another surgeon. In addition, Respondent failed to convert the surgery to an open procedure to avoid the injury. Although Patient A survived, the patient now requires multiple procedures continuously for the rest of Patient A's life as a result of the injury. Dr. White also contended that Respondent's medical records were lacking in that the operative report was not completed until two months after the surgery and was incomplete.

Respondent did not call any witnesses but stated that he was considered an expert in his field by peers. He testified on his own behalf that laparoscopy is a high-risk procedure with an inherent incidence of bile duct injury. This was clearly stated as a risk of the procedure in the consent the patient signed. Moreover, cholangiography has not been shown to decrease the incidence of bile duct injury and only 16% of surgeons routinely use this technique. Further, Respondent believed that he had correctly identified the anatomy during the operation and there was no need to consult another surgeon.

Hearing Officer Analysis and Recommendation

The Hearing Officer believed that the testimony from each of the witness and the Respondent at the hearing was equally credible. The Hearing Officer saw no prejudice or bias on

the part of any one who gave testimony. However, because the IC provided testimony from an outside expert and Respondent did not, the undersigned Hearing Officer recommends to the Board that the IC met its burden of proof in relation to all counts of the Complaint.

THIS REPORT IS NOT A FINAL ORDER OF THE BOARD OF MEDICAL EXAMINERS.

Dated: December 29, 2023

By: /s/ Penelope Hall, Esq.
Penelope Hall, Esq.
Hearing Officer

LIBRARY

EXCERPTS FROM NEVADA REVISED STATUTES

Title 18. State Executive Department.
Chapter 233B. Nevada Administrative Procedure Act.

NEVADA ADMINISTRATIVE PROCEDURE ACT

NRS 233B.032 "Contested case" defined.

"Contested case" means a proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, or in which an administrative penalty may be imposed.

NRS 233B.121 Notice of hearing in contested case; representation by counsel; opportunity to respond and present evidence and argument; informal disposition.

1. In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice. . . .

3. Any party is entitled to be represented by counsel.

4. Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved. . . .

5. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. If an informal disposition is made, the parties may waive the requirement for findings of fact and conclusions of law.

NRS 233B.122 Certain members of agency prohibited from taking part in adjudication.

1. No agency member who acts as an investigator or prosecutor in any contested case may take any part in the adjudication of such case.

NRS 233B.125 Adverse decision or order required to be in writing; contents of final decision; standard of proof; notice and copies of decisions and orders.

A decision or order adverse to a party in a contested case must be in writing . . . . Except as provided in subsection 5 of NRS 233B.121, a final decision must include findings of fact and conclusions of law, separately stated. Findings of fact and decisions must be based upon a

preponderance of the evidence. . . . Parties must be notified either personally or by certified mail of any decision or order. Upon request a copy of the decision or order must be delivered or mailed forthwith to each party and to the party's attorney of record.

NRS 233B.130 Judicial review; requirements for petition; service.

1. Any party who is:

   (a) Identified as a party of record by an agency in an administrative proceeding; and

   (b) Aggrieved by a final decision in a contested case,

   is entitled to judicial review of the decision. . . .

2. Petitions for judicial review must:

   (a) Name as respondents the agency and all parties of record to the administrative proceeding;

   (b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county in which the aggrieved party resides or in and for the county where the agency proceeding occurred;

   (c) Be served upon:

      (1) The Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and

      (2) The person serving in the office of administrative head of the named agency; and

   (d) Be filed within 30 days after service of the final decision of the agency. . . .

5. The petition for judicial review . . . must be served upon the agency and every party within 45 days after the filing of the petition, . . .

NRS 233B.133 Form and deadlines for serving and filing memorandum of points and authorities.

1. A petitioner . . . who is seeking judicial review must serve and file a memorandum of points and authorities within 40 days after the agency gives written notice to the parties that the record of the proceeding under review has been filed with the court. . . .

NRS 233B.135 Judicial review: standard for review.

. . .

3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by abuse of discretion.

4. As used in this section, "substantial evidence" means evidence which a reasonable mind might accept as adequate to support a conclusion.

NRS 233B.140 Procedure for applying for stay of final decision; considerations by court in making ruling; provision of security by petitioner.

1. A petitioner who applies for a stay of the final decision in a contested case shall file and serve a written motion for the stay on the agency and all parties of record to the proceeding at the time of filing the petition for judicial review. . . .

3. In making a ruling, the court shall:

(a) Give deference to the trier of fact; and

(b) Consider the risk to the public, if any, of staying the administrative decision.

The petitioner must provide security before the court may issue a stay.

NRS 233B.150 Appeal from final judgment of district court.

An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court . . . .

Title 54. Professions, Occupations and Businesses.
Chapter 630. Physicians, Physicians Assistants, Medical Assistants, Perfusionists and Practitioners of Respiratory Care.

MEDICAL PRACTICE ACT

NRS 630.311 Review and investigation of complaint by committee designated by Board; formal complaint.

1. . . . , a committee designated by the Board and consisting of members of the Board shall review each complaint and conduct an investigation to determine if there is a reasonable basis for the complaint. The committee must be composed of at least three members of the Board, at least one of whom is not a physician. . . .
2. If, after conducting an investigation, the committee determines that there is a reasonable basis for the complaint and that a violation of any provision of this chapter has occurred, the committee may file a formal complaint with the Board. . . .

NRS 630.339 Contents of formal complaint; formal hearing.

1. If a committee designated by the Board to conduct an investigation of a complaint decides to proceed with disciplinary action, it shall bring charges against the licensee by filing a formal complaint. . . . The formal complaint must specify any applicable law or regulation that the respondent is alleged to have violated. . . .

NRS 630.346 Board, panel or hearing officer not bound by formal rules of evidence; burden of proof.

In any disciplinary hearing:
1. The Board, a panel of the members of the Board and a hearing officer are not bound by formal rules of evidence, ...
2. A finding of the Board must be supported by a preponderance of the evidence. . . .

NRS 630.352 Disposition of charges: Adjudication by Board; dismissal of charges or required disciplinary action for violations; issuance of order imposing discipline; orders imposing discipline deemed public records.

1. Any member of the Board, other than a member of an investigative committee of the Board who participated in any determination regarding a formal complaint in the matter or any member

serving on a panel of the Board at the hearing of the matter, may participate in an adjudication to obtain the final order of the Board. . . .

4. If the Board finds that a violation has occurred, it shall by order take one or more of the following actions:

(a) Place the person on probation for a specified period on any of the conditions specified in the order; . . .

(d) Suspend the person's license for a specified period or until further order of the Board; . . .

(h) Impose a fine not to exceed $5,000 for each violation; . . .

7. Within 30 days after the conclusion of the adjudication by the Board, the Board shall issue a final order, certified by the Secretary-Treasurer of the Board, that imposes discipline and incorporates the findings of fact and conclusions of law obtained from the hearing. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

NRS 630.356 Judicial review.

1. Any person aggrieved by a final order of the Board is entitled to judicial review of the Board's order. . . .

EXCERPTS FROM NEVADA ADMINISTRATIVE REGULATIONS

NAC 630.270 Disposition of findings and order of Board.

A copy of the disciplinary findings and order of the Board:

1. Will be served by personal service or by certified mail upon the person affected by them at the address of the person on file with the Board and his or her attorney of record;
2. Will be delivered by first-class mail or electronic mail to each hospital in the geographical area in which the physician, physician assistant, perfusionist or practitioner of respiratory care practices; and
3. May be delivered by first-class mail or electronic mail to members of the media.

