

RELOCATION CASES ISSUED AFTER PUBLICATION OF THE NEVADA FAMILY LAW PRACTICE MANUAL (NFPM), OR NOT INCLUDED IN THAT WRITE-UP

All cases follow in the line of *Schwartz v. Schwartz*, 107 Nev. 378, 812 P.2d 1268 (1991). Note: The statute (NRS 125C.200, previously NRS 125A.350) was amended significantly in 1999.

Blaich v. Blaich, 114 Nev. 1446, 971 P.2d 822 (1998) (reversing the district court's denial of relocation and change of custody from the mother to the father. The trial court had held that it would be necessary to first determine primary physical custody before assessing a move motion. This was reversed also, the Court stating that the face of NRS 125A.350 explicitly included joint custody cases. Finally, the trial court was criticized for its "improper emphasis" on the fact that the father would not have weekly contact with the child).

Davis v. Davis, 114 Nev. 1461, 970 P.2d 1084 (1998) (reiterating that a good faith sensible reason to move is one not designed to frustrate the visitation rights of the noncustodial parent. Reiterated that district courts should focus on the availability of adequate alternate visitation. Here, trial court denial of relocation was affirmed, where no practical alternate visitation schedule could be devised for firefighter father, since neither frequent short trips nor longer trips would work, given the ages of the children, the six-hour flying time between Florida and Nevada, and the father's work schedule).

Gepford v. Gepford, 116 Nev. 1033, 13 P.3d 47 (2000) (reversing trial court's granting of mother's motion to change custody based on father's having obtained verbal (but not written) permission from the mother to relocate from Nevada, and leaving child alone in one instance).

Reel v. Harrison, 118 Nev. 881, 60 P.3d 480 (2002) (reversing a trial court finding that the relocation statute violated the Equal Protection Clause of the Constitution, but nevertheless approving the relocation at issue in this case on the basis that the mother had satisfied the factors justifying a relocation set out under previous case law).

Flynn v. Flynn, 120 Nev. 436, 92 P.3d 1224 (2004) (affirming trial court order denying custodial mother permission to relocate with child to California, and holding that a trial court should first determine whether the custodial parent wishing to leave Nevada demonstrated a good faith reason for relocating, and then determine whether the custodial parent has demonstrated that an actual advantage will be realized by both the parent and the child by moving to the new location, applying the *Schwartz* factors. In this case, the mother's request to move to California so that she could receive a theology degree was a "good faith reason" for a move, but for various reasons the move would harm the child and so did not produce an "actual advantage," and so was properly denied. Finally, the move statute is applicable even if the custodial parent intends to return to Nevada in the future, and demonstration that the proposed move would allow a reasonable alternative visitation

schedule does not end the application of the factors).

Potter v. Potter, 121 Nev. ___, 19 P.3d 1246 (Adv. Opn. No. 60, Sept. 22, 2005) (apparently overruling *Blaich*, the Court held that the current version of NRS 125C.200 did not define “custodial parent” and contained no reference to shared or joint custody. Examining the legislative history of the change to the statute, the Court held that a parent sharing joint physical custody is not eligible to petition to relocate with a minor child under NRS 125C.200. Instead, a parent with joint physical custody of a child who wishes to relocate outside of Nevada with the child must move for primary physical custody for the purposes of relocating. Such a motion is to be resolved under the best interest of the child standard established for joint custody situations in NRS 125.510 and *Truax v. Truax*, 110 Nev. 437, 874 P.2d 10 (1994). The party proposing to relocate has the burden of establishing that it is in the child’s best interest to reside outside of the state with the moving parent as the primary physical custodian).