

Schwartz Factors Worksheet:

This Worksheet allows you to insert the relevant data in the format the Court indicated was most relevant, so that it can be gone over with counsel in assessing the strength of any relocation proposal.

The legal test is 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.

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.

MOVE CASES AFTER *SCHWARTZ*

The Legal Standard

The first “major” relocation case of the modern era in Nevada was *Schwartz v. Schwartz*, 107 Nev. 378, 812 P.2d 1268 (1991), in which a father’s request to move to Pennsylvania with kids was allowed. In *Schwartz*, the father was the primary physical custodian. An extended family was present in Pennsylvania to assist with custody and child-rearing. The court held that the purpose of NRS 125A.350 was to preserve rights and familial relationship of the noncustodial parent, and that it was in the best interest of the child to have a healthy and close relationship with both parents, as well as other family members.

The court found that the court needs to balance 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

interest of the child, and the competing interests of the noncustodial parent.” The court noted that removal is “separate and distinct” from custody, but that the facts and policies of the two analyses overlap – in both, the best interest of the child is paramount.

In setting out guidelines, the court held that these cases are necessarily fact-specific, with no bright-line determinations possible, but the court generally found the *D’Onofrio*¹ criteria sound. Under that standard, the court must first find whether custodial parent has demonstrated an actual advantage for both the child and parent in moving. If there is such an advantage, then the court must weigh: (1) the extent to which move likely to improve quality of life for the child and parent; (2) whether the motive for the move is “honorable” and not designed to frustrate or defeat visitation rights to the non-custodian; (3) whether, if the move is allowed, the parent will comply with substitute visitation orders; (4) whether non-custodian’s motives are honorable in resisting motion to move, or if it is simply intended to secure a financial advantage as to support or otherwise; (5) whether, if the move is allowed, there is realistic opportunity for a visitation schedule that will adequately foster and preserve the relation with the non-custodian.

The court went further and set out sub-factors for determining quality of life improvement; in *Schwartz*, the court found a financial advantage to the move (lower costs), and concluded that a reduction in visitation was “not necessarily determinative” and could be offset by expanded summer visits. The court found the fact that the parent had no job waiting not critical.

¹ *D’Onofrio v. D’Onofrio*, 144 N.J.Super. 200, 365 A.2d 27, 29 (Ch.Div.1976)

Application to the Facts of A Particular Case

Some background facts are helpful in this analysis. The parties are from _____. Their extended family and close friends primarily live in _____. Almost all members of _____ family also live in _____.

The parties met and were married in _____, and are present in Nevada because of _____ . Had Party 1 had ever before left _____? Had the parties intended to return there as soon as they could?

Can the threshold question, whether the custodial parent has demonstrated an actual advantage for both the child and parent in moving, be clearly answered yes on economic, familial, and other bases?

1. The extent to which move likely to improve quality of life for the child and parent.

Comparison with existing situation here. Currently, Party 1 is working as a _____, and must work _____ (schedule). Impact on time primary custodian can spend with the children.

Whether Party 1 is able to attend weekend school functions, and whether work schedule interferes with holidays as a family unit. Whether a large portion of Party 1's wages are consumed by baby sitters and day-care centers. Same questions for Party 2.

Whether the move will lead to a different work schedule in a different city. Whether extended families (Party 1's, Party 2's, or other relevant persons) would give the children an opportunity for extended family interaction of which they have been deprived during their stay in Las Vegas.

2. Whether the motive for the move is “honorable” and not designed to frustrate or defeat visitation rights to the non-custodian.

Is there a clear answer to this question, in light of the information above and below?

Whether relocation or return to _____ has previously been intended by the parties; what changed, and for whom?

3. Whether, if the move is allowed, the parent will comply with substitute visitation orders.

Does the history of visitation lend any substantial question to an expectation of facilitating contact with the non-custodian?

4. Whether non-custodian’s motives are honorable in resisting motion to move, or if it is simply intended to secure a financial advantage as to support or otherwise.

Are the opposing party’s motives clear. Whether previous consent to the move has been given. Financial impact on Party 2 of the move going forward or not? Whether Party 2 has expressly demanded lower child support or other concessions in exchange for written consent to the move.

5. Whether, if the move is allowed, there is realistic opportunity for a visitation schedule that will adequately foster and preserve the relation with the non-custodian.

What steps Party 1 will take to maintain a strong relationship between child and Party 2.

6. The court’s sub-factors.

Whether the sub-factors set out by the court militate toward permitting the move in question.

Whether positive family care and support, including that of the extended family, would be enhanced. How? What commitments made?

Whether housing and environmental living conditions will be improved. Comparison with current conditions. Long-range plans for these factors.

Whether there are educational advantages for the children likely to result from the move (Party 1's greater availability to assist them, other direct or indirect factors, such as cultural events and programs in the proposed relocation area).

Whether gains would likely occur for Party 1's long-term employment and income. How? Free rent? Support of family?

The court's last specified sub-factor, whether the children believe that their circumstances and relationships will be improved, must be approached child-by-child, depending on ages and ability to state reasoned opinions.

Bottom line is whether the Party 1 should be allowed to relocate from the State of Nevada and whether written consent should be included in the Decree (divorce cases; or Order, if post-divorce). Whether the actual best interests of the children, as well as Party 1, outweigh any inconvenience that might accrue to Party 2's visitation with them.