NEVADA STATE BOARD OF ARCHITECTURE INTERIOR DESIGN AND RESIDENTIAL DESIGN v. Dennis E. Rusk

Supreme Court of Nevada (2019)

OPINION

We grant this petition for a writ of prohibition to clarify that premature petitions for judicial review do not vest subject matter jurisdiction in the district court. A petition for judicial review may not precede the administrative agency decision it contests, and the agency decision must satisfy NRS 233B.125 in order to constitute a decision subject to judicial review. The underlying petition for judicial review was filed after the administrative agency stated its disposition on the record, but that utterance did not include findings of fact and conclusions of law with a concise and explicit statement of the underlying facts in support. The disposition that was stated on the record accordingly did not constitute a final decision for purposes of commencing the period set forth in NRS 233B.130(2)(d) in which an aggrieved party may seek judicial review. Accordingly, the petition did not vest jurisdiction in the district court.

FACTS AND PROCEDURAL HISTORY

Dennis Rusk was a licensed architect in Nevada. In 2011, the Nevada State Board of Architecture, Interior Design and Residential Design (Board) held a hearing on two complaints. The Board concluded that Rusk violated Nevada law and ordered that Rusk pay a fine, pay the Board's fees and costs, complete certain courses while his registration as an architect was placed on probation.

Rusk moved to vacate the Board's disciplinary order in light of newly discovered evidence, and the Board denied Rusk's motion. The district court granted Rusk's petition for judicial review and remanded to the Board with a mandate to consider whether to vacate its 2011 disciplinary order in light of newly discovered evidence. On October 25, 2017 the Board held a hearing pursuant to the district court's mandate and unanimously passed an oral motion to deny Rusk relief and uphold the original disciplinary order. The Board stated its disposition on the record without discussing specific findings of fact or conclusions of law supporting its decision and announced that a written order would be forthcoming. Before the Board filed its written order, Rusk petitioned for judicial review of the Board's oral decision. On December 1, 2017, the Board issued its written order. The Board moved to dismiss Rusk's petition as jurisdictionally infirm. The district court denied the Board's motion, concluding that the Board's

oral decision at the October 25 hearing was a sufficient basis for Rusk's petition for judicial review. The Board petitioned this court for a writ of prohibition to challenge the district court's order denying its motion to dismiss.

DISCUSSION

The Board petitions for a writ of prohibition, arguing that NRS 233B.130(2)(d) sets forth a mandatory jurisdictional requirement and that the district court did not have jurisdiction to consider Rusk's petition for judicial review because he did not file it in the 30-day period after the Board's written decision. Whether a district court may exercise jurisdiction over a premature petition for judicial review is a matter of first impression.

An administrative agency's order must contain detailed findings of fact and conclusions of law to constitute a final decision for purposes of judicial review. . . .

Before considering the effect of a prematurely filed petition for judicial review, we must determine whether the Board's oral October 25, 2017 order constituted a final decision for purposes of NRS Chapter 233B.

We review matters of statutory interpretation de novo. Nevada's Administrative Procedure Act (NAPA), codified at NRS Chapter 233B, provides for judicial review of administrative decisions. NRS 233B.130(2)(d) requires a petition to be filed after service of an administrative agency's final decision. NRS 233B.125 provides that a final decision "must be in writing or stated in the record, must include findings of fact and conclusions of law, must be based upon a preponderance of the evidence, [and] must be accompanied by a concise and explicit statement of the underlying facts supporting the findings." The final decision requirements ensure that the decision has sufficient detail to satisfy due process and permit judicial review.

The Board's statement of its disposition in the record lacked the requisite findings of fact and conclusions of law to constitute a final decision pursuant to NRS 233B.125. At the conclusion of the October 25, 2017 hearing, one of the board members moved to uphold the Board's 2011 disciplinary order, the motion was seconded, the board members unanimously voted to affirm the 2011 order, and the chairman announced that a written order would be drafted and circulated. No further statement of the decision's basis or reasoning was made. A board member assented to Rusk's counsel that nothing would take effect and no limitations

period would begin to run until the written order was produced. As the Board's October 25 disposition as stated in the record summarily presented its ruling without any further legal or factual explanation, the October 25 disposition was not a final decision under NRS 233B.125 for purposes of commencing the NRS 233B.130(2)(d) filing period. . . . Accordingly, we conclude that the period for Rusk to file a petition for judicial review to challenge the Board's disposition did not begin to run with its October 25 oral decision . . . and that Rusk's petition for judicial review was prematurely filed.

Rusk's arguments to the contrary are unpersuasive. Rusk's argument that the October 25, 2017 oral decision adopted the Board's original 2011 disciplinary order and thus incorporated the 2011 findings of fact and conclusions of law fails because the purpose of the 2017 hearing was to investigate whether newly discovered evidence provided cause to vacate the 2011 order. . . . The Board did not proffer findings and conclusions supporting and explaining its disposition until it produced the December 1 written order.

A prematurely filed petition for judicial review does not vest jurisdiction in the district court.

We look to the statutory language of NRS 233B.130(2) to determine whether a prematurely filed petition for judicial review may be considered. Petitions for judicial review must name the agency and all parties of record to the administrative proceeding as respondents; be filed in the district court in Carson City, in the county where the petitioner resides, or in the county where the agency proceeding took place; be served on the Attorney General or a person designated by the Attorney General and on the person serving in the named agency's administrative head's office; and "[b]e filed within 30 days after service of the final decision of the agency." NRS 233B. 130(2). Where a statute's meaning is unambiguous, we give effect to the plain meaning of its language.

NRS 233B.130(2) plainly states that the petition must be filed after service of the final decision. Rusk filed his petition 22 days before the Board's order was filed, let alone served. A prematurely filed petition like Rusk's thus does not satisfy the NRS 233B.130(2) requirements. Rusk's argument that the provision creates a filing deadline, rather than a filing period, fails because the petition must be filed "within 30 days after," creating a period within which the relevant act must occur. We have held that the requirements to name the agency, file the petition in the proper venue, serve the petition on the Attorney General, and file the petition within 30

days of the decision are mandatory and jurisdictional. Insofar as Rusk argues that he had to file his petition prematurely to avoid being procedurally barred had the Board's oral decision been a final decision, this contention does not excuse his failure to satisfy the procedural requirements of NRS 233B.130(2). Moreover, Rusk's counsel was explicitly told that the Board's decision would not take effect and the limitations period would not begin until the written order was produced. We conclude that a premature petition for judicial review does not satisfy the jurisdictional requirement to timely file the petition. Accordingly, Rusk's premature petition for judicial review did not vest jurisdiction in the district court.

CONCLUSION

Because the district court lacked jurisdiction over Rusk's petition for judicial review, we grant the Board's petition for extraordinary relief. The clerk of this court shall issue a writ of prohibition directing the district court to grant the Board's motion to dismiss Rusk's petition for judicial review for lack of jurisdiction. . . .

Bradley GILMAN, DVM v. NEVADA STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Supreme Court of Nevada (2004)

OPINION

On October 22, 1998, Mr. and Mrs. Slensky took their young beagle, "Gardener," to the Green Valley Animal Hospital for routine vaccinations and for examination because the dog had experienced loose stools for four days. . . . Dr. Gilman instructed Greg Krasch, an unlicensed veterinary technician, to take x-rays of Gardener. Krasch attempted to x-ray Gardener, but the dog struggled extensively. At one point, it hit its head against the table. It also defecated on the table. While Krasch was cleaning up the mess, he tied Gardener to a cage in the room with a slip leash. . . . , after Gardener settled down, Krasch obtained the x-rays without waiting for Gardener to be sedated.

