

RELOCATION OUT OF THE STATE OF NEVADA:

If a parent desires to relocate out of the State of Nevada with a child(ren), the physical custody status of the parents must be evaluated to determine which test to apply:

INITIAL CUSTODY ACTION: If physical custody has not been determined by Court Order, pursuant to Druckman v. Ruscitti, 130 Nev. Advance Opinion 50 (2014), married and unmarried parents have equal custody rights regarding their child(ren), absent a judicial custody order to the contrary. When two parents seek custody of their child(ren) in an initial custody action, they begin as equals. If parents begin an initial custody action as equals, then-prior to a judicial order establishing otherwise-the parents are entitled to equal rights to their child(ren). This conclusion derives further support from the constitutional protections parents enjoy regarding the care, custody, and control of their child(ren), as well as a parent's legal rights in making major decisions regarding his or her child(ren)'s upbringing, including where the child(ren) will live.

When parents have equal custody rights of their child(ren), one parent may not relocate his or her child(ren) out of state over the other parent's objection without a judicial order authorizing the move. The proper procedure is to file a motion for primary physical custody with a request to relocate outside of Nevada. Ultimately, when considering a motion to relocate a minor child(ren) out of Nevada by a parent who shares equal custody of the child, the district court must base its decision on the child's best interest. The requesting parent must demonstrate "a sensible, good faith reason for the move" before the court considers the motion. If the parent clears the "good faith reason" hurdle, the district court can then consider the relocation motion. The moving parent's failure to establish a "good faith reason" for the move is grounds to deny the request to relocate with the child.

In considering a motion to relocate and determining the parents' custodial rights, the court must decide "whether it is in the best interest of the child to live with parent A in a different state or parent B in Nevada." Potter (below). The district court may consider, among other factors, whether one parent has *de facto* primary custody. The district court must also incorporate the five Schwartz factors (below) into its best-interest analysis.

Importantly, *removal without consent* violates the spirit of the law and may subject the offending parent to negative consequences. For instance, if a parent unlawfully relocates his or her child out of Nevada and later moves for primary physical custody, the district court should not consider any factors from the child's time in the new state-such as the child's new school, friends, or routine-in the best-interest determination.

PRIMARY PHYSICAL CUSTODY: If one parent has primary physical custody (custodial parent) of the child(ren), and the custodial parent desires to relocate out of the State of Nevada with the minor child(ren):

First, the custodial parent must seek written consent from the other parent to relocate as follows:

NRS 125C.200 provides:

If custody has been established and the custodial parent or a parent having joint custody intends to move his residence to a place outside of this state and to take the child with him, he must, as soon as possible and before the planned move, attempt to obtain written consent of the other parent to move the children from the state. If the noncustodial parent or other parent having joint custody refuses to give that consent, the parent planning the move shall, before he leaves the state with the child, petition the court for permission to move the child. The failure of a parent to comply with the provisions of this section may be considered as a factor if a change of custody is requested by the noncustodial parent or other parent having joint custody.

If the noncustodial parent will not provide written consent to move the child(ren) from the State, the custodial parent must file a motion for permission to relocate *prior to* moving as follows:

Pursuant to Schwartz v. Schwartz, 107 Nev. 378 (1991), “in determining the issue of removal, the court must first find whether the custodial parent has demonstrated that an actual advantage will be realized by both the children and the custodial parent in moving to a location so far removed from the current residence that weekly visitation by the noncustodial parent is virtually precluded.”

Schwartz Factors: “If the custodial parent satisfies the threshold requirement set forth above, then the court must weigh the following additional factors 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.”

Additional factors the Court should consider: “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, and importantly, the Court found “the 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.”

JOINT PHYSICAL CUSTODY: If you and the other parent share joint physical custody of the child(ren), and one of you desires to relocate out of the State of Nevada with the minor child(ren):

Pursuant to Potter v. Potter, 121 Nev. 613 (2005), when a parent with joint physical custody of a child wishes to relocate outside of Nevada with the child, “the parent must move for primary physical custody for the purposes of relocating.” Further, “[t]he District Court must consider the motion for primary custody under the best interest of the child standard established for joint custody situations in NRS 125.510 and Truax v. Truax, 110 Nev. 437 (1994).” NRS 125.510(2), provides:

Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court’s own motion if it is shown that the best interest of the child requires modification or termination. The court shall state in its decision the reason for the order of modification or termination if either parent opposes it.

“Any order for joint custody may be modified or terminated by the Court . . . if it is shown that the best interests of the child requires the modification or termination.”

“In considering this motion, the District Court must determine whether the moving parent will be relocating outside of Nevada with the child if he or she obtains primary custody.” “The District Court may also consider, among other specters, the locales of the parents and whether one parent had *de facto* primary custody of the child prior to the motion.” “The moving party has the burden of establishing that it is in the child’s best interest to reside outside of Nevada with the moving parent as a primary physical custodian.”

Potter Test: “The issue is whether it is in the best interest of the child to live with Parent A in a different state or Parent B in Nevada.”

Factors the Court may consider: In determining whether it is in the best interest of the child to live with Parent A in a different state of Parent B in Nevada, the Court may evaluate the following factors: “In determining whether the move will improve the quality of life, the court should consider subfactors, such as: whether positive family care and support will be enhanced, whether housing and living conditions will be improved, whether educational advantages will result for the children, whether the custodial parent’s employment and income will improve, whether special needs of a child will be better served, and whether, in the child’s opinion, circumstances and relationships will be improved.” Jones v. Jones, 110 Nev. 1253, 885 P.2d 563 (November 30, 1994).

IN ANY SCENARIO:

Pursuant to NRS 125.480(4), the Court may also evaluate the following factors:

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 custody.
- (b) Any nomination by a parent or a guardian for the child .
- (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 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 custody has committed any act of abduction against the child or any other child.