At approximately 5:00 p.m., Mrs. Slensky and her daughter arrived to take Gardener home. When Gardener was brought to them, he took a few steps toward them, then collapsed at their feet and was nonresponsive. . . . Dr. Gilman initially told the Slenskys . . . to take Gardener to the Emergency Animal Center to be monitored by a veterinarian overnight. . . . The veterinarian on call at the emergency clinic treated Gardener for shock. Despite her efforts, Gardener died that evening. . . .

The Slenskys filed a complaint with the Nevada State Board of Veterinary Medical Examiners (the Board), against Dr. Gilman. After an investigation by Gary Ailes, DVM, the Board led an "Accusation" against Dr. Gilman on August 31, 1999.

On December 13, 1999, the Board held an evidentiary hearing. Both the deputy attorney general and Dr. Gilman presented testimony from expert witnesses who reached opposite conclusions regarding the appropriateness of Dr. Gilman's actions. The Board voted to convict Dr. Gilman of incompetence and gross negligence under NRS 638.140(5), an ethics violation under NAC 638.046 and incompetence under NRS 638.140(5) for the use of an unlicensed veterinary technician. Dr. Gilman's license was suspended for sixty days, and Dr. Gilman was placed on probation for three years. The Board also ordered Dr. Gilman to pay costs and attorney fees in the amount of $18,093. The costs were based on an affidavit submitted by the Board's executive director.

Dr. Gilman timely filed a petition for judicial review, which the district court denied. Dr. Gilman then appealed to this court. . . .

"On review, neither this court nor the district court may substitute its judgment or evaluation of the record developed at the agency level for that of the Board ." Rather, the court must " 'review the evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion." ' The decision of the agency will be affirmed if substantial evidence exists to support it. Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion." Questions of law, however, are reviewed de novo.

Dr. Gilman argues that the Board members who served as triers of fact in his disciplinary hearing were also responsible for the Board's finances and, therefore, could not serve as impartial decision makers because their pecuniary interest created an appearance of bias and tempted them to decide the case in favor of their interest. Dr. Gilman also contends that under NRS 638.1473(2)-(3), any fines recovered from licensees must be deposited in the state general fund to avoid the appearance of bias unless the Board has appointed an independent hearing officer or panel for a disciplinary matter. Dr. Gilman contends that because the Board (1) did not appoint an independent hearing officer, (2) imposed $18,093 in penalties against him to recover its expenses in conducting the hearing, and (3) deposited the monies in the Board's operating fund rather than the state general fund, there was sufficient evidence to create the appearance of bias.

A veterinarian's license to practice is a property interest protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution as well as by Article 1, Section 8 of the Nevada Constitution. The United States Supreme Court has set forth standards for evaluating a tribunal's fairness under the Due Process Clause. "[A] 'fair trial in a fair tribunal is a basic requirement of due process.' This applies to administrative agencies which adjudicate as well as to courts." Not only must the tribunal harbor no actual bias against the person facing a deprivation of his property interests, but " 'justice must satisfy the appearance of justice.' " The test is: whether the [adjudicator's] situation is one "which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused."

A presumption of honesty and integrity cloaks those who serve as adjudicators. That presumption may be overcome, however, by showing that the adjudicators have a conflict of interest, such as a financial stake in the outcome of the case. Here, the executive director and the president of the Board had knowledge of the Board's day-to-day finances, and the other Board members reviewed the quarterly finances, yearly audits and budget requests at Board meetings. Therefore, they did have some fiscal responsibility for the agency.

However, no bias may be inferred if the pecuniary interest is too remote to create a possible temptation to convict. The Board had a $350,000 reserve fund, in addition to its annual budget, which it could access with approval from the Board of Examiners. The costs expended by the Board in Dr. Gilman's case were only approximately five percent of its reserve fund, and less than four percent of the combined annual budget and reserve fund.

Dr. Gilman's reliance on a 1983 decision by this court, *In re Ross*, is misplaced. In *Ross*, we held that where dues were paid directly to the State Bar treasury and the Board of Governors was responsible for the bar association's financial integrity, the board violated the petitioner's due process rights by sitting as the trier of fact in his hearing because doing so "present[ed] a constitutionally unacceptable potential for bias." *Ross* differs from Dr. Gilman's situation in one very important aspect. In *Ross*, the Board of Governors completely absolved the attorneys facing disciplinary charges of all allegations against them. However, the Board found that the attorneys had been untruthful during the investigation. The Board then recommended discipline and imposed costs on that basis. The imposition of costs in that case entirely defrayed the State Bar's yearly budget deficit. Given those facts, we could not say that the Board of Governors was not potentially biased or would not have been tempted to find that the attorneys had engaged in misconduct in order to recover its investigation costs and to cover the State Bar's budgetary deficit. Here, in contrast, the Board had a budgetary surplus of $350,000, in addition to its annual budget. The Board in this case found that all of the allegations against Dr. Gilman were true. There was ample evidence in the record to support the Board's factual findings. Furthermore, while the costs of investigating the allegations against Dr. Gilman were not insignificant, the Board was operating with a substantial budgetary surplus. Given that the Board had access to $350,000 if necessary, it does not appear to us that the Board would have been tempted to find that Dr. Gilman had engaged in misconduct merely to recuperate the costs of investigation and hearing.

Moreover, if we were to forbid the costs of an investigation and hearing simply because a board has minimal budgetary oversight, the agency would not be able to effectively function as a self-policing entity. To cover the costs of investigating cases of alleged professional misconduct, it would either have to increase its membership fees, which could result in pricing people out of the profession, or it would have to appoint an independent hearing officer, which would effectively force every agency to implement an intermediate appeals process. Furthermore, a party upon whom costs are imposed may seek judicial review to determine whether the costs imposed were excessive.

. . .

Dr. Gilman next asserts that the Board's assessment of "Board Costs" against him was an abuse of discretion. The Board charged him $1,737 for travel, hotel and meals for nine people for two days and per diem and travel expenses for Dr. Bernard Cannon. . . . Dr. Gilman argues that the charges were improper because meals are not an appropriate cost connected to judicial proceedings and because the Board's meals should have been paid out of its per diem allowance. The Board members are practicing veterinarians who must leave their normal routines to conduct the Board's business, which includes holding disciplinary hearings. They are entitled to a salary and per diem as set forth in . . . and the regulations adopted by the State Board of Examiners.

. . .

The record reflects that the Board imposed its actual costs, rather than the salary and per diem, for most of its members and employees. Because these actual costs do not exceed the amount that could have been assessed for salaries and per diem allowances, the Board did not abuse its discretion by imposing these costs on Dr. Gilman. However, it was improper for the Board to assess against Dr. Gilman the costs of feeding the prosecuting attorney, as the prosecuting attorney, employed by the Attorney General's Office, is neither a Board member nor an employee. Therefore, the district court's affirmance of "Board Costs" must be reversed as to meals for persons who were not Board members or employees.

. . .

Expenses necessarily incurred in disciplining a veterinarian must, by their very nature, be reasonable; and the Board must show that its costs were both reasonable and actual. Because the reasonableness of the investigative costs incurred could not be determined without an explanation of how such costs were necessary to the action, the Board abused its discretion by

assessing costs against Dr. Gilman based only on billing statements of Dr. Chumrau, without any explanation of the services provided by him, especially since Dr. Ailes was the investigator on the case. Therefore, the district court erred by denying judicial review on this basis.

. . .

For the foregoing reasons, we affirm the judgment of the district court in part, reverse in part and remand with instructions to the district court to remand the matter to the Board of Veterinary Medical Examiners to reassess costs against Dr. Gilman in accordance with this opinion.

NEVADA PERFORMANCE TEST (NPT)

The NPT is a 2-hour exam designed to test the ability to complete a common legal task that a beginning lawyer would be expected to perform. You are required to use necessary legal skills in a real-life scenario.

You will be provided with a File. The File will contain source documents that will set forth the facts of the case and other background information. These materials may include interview transcripts, correspondence, investigative reports, client records, pleadings, internal memorandum, newspaper articles, legislative materials, medical records and correspondence between counsel. All facts recited are not relevant, and maybe incomplete, ambiguous or conflicting. You are expected to recognize what facts are relevant and to identify when facts are ambiguous and how such ambiguities could be resolved.

The second component of the exam materials is the Library. The Library may contain cases, statutes, administrative regulations and other legal authority commonly cited in a legal memorandum or used for reference. All legal sources are based on Nevada law. You may use abbreviated titles and omit page references when citing cases found in the Library.

The NPT is not a test of your knowledge of substantive law. The NPT is designed to evaluate your fundamental lawyering skills. Your answer will be evaluated on the content, thoroughness, and organization of your document based on these criteria:

- Ability to determine relevant factual details, to distinguish relevant from irrelevant facts, and to resolve potentially conflicting facts;
- Analysis of source legal authorities to determine applicable principles of law;
- Application of the controlling law to the relevant facts and circumstances;
- Effective communication in writing;
- Performing task in a timely matter; and
- Ability to follow the directives provided.

In preparing your written document, it is important that you concentrate on the materials in the File and Library, which provide the specific materials from which you should use. Use your general legal knowledge to assist you with analyzing the issues presented.

FILE

Miller & Associates
123 Main Street
Reno, NV

MEMORANDUM

TO: Applicant
FROM: Managing Partner Miller
DATE: February 29, 2024
RE: Johnson v. Johnson

Our firm represented Mary Johnson in her divorce from David Johnson several years ago. In that matter, the court ordered joint physical custody of their two minor children. Recently, Mary has decided that she would like to move with the children from Reno, Nevada to live with her boyfriend Bob Smith on his farm in Davis, California, which is near Sacramento, California. Her ex-husband David has refused to consent to the relocation.

Using the materials in the File and the applicable statutes and cases in the Library, please prepare the points and authorities supporting the motion for primary physical custody and permission to relocate the children that we will file on behalf of Mary.

OFFICE MEMORANDUM

TO: All Attorneys
FROM: Managing Partner Miller
SUBJECT: Guidelines for Persuasive Briefs for Trial Courts
DATE: November 10, 2023

The following guidelines apply to persuasive briefs filed by our office in trial courts in support of motions.

III. Legal Argument

The body of each argument should analyze applicable legal authority and persuasively argue that both the facts and the law support our position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished. Courts are not persuaded by exaggerated, unsupported arguments.

A brief should not contain a single broad argument heading. Break the argument into its major components and write carefully crafted subject headings that summarize the arguments each covers. The argument headings should be complete sentences that succinctly summarize the reasons the tribunal should take the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or a statement of an abstract principle. Examples:

> Improper: Plaintiff has satisfied the exhaustion of administrative remedies requirement
>
> Proper: Where Plaintiff requested an administrative hearing by timely completing Form 3B, but the prison has refused to schedule a hearing, Plaintiff has satisfied the exhaustion of remedies requirement.

Do not prepare a table of contents, a table of cases, a statement of the case, or an index; these will be prepared, as required, after the draft is approved.

NOTES ON INTERVIEW WITH MARY

Mary and David were divorced in 2016 and share joint physical custody of their minor sons, who were five and seven years old at the time of the divorce. Mary, a full-time nurse, lives in Reno, Nevada and David, a casino worker, lives in Sparks, Nevada, about 20 minutes from Mary. Under the current visitation schedule, David has the boys every other weekend from Friday afternoon until Tuesday morning and, on the off week, on Monday night.

EMAIL EXCHANGES BETWEEN MARY AND DAVID

TO: David Johnson
FROM: Mary Johnson
DATE: November 14, 2023 10:07AM

David - I've been thinking about it a lot and I have decided that I want to move with the boys to Davis to live with Bob. I'm topped out in my job at Washoe Hospital here in Reno and there's no room for advancement. I've been offered a position at Davis Community Hospital with the same hours as I have now and a slightly higher salary. I've done a lot of research and in contrast to Washoe Hospital where nurses working for 20 years longer than me are only making $2 an hour more than me, there is a structure in place at Davis Community Hospital for advancement and pay increases. Davis Community Hospital indicated that they would like to use me as a labor and delivery consultant as they expand that department. At the University of California, Davis, I could obtain a master's degree, which will help me advance in my career. I would also have more income since I wouldn't be paying rent.

TO: Mary Johnson
FROM: David Johnson
DATE: November 14, 2023 2:34PM

So, you're going to be shacking up with Bob without being married - what kind of role modeling is that for the boys? You've only known him for a short time. Plus, the boys will have to share a bedroom whereas now they have their own bedrooms.

TO: David Johnson
FROM: Mary Johnson
DATE: November 14, 2023 5:56PM

I've known Bob since 2020 when we met through our mutual fly-fishing interest. We were friends until we began dating in 2021. Bob and I have discussed marriage, but we decided to wait before making such a big decision. Bob is great with the boys and, as a divorced dad, he spends a lot of time with his own two children. I have discussed this move with the boys, and they are

excited about it. We've spent many weekends at the farm and the boys love it. I want the boys to live in a more rural community that offers outdoor activities right outside the front door - fishing, hiking, horseback riding and farm activities. The school district in Davis, which is ranked higher than the school district in Reno, has a charter school that is highly ranked for its computer science curriculum. You know how interested our oldest son is in computer programming. There are also more tutoring and other educational resources available with UC Davis located there. We would be able to visit my sister and her family more easily since Davis is closer to their home in the San Francisco Bay Area. The boys could see their cousins more often. Your family lives back East.

TO: Mary Johnson
FROM: David Johnson
DATE: November 14, 2023 8:16PM

I absolutely object to this move to Davis. I know the boys really like the farm and are excited to live there, but I won't get to see them very often and won't be able to go to their sports and school events.

TO: David Johnson
FROM: Mary Johnson
DATE: November 15, 2023 10:05AM

You have never taken more than 2 weeks out of the possible 6 weeks of summer vacation. During the last year, you've dropped your Monday night visitation on the off week. Plus, it's only a 2 1/2 hour drive from Sparks to Davis and there is public transportation between nearby Sacramento and Reno/Sparks.

TO: Mary Johnson
FROM: David Johnson
DATE: November 15, 2023 1:14PM

You know I only get 2 weeks' paid vacation and I can't afford day care for any additional time during the summer. It is also too inconvenient for me to pick up the kids on Monday nights.

TO: David Johnson
FROM: Mary Johnson
DATE: November 15, 2023 6:30PM

Although you won't be able to see them every other weekend when we move to Davis, they could spend several weeks each summer and school break weeks with you, and I will pay the transportation costs. We can alternate holidays. If you want to come take them on 3-day weekends, we can work that out. Of course, I will continue to submit to the jurisdiction of the Nevada courts over custody matters after the move.

LIBRARY

EXCERPTS FROM NEVADA REVISED STATUTES

Title 11. Domestic Relations.
Chapter 125C. Custody and Visitation

NRS 125C.0035 Best interests of child: Joint physical custody; preferences; presumptions when court determines parent or person seeking custody is perpetrator of domestic violence or has committed act of abduction against child or any other child.

1. In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child. If it appears to the court that joint physical custody would be in the best interest of the child, the court may grant physical custody to the parties jointly.

2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.

3. The court shall award physical custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:

(a) To both parents jointly pursuant to NRS 125C.0025 or to either parent pursuant to NRS 125C.003. If the court does not enter an order awarding joint physical custody of a child after either parent has applied for joint physical custody, the court shall state in its decision the reason for its denial of the parent's application.

(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

(c) To any person related within the fifth degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

(d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.

(b) Any nomination of a guardian for the child by a parent.

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.

(f) The mental and physical health of the parents.

(g) The physical, developmental and emotional needs of the child.

(h) The nature of the relationship of the child with each parent.

(i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the child.

(k) Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

(l) Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.

5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint physical custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:

(a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and

(b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

NRS 125C.006 Consent required from noncustodial parent to relocate child when primary physical custody established; petition for permission from court; attorney's fees and costs.

1. If primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the

ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

(a) Attempt to obtain the written consent of the noncustodial parent to relocate with the child; and

(b) If the noncustodial parent refuses to give that consent, petition the court for permission to relocate with the child.

2. The court may award reasonable attorney's fees and costs to the custodial parent if the court finds that the noncustodial parent refused to consent to the custodial parent's relocation with the child:

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the custodial parent.

3. A parent who relocates with a child pursuant to this section without the written consent of the noncustodial parent or the permission of the court is subject to the provisions of NRS 200.359.

NRS 125C.0065 Consent required from non-relocating parent to relocate child when joint physical custody established; petition for primary physical custody; attorney's fees and costs.

1. If joint physical custody has been established pursuant to an order, judgment or decree of a court and one parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the relocating parent desires to take the child with him or her, the relocating parent shall, before relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

(a)Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

NRS 125C.007 Petition for permission to relocate; factors to be weighed by court.

1. In every instance of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 or 125C.0065, the relocating parent must demonstrate to the court 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.

2. If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the 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.

3. A parent who desires to relocate with a child pursuant to NRS 125C.006 or 125C.0065 has the burden of proving that relocating with the child is in the best interest of the child.

Eorio v. Eorio
Court of Appeals of Nevada (2022)

Lisa M. Eorio and Joel E. Eorio were married in Las Cruces, New Mexico in 2006. Together, the parties have two children. Additionally, Joel is the equitable father of Lisa's third child. All three of the children were born in New Mexico and lived there until 2019.

In 2019, Lisa accepted a job offer and moved to Las Vegas, Nevada. Joel remained in New Mexico for several months with the children, which allowed them to finish the school year, before also moving to Las Vegas with the children. Approximately one year after moving to Las Vegas, the parties separated, and Joel filed a complaint for divorce and sought primary physical custody and permission to relocate from Nevada to New Mexico. Lisa timely filed an answer to Joel's complaint for divorce, and she counterclaimed for primary physical custody, requesting that the children remain with her in Las Vegas. A month after filing for divorce, however, Joel formally petitioned the court for primary physical custody for the purpose of relocating under NRS 125C.0065(1). In his petition, Joel detailed all the provisions relating to relocation found within subsections 1 and 2 of NRS 125C.007 [NRS 125C.007(1) & (2)] and the best interest factors of subsection 4 of NRS 125C.0035 [NRS 125C.0035(4)]. Lisa timely opposed Joel's petition, and eventually the parties stipulated to share temporary joint physical custody of the three children until the district court conducted a trial and made a determination. The parties also attended mediation and developed two parenting agreements, one for if relocation was granted and a second for if relocation was denied.

Apparently, the parties stipulated that they would share joint physical custody if they lived in the same state. However, the parties also stipulated that Joel would receive primary physical custody of the children if the court granted relocation, and Lisa would receive substantial parenting time in Nevada. Likewise, the parties stipulated that if the court denied relocation, Lisa would receive primary physical custody and the children would remain with her in Las Vegas if Joel returned to New Mexico. The parties apparently agreed to these physical custodial arrangements, with the permanent arrangement ultimately being governed by the district court's decision on relocation. Thus, the only custody issue for trial was whether Joel's petition for relocation would be granted.

In April 2021, the district court held a trial wherein it heard testimony from both parties regarding relocation. Joel testified, in part, that if he moved back to New Mexico, he would be

more financially stable because he could live rent-free with his parents, and that his job would allow him to make a lateral transfer to a location in New Mexico. Lisa offered testimony that it would be better for the children to remain with her in Las Vegas. At the conclusion of all testimony, the district court made oral findings regarding the threshold provisions in NRS 125C.007(1) and the provisions outlined in NRS 125C.007(2).

When the district court analyzed the threshold best interest provision in NRS 125C.007(1)(b), it made findings regarding each enumerated NRS 125C.0035(4) custody best interest factor. The court found that the provisions either did not apply or applied equally to both parents. Nonetheless, the district court concluded that Joel satisfied all three of the NRS 125C.007(1)'s threshold provisions including that he had a sensible good faith reason for the move, the best interests of the children would be served by relocating, and he and the children would benefit from an actual advantage from relocation. The district court then turned to the provisions outlined in NRS 125C.007(2) and found under the first factor that relocation is likely to improve the quality of life for the children and the relocating parent, and the balance of the provisions did not weigh against relocation. Thus, the district court granted Joel's petition for primary physical custody for the purpose of relocation and permitted Joel to relocate with the children to New Mexico. Following the parties' pre-trial stipulation, the court granted Joel primary physical custody if Lisa remained in Las Vegas. Lisa would, in turn, receive substantial parenting time. However, if Lisa moved to New Mexico, the parties would continue to share joint physical custody. This appeal followed.

On appeal, Lisa argues that the district court abused its discretion in permitting Joel to relocate with the children to New Mexico. She argues that Joel did not show that relocating to New Mexico was in the children's best interests and that the children would benefit from an actual advantage and an improvement of their quality of life. She also argues that the district court failed to make specific findings that adequately explain why the court found that Joel's relocating to New Mexico would be in the children's best interests. Joel responds that the district court did not abuse its discretion in granting relocation and its order is sufficient when read in conjunction with the court's oral findings at trial. We agree in part with Lisa, and therefore, reverse and remand.

The district court abused its discretion by not making adequate findings regarding the best interests of the children

This court reviews a district court's decision regarding relocation for an abuse of discretion. Under the Nevada relocation statute, a relocating parent must first demonstrate that (1) there is a sensible, good-faith reason for the move that is not intended to deprive the non-relocating parent of his or her parenting time; (2) relocating is in the child's best interests; and (3) both the relocating parent and the child will benefit from an actual advantage from the relocation. *See* NRS 125C.007(1)(a)-(c); *see also* NRS 125C.007(3) (stating the relocating parent bears the burden to show that relocation is in the child's best interest); *Monahan* (clarifying that the relocating parent must show, by a preponderance of the evidence, that relocation is in the child's best interest). If the relocating parent cannot meet the burden under these threshold requirements, then the court must deny the motion to relocate. *See* NRS 125C.007(2) (stating that if the relocating parent demonstrates the provisions in NRS 125C.007(1)(a)-(c), the court must then weigh the remaining relocation provisions).

Therefore, the burden is on the relocating parent and the district court is required to issue specific findings for each provision under NRS 125C.007(1) and then tie those findings to the decision made. When the court is making those specific findings under NRS 125C.007(1)(b), it should look to the NRS 125C.0035(4) custody best interest factors and any other factors that may bear on the issue.

Here, we cannot conclude that the district court correctly found that it was in the best interests of the children to relocate by a preponderance of the evidence. The court's decree only states,

> [r]elative 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 [Joel] was able to spend more time with the children as [Lisa] was the historical primary wage earner.

Thus, considering only the written order, and recognizing that Joel bore the burden to prove relocation was in the best interest of the children, *see* NRS 125C.007(3), we cannot say that the district court adequately considered and determined the children's best interests by a preponderance of the evidence. Indeed, the court never actually made a determination in the divorce decree itself that relocation was in the children's best interests.

However, we can review the district court's oral findings on the record to construe its judgment. At trial, the district court made detailed and comprehensive oral findings regarding NRS 125C.0035(4)'s best interest factors. However, the district court only found that none of the factors disqualified either Joel or Lisa from enjoying joint physical custody. Yet, the district court summarily determined that Joel met his burden for primary physical custody for the purpose of relocating even though the best interest factors were neutral or inapplicable. Thus, the court failed to explain through its findings how Joel could relocate with the children when none of the best interest factors the court considered showed relocation was in the children's best interests.

As we previously noted, a parent with joint physical custody, which existed here by pretrial agreement, must petition the court for primary physical custody for purpose of relocating and demonstrate relocating is in the best interests of the children by a preponderance of the evidence. The district court, however, cannot make this best interest determination in a vacuum. Instead, it must consider it in relation to the parent's petition for relocation and compare the lives of the children and the parents in each location.

This is why a petition for primary physical custody under NRS 125C.0065(1)(b) normally requires that the district court provide detailed and specific findings as to any applicable best interest factors from NRS 125C.0035(4), or any other relevant factors, in the context of relocation. Thus, because there were not adequate findings regarding best interests and relocation in the written order, and the oral findings also do not establish best interests by a preponderance of the evidence, we cannot conclude that the district court properly exercised its discretion.

Therefore, we order the judgment of the district court affirmed in part and reversed in part and remand this matter to the district court to make specific findings, tie those findings to its conclusion regarding which NRS 125C.0035(4) best interest factors, if any, support primary physical custody for the purposes of relocation, or any other relevant factors, and then balance all factors by comparing each potential home.

Trent v. Trent

Supreme Court of Nevada (1995)

FACTS

Christi and Kenneth separated in March, 1991, and divorced on August 5, 1992. Pursuant to the parties' settlement agreement, Christi and Kenneth share joint legal custody of their minor son, Corey; Christi has primary physical custody. Kenneth, in turn, pays $400 per month in child support and maintains health insurance for Corey. The settlement agreement grants Kenneth reasonable visitation rights, including every other weekend, two days during the week, four weeks during the summer, and certain holidays.

Christi wishes to marry a man from Dover, Ohio, and move to Dover with Corey. Pursuant to NRS 125A.350 **[now NRS 125C.006 (if one parent has primary physical custody) or 125C.0065 (if parents have joint physical custody), as applicable, and 125C.007]**, Christi sought permission from Kenneth to move with Corey. When Kenneth denied her request, Christi petitioned the district court for removal.

At the time the district court considered this matter, Christi was taking care of Corey on Monday, Tuesday, and Wednesday and was working on Thursday, Friday, and Saturday. On Thursday and Friday, Kenneth's sister was caring for Corey from 8:00 a.m. until approximately 3:00 p.m., when Kenneth finished work for the day. Kenneth was taking care of Corey on alternating weekends (including Friday nights) and some additional Saturdays and Saturday nights, in light of Christi's work schedule.

Kenneth was born and raised in Las Vegas, and his mother, father, sister, brother, four uncles, three aunts, and numerous cousins live in Las Vegas. Kenneth works as a construction electrician and has been employed by the same company for approximately seven years. His gross monthly income is approximately $4,167. Kenneth presently lives in a condominium, but he owns a lot that is adjacent to his sister's house and plans to construct a house on this lot.

Christi was raised in Las Vegas, and her mother, father, sister, brother-in-law, nieces, and nephews reside in the Las Vegas area. When the district court considered this matter, Christi lived in an apartment without security and had fears about her safety. Christi works as a manicurist three days per week and makes $1,000 per month from this employment. At the time this matter was heard, Christi's rent was $550 per month, and she was unable to save money. She was forced to borrow money from her parents on occasion.

In May of 1992, Christi met Douglas Albert (Douglas), who is from Dover, Ohio, while he was visiting Las Vegas. She has visited Douglas in Dover on numerous occasions (on four of these visits, Corey accompanied her). Douglas, in turn, has visited Christi and Corey in Las Vegas. Since they first met, Christi and Douglas have visited each other nine times, each time for approximately one week. In addition, Christi and Douglas speak to each other over the telephone two or three times per day.

Douglas is a homeowner and is vice-president of his family's construction company. In addition, most of Douglas's family members reside in or near Dover. Christi and Douglas want to be married, and Christi desires to move, with Corey, to Dover. Douglas's income is more than sufficient to support Christi and Corey, and Christi will stay home with Corey if she marries Douglas and moves to Dover. If Christi is not permitted to take Corey to Dover, she will then remain with Corey in Las Vegas.

Travel time from Las Vegas to Dover by aircraft and automobile is approximately six and one-half hours: a direct flight from Las Vegas to Columbus, Ohio, takes approximately four and one-half hours, and the Columbus airport is one and one-half to two hours from Dover by automobile. In light of the distance, Christi has proposed that Kenneth's visitation time with Corey be modified so that Corey visits Kenneth for three one-week periods during the year and four weeks in the summer, with Corey's visits to increase by one week each year. Christi has also offered to split the cost of plane tickets with Kenneth and to serve as Corey's travel companion.

At the hearing, Kenneth introduced the testimony of Dr. Elizabeth Richett, a licensed clinical psychologist, who had examined Kenneth and Corey on January 19, 1993. Dr. Richett reported that Corey and Kenneth appear to have "a warm and close bond" and that Corey exhibited appropriate behavior for a two year old. Dr. Richett also testified that boys less than five years old who are separated from their fathers often experience increased aggression and "non-compliant acting out behavior at home," possibly because they are confused about the loss and feel somehow responsible. She added that if Corey were able to bond with Douglas, any such negative effect of his separation from Kenneth might be mitigated. In addition, Dr. Richett opined that some children are unable to bond with a stepparent if they feel guilty about "abandoning" the natural parent.

At the conclusion of the hearing, Judge Marren ruled that both parties had acted in good faith. He also determined that the move would undoubtedly improve Christi's financial situation and that Corey's housing and environmental living conditions would probably improve. However,

he found that Corey's positive family care and support, including that of the extended family, would not be enhanced.

On March 10, 1993, the court entered its findings of fact and conclusions of law, in which it denied Christi's motion. In its findings and conclusions, the court determined that "[f]ollowing [the parties'] separation, Kenneth Trent maintained frequent and substantial contact with Corey, and had visitation every weekend, at a minimum. This schedule of substantial contact continued after the parties' divorce was finalized...."

Additionally, the court found:

> Although Christie Trent has demonstrated that an actual advantage will be realized by Christie Trent should she relocate to Dover, Ohio, she has not clearly demonstrated that the parties' minor child will also realize such an advantage. It is clear ... that Christie Trent would comply with substitute visitation orders issued by the court, and that Christie Trent's financial outlook will improve. On the other hand, it is also clear ... that the positive family care and support, including that of the extended family, will not be enhanced by the move, and that there will not be a realistic opportunity for the non-custodial parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship with the non-custodial parent should the move be allowed. No educational advantage has been demonstrated, and the child has no special needs which could be addressed.

The court also based its decision on the substantial, regular contact between Kenneth and Corey, Corey's gender and young age, Corey's close relationship with Kenneth's sister, Corey's relationship with other extended family members, and the "short length of time that Christie Trent has known Douglas Albert, and the small amount of time they have spent together since meeting."

In weighing these factors, the court concluded that Corey stood to lose a great deal if the relocation to Ohio were allowed and that relocation was not in Corey's best interest. This timely appeal followed.

DISCUSSION

Christi contends that the district court abused its discretion in denying her motion. Specifically, Christi asserts that under the court's reasoning, a custodial parent will be prevented from leaving Nevada unless the noncustodial parent has little or no relationship with the child.

Under NRS 125A.350 **[now NRS 125C.006 or 125C.0065, as applicable, and 125C.007],** a custodial parent who intends to move with the child to a location outside of Nevada must attempt to obtain the other parent's written consent. If the other parent refuses permission, then the parent planning to move must petition the court for permission to move the child.

This court first interpreted NRS 125A.350 **[now NRS 125C.006 or 125C.0065, as applicable, and 125C.007]** in *Schwartz.* In *Schwartz,* we explained that the statute's "overall purpose ... is to preserve the rights and familial relationship of the noncustodial parent." In summarizing the district court's role in evaluating a move, we explained that "[t]he proper calculus involves a balancing between 'the custodial parent's interest in freedom of movement as qualified by his or her custodial obligation, the State's interest in protecting the best interests of the child, and the competing interests of the noncustodial parent.'"

We find it disturbing that despite our decision in *Schwartz,* many district courts are using NRS 125A.350 **[now NRS 125C.006 or 125C.0065, as applicable, and 125C.007]** as a means to chain custodial parents, most often women, to the state of Nevada. NRS 125A.350 **[now NRS 125C.006 or 125C.0065, as applicable, and 125C.007]** is primarily a notice statute intended to prevent one parent from in effect "stealing" the children away from the other parent by moving them away to another state and attempting to sever contact. Given the legislative purpose behind NRS 125A.350 **[now NRS 125C.006 or 125C.0065, as applicable, and 125C.007]**, it should not be used to prevent the custodial parent from freely pursuing a life outside of Nevada when reasonable alternative visitation is possible. Because the record in this case shows that Douglas and Christi would be financially capable of sending Corey for frequent visits with Kenneth, we feel that the bond between Kenneth and Corey can be adequately preserved if the move is allowed. The district court in this case focused on the strength of the bond between Kenneth and Corey and on maintaining the existing visitation pattern, thus failing to consider whether reasonable, alternative visitation was possible.

Christi desires to marry Douglas and live with him, a good faith reason for moving. [*See* NRS 125C.007(1)(a).] Moreover, Christi showed that both her and Corey's standard of living will

be drastically improved if she is permitted to move to Dover and marry Douglas. Presently, Christi makes only $1,000 per month and can barely afford a place to live for her and Corey. Christi indicated that she and Corey have been living recently in a converted garage at her sister's house for $200 monthly rent. In contrast, Douglas is a homeowner with substantial earnings. He will be able to offer Christi and Corey numerous opportunities not available to them in Nevada. Thus, Christi made the actual advantage threshold showing required by [NRS 125C.007(1)(c)].

Additionally, the other factors weigh in favor of Christi. The district court found that Christi had a good faith reason for moving, that she would comply with substitute visitation orders, and that Corey and Christi's living conditions and economic status would be improved by the move. Given the evidence in the record regarding Douglas's financial situation, there is no reason that Christi should have to remain unwillingly in the State of Nevada.

The district court based its denial of the move on Kenneth's frequent contact with Corey and its finding that there would not be a realistic opportunity for Kenneth and Corey to maintain their relationship if Corey moved to Dover. The record shows, however, that Douglas is financially well-off enough that Christi should be able to pay for airline tickets to send Corey to see Kenneth regularly. Christi stated that given Corey's young age, she would fly back and forth with him for visits. Thus, we feel that there would be an adequate opportunity for Kenneth and Corey to maintain their relationship.

Accordingly, we reverse the order of the district court and remand with instructions to grant Christi's petition for removal.

Gandee v. Gandee

Supreme Court of Nevada (1995)

Appellant Kenna Lloyd Gandee (Kenna) and respondent Lisa Renee Osgood, formerly Lisa Gandee (Lisa), were divorced on May 4, 1992. Kenna and Lisa have two daughters. Kenna wants to move himself and the two girls, Brianna and Kelsey, to Medford, Oregon, so that he can accept a promotion from his position as a sales associate at Montgomery Ward Co.'s Reno store to general manager of Montgomery Ward & Co.'s Medford store. Kelsey is now four years old and in pre-school. Brianna is currently five years old and attends a special education pre-school. Brianna was born with physical disabilities caused during the first trimester of Lisa's pregnancy. Medical tests reveal that Brianna has speech and motor skill problems.

Lisa denied Kenna permission to move the children to Medford. After Lisa denied Kenna permission to move the children, Kenna filed a motion in the district court seeking judicial permission to move pursuant to NRS 125A.350 **[now NRS 125C.006 or 125C.0065, as applicable, and 125C.007]**. After a hearing on Kenna's motion, the district court denied the motion on the grounds that: (1) the only actual advantage presented by the move was "a few thousand dollars that will be eaten up on forfeited child support or transportation costs," and (2) the children would not be able to see their mother on a weekly basis as they have been doing.

This court has construed NRS 125A.350 **[now NRS 125C.006 or 125C.0065, as applicable, and 125C.007]** in three recent cases. This line of cases establishes that the custodial parent wishing to remove the child from the state must make a showing of "a sensible, good faith reason for the move." **[Now codified in NRS 125C.007(1)(a)]** "A 'good faith' reason means one that is not designed to frustrate the visitation rights of the noncustodial parent." In this case, Kenna made the showing of a sensible, good faith reason for the move, *i.e.,* career advancement.

The district court is bound to consider other factors, as enumerated in *Schwartz* **[now codified in NRS 125C.007(2)]**. These factors are:

> (1) the extent to which the move is likely to improve the quality of life for both the children and the custodial parent; (2) whether the custodial parent's motives are honorable, and not designed to frustrate or defeat visitation rights accorded to the noncustodial parent; (3) whether, if permission to remove is granted, the custodial parent will comply with any substitute visitation orders issued by the court; (4) whether the noncustodian's motives are honorable in resisting the

> motion for permission to move; and (5) whether, if removal is allowed, there will be a realistic opportunity for the noncustodial parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship with the noncustodial parent.

In particular, a district court should focus "on the availability of adequate, alternate visitation."

With respect to the first factor, Kenna provided undisputed evidence that he had a greater familial support system in Medford, and that his and the children's housing situation would improve. Further, Kenna's improved financial situation and expanded career opportunities will impact the children's quality of life. He will be able to save money for the girls' college education and better provide for Brianna's special needs. Kenna also testified that he had inquired into the quality of education available to his children in Medford, and in particular the quality of special education programs for Brianna. He found that the quality of education was comparable to that available in Reno. Kenna's testimony was not contradicted.

With respect to the second factor, the district court specifically found, and Lisa's counsel conceded, that Kenna's motives for seeking to move the children to Medford were honorable.

With respect to the third factor, Lisa did not dispute that Kenna has always been accommodating regarding visitation. Kenna himself proposed that Lisa get blocks of time to include one-half the Christmas holiday vacation, one-half the summer vacation and rotate major holidays when the children can spend a block of at least five days at a time with Lisa. Kenna also proposed lessening Lisa's child support obligations to defray the costs of visitation. There is simply no evidence in the record that suggests that Kenna would not comply with substitute visitation orders issued by the district court.

With respect to the fourth factor, whether the noncustodial parent's motives are honorable in resisting the move, the district court found that Lisa's motives for resisting the move were honorable. The record reveals that Lisa is very close to her children, and that she is concerned about the impact the move would have on her relationship with them.

With respect to the fifth factor, this court has held that "[r]easonable visitation is visitation that 'will provide an adequate basis for preserving and fostering a child's relationship with the noncustodial parent if the removal is allowed.'" In *Schwartz,* this court concluded that one month per summer was adequate time to preserve the "maternal bond," and in *Jones* this court concluded that a proposed visitation schedule which would allow the noncustodial parent to have his children

during regularly scheduled holidays, spring break, two weeks at the beginning of summer and two weeks at the end of summer and any three day weekend that the parent wanted was reasonable. This court also took "special note" in *Jones* of the fact that the city to which the custodial parent was allowed to remove the children, is only three hours away from the noncustodial parent's home. Under such circumstances, this court concluded, reasonable visitation should always be possible. In this case, Medford is approximately six hours away. Although weekly visits are obviously precluded, a reasonable visitation schedule, such as the one suggested by Kenna, is certainly possible.

The district court in this case did not even consider whether there will be a realistic opportunity for Lisa to maintain a visitation schedule that will adequately foster and preserve her relationship with her children if the children move to Medford with their father. The district court merely found:

> 5. That by definition if [Lisa] could only spend a block of time in the summer and on major holidays with her children, her relationship with her children changes profoundly;
>
> ....
>
> 10. That the children will be deprived of the chance to see their mother on a weekly basis.

The district court clearly abused its discretion by failing to even consider an alternative visitation schedule. The district court's order must be reversed and the case remanded to the district court with instructions to grant Kenna's motion and fix a reasonable visitation schedule.

Schwartz v. Schwartz
Supreme Court of Nevada (1991)

Laura and Christopher were married on November 20, 1981. In 1988, serious marital problems developed between the couple. As a result, Laura was twice hospitalized for depression; she also attempted suicide with an overdose of antidepressants. Christopher filed for divorce in November of 1988. At that time, he was awarded primary custody of their children, Debra and William ("Billy").

Prior to the time Christopher filed for divorce, Laura remained in the couple's Las Vegas home, caring for the two children. Christopher had been employed for three years as a casino floorman where he earned an annual salary of $35,000. After the divorce, it appears that Laura worked as a cocktail waitress where she earned a minimum wage plus tips.

In support of his motion for authorization to remove the children from this jurisdiction, Christopher stated that his mother owns a four-bedroom house in Pennsylvania which would accommodate a bedroom for each child. The grandmother, who is seventy-three years old, has an established relationship with the children. Christopher also testified that his mother is one of eleven children and that there would be an extended family of aunts and uncles within driving or walking distance in the event of a family emergency. In addition, Christopher is an only child and expects to some day inherit his mother's home.

Legal Discussion

In this appeal, we are asked in a case of first impression to interpret NRS 125A.350 **[now NRS 125C.006 or 125C.0065, as applicable, and 125C.007]**, Nevada's "anti-removal" statute. The overall purpose of such a statute is to preserve the rights and familial relationship of the noncustodial parent with respect to his or her child. As one court has stated, "it is 'in the best interests of a child to have a healthy and close relationship with both parents, as well as other family members.'" The proper calculus involves a balancing between "the custodial parent's interest in freedom of movement as qualified by his or her custodial obligation, the State's interest in protecting the best interests of the child, and the competing interests of the noncustodial parent."

If the custodial parent satisfies the threshold requirement **[now codified in NRS 125C.007(1)]**, then the court must weigh the following additional factors **[now codified in NRS**

125C.007(2)] and their impact on all members of the family, including the extent to which the compelling interests of each member of the family are accommodated: (1) the extent to which the move is likely to improve the quality of life for both the children and the custodial parent; (2) whether the custodial parent's motives are honorable, and not designed to frustrate or defeat visitation rights accorded to the noncustodial parent; (3) whether, if permission to remove is granted, the custodial parent will comply with any substitute visitation orders issued by the court; (4) whether the noncustodian's motives are honorable in resisting the motion for permission to remove, or to what extent, if any, the opposition is intended to secure a financial advantage in the form of ongoing support obligations or otherwise; (5) whether, if removal is allowed, there will be a realistic opportunity for the noncustodial parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship with the noncustodial parent.

In weighing and balancing the above factors, the court will, of course, have to consider any number of sub-factors that may assist the court in reaching an appropriate decision. For example, in determining whether, and the extent to which the move will likely improve the quality of life for the children and the custodial parent, the court may require evidence concerning such matters as: (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. The foregoing list is by no means exhaustive, and is only illustrative of the many sub-factors that the court may, in the exercise of good common sense, feel the need to pursue prior to ruling on the issue of removal. In certain instances, the court may even conclude that a professional opinion or evaluation by a psychiatrist or psychologist will be desirable in assessing the impact of the move on a child.

Finally, "[t]he court should not insist that the advantages of the move be sacrificed and the opportunity for a better and more comfortable life style for the mother [custodial parent] and children be forfeited solely to maintain weekly visitation by the father [noncustodial parent] where reasonable alternative visitation is available and where the advantages of the move are substantial."

The district court found that the children would benefit from "a large and helpful extended family." In addition, the father would be spared approximately $440 in child care expenses which

could be used to benefit the children more directly. Christopher also stated that he and the children would be able to live with his mother rent-free, thereby increasing the amount of funds available for the children's needs.

The judge rightly determined that it was in the best interests of the children not to be shuttled back and forth between paid babysitters with little family life until after 5:00 P.M. A review of the record reveals that the children were sometimes out of their home and in day care for up to ten hours a day. The district judge could reasonably conclude that the children would be more appropriately cared for by their grandmother. The court did not find that the removal was motivated to defeat or frustrate visitation. Moreover, the court noted that it would continue to have jurisdiction and the power to enter future orders adjusting visitation.

Laura contends that the district court abused its discretion in allowing removal because Christopher had not found employment at the time of the move. We do not view this factor as determinative. The record reveals that Christopher had the formal skills to obtain employment and that he had never failed to support his family. Although at the time of the ruling Christopher had no definite employment in Pennsylvania, he held a college degree and had received previous training both as a stockbroker and as a real estate agent.

The district court determined that the preservation of the relationship with the noncustodial parent could be addressed appropriately by extended summer visitation instead of weekend visits. A reduction in visitation privileges is not necessarily determinative.

The visitation obstacles incident to distance and expense and their impact on Laura's continued relationship with her children were appropriately identified by the court as the most difficult and serious area of concern. However, as the 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 court therefore ordered that Laura have the children for one month during summer vacations and that travel expenses be shared between Laura and Christopher in order to facilitate the summer visitation schedule. An uninterrupted sequence of time may prove more effective in bonding the relationship between the mother and her children than the weekend visits, at least under current circumstances.

Additionally, although the court found that Laura sincerely loved her children, the court also found that the mother had an unfortunate, fairly recent history of mental illness which manifested itself during the initial separation. The judge was appropriately concerned about

Laura's ability, during periods of illness, to provide full time care for her children. The judge was rightly concerned as to whether the mother could presently absorb the additional emotional, logistical and financial stress of being a single parent for any extended length of time. Sufficient evidence in the record, coupled with demeanor evidence considered by the court in the form of Laura's testimony and comportment in court, and her failure to comply with previous court orders, support the court's decision.

The district judge properly ruled that moving the children would enhance their lifestyle, ameliorate the family's financial condition, and provide badly needed emotional stability for the children. Although a one-month summer visitation period is less than the period requested by Laura, prospects exist for expanding the visitation if the current schedule remains free of recurrent maternal misconduct and proves beneficial to the children. The district court did not abuse its discretion in granting Christopher's motion.