AB 263
THE PARENTAL RIGHTS PROTECTION ACT OF 2015: A SIGNIFICANT IMPROVEMENT IN FAMILY LAW


SHUTTERSTOCK

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In what has been called the most significant family law legislation in a decade, AB 263 leveled the playing field for parents seeking to protect their relationships with their children. The legislation has been recently codified and can be found at NRS 125C.001-0075 and NRS 200.359.

Prior to its passage, significant inequities and conflicts existed. For example, primary physical custody was awarded to biological mothers by operation of law,[1] while fathers had to sue for custody, contradicting statutory policies that:

1. Both parents have an equal claim to their children,[2] and
2. When considering custody determinations, "the sole consideration of the court is the best interest of the child.[3]

Further, certain ambiguities existed, such as referring to "joint legal custody,"[4] but then stating a presumption only for "joint custody" without differentiating whether it was referring to legal or physical custody, or something else.[5]

Moreover, relocation cases (where a parent seeks to move with the child) were subject to inadequate statutory treatment. NRS 125C.200 stated that custodial parents must obtain consent of the non-custodial parent before moving, yet no mention was made regarding those with joint custody or where no custodial determination had been made by a court. Neither did the statute address how courts were to approve or reject a request to relocate. The Nevada Supreme Court attempted to fill the gaps,[6] but again, such guidelines only applied where a custodial determination had already been made. No law addressed situations where the parties had separated and simply adopted their own parenting schedule, or where one party moved out of state without the consent of the other parent.

The Impetus

Though the courts frequently proclaimed a desire for family law determinations to be predictable, particularly as they relate to child custody, the law was anything but. *Druckman v. Ruscitti*[7] sought to apply the judicially developed factors across all relocation cases. The problem with the opinion was not the rule that was developed—the court did a thorough job of setting forth the rule—but in the affirmance of the underlying trial

court's decision. The trial court simply made no mention of how the myriad factors were considered, let alone applied, to the underlying facts. As a result, attorneys argued that the rule developed in *Druckman* was actually dicta.

It was at this point that many family law attorneys took action. What started out as a response to a particular case transformed into a more comprehensive project; AB 263 was drafted.

The legislation achieved three principal goals:

1. It established a tiered preference for joint physical custody, consistent with the statutory policies regarding children's best interests;
2. It established uniform rules for all relocation cases, including both intra- and interstate relocation cases, based upon the intended *Druckman* rule; and
3. It brought the disparate rules scattered across the five sections of the statutory scheme into one place, NRS 125C, which allowed for harmonization of the various standards, removing the threshold tests based upon the parties' gender and prior marital status.

A Tiered Preference for Joint Physical Custody

NRS 125C.001 restates the policy ensuring "that minor children have frequent associations and a continuing relationship with both parents." NRS 125C.001(1).[8] It also establishes that both parents have an equivalent (though not necessarily numerically equal) duty to support their children. NRS 125C.001(3).[9] Similarly, NRS 125C.0035 restates the declaration that the "sole consideration of the court is that of the 'best interest of the child.'"

But the substantial value of the legislation is found in what it clarifies. NRS 125C.002-0025 clarifies that joint legal custody is still "presumed" to be in the child's best interests (see NRS 125C.002), while joint physical custody is simply "preferred," leaving the court with substantial discretion to make a determination (see NRS 125C.0025).

The new structure also provides guidance for when a parent might have abandoned the child to the other parent, or when domestic violence has been proven. Historically, trial courts were quick to consider the custodial arrangement that existed prior to the end of the parents' relationship. This backward-looking view was considered important because it showed what the parents believed was in the child's best interest. But, as many have conceded, that arrangement was based upon a cooperative relationship that no longer exists. The act redirects the courts' attention to a forward-looking view, as it considers whether a parent should be awarded custodial time. NRS 125C.003(1). Thus, if the trial court determines that primary physical custody in one parent is preferable, the court must merely explain what facts support that determination.

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Consistent Rules for Relocation Cases

There were two glaring problems with relocation cases when *Druckman* was decided. The first had to do with the inequity between instances where parents had a custodial order and when there were none. The second had to do with the disparity between inter- and intra-state relocation cases. Interstate relocation was prohibited without prior consent, no matter how close the parties remained. Intrastate relocations without consent, however, were always permissible.

The legislation resolved these discrepancies. First, the act codified the *Schwartz* factors that the *Druckman* court attempted to apply, including a three-pronged threshold test, and applied them to all relocation cases. Once the relocating parent meets the threshold test, the court must consider the statutory factors that

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offer a relatively predictable way of addressing the interests of the child.

Second, the act now requires that intrastate relocations follow the same rules. A parent who wishes to relocate "within the state at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child" must seek consent of the other parent or, if the other parent objects, permission from the court.[10]

Penalizing Unilateral Moves While Protecting Those Subject to Domestic Violence

Another frustration with the existing rules was that parents would often relocate with impunity, because the rules regarding parental abduction were easy to circumvent or were disregarded by the courts. The remaining parent could often do very little when the relocating parent moved without notice or consent, other than filing a motion after the fact. The rule simply had no teeth.

As a result, the state's kidnapping laws were modified to address this issue. See NRS 200.359. Under the new law, a person violating the relocation rules may be guilty of a category D felony, subject, however, to an exception that protects those fleeing domestic violence. In short, a parent who does not seek permission to relocate first must demonstrate to the satisfaction of the court that they were fleeing domestic violence.

The act also addresses various other scenarios that might provide the relocating parent justification for a preemptive move. In an effort to give the court the flexibility needed in such cases, the court is given the ability to determine on a case-by-case basis whether a party has a compelling excuse for disregarding the rule. Not to be interpreted as any excuse, a party must show a compelling reason for doing so. If the court is satisfied that the party was justified in the unilateral relocation, the court has the ability to avert punishment.

The Resulting Law is Predictable and Fair

Ultimately, the result of the act is a good one. AB 263 took a step toward legislative changes that make sense. It codified the *Druckman* rule, making relocation cases more predictable. It also leveled the playing field for those seeking to retain a relationship with their children, and it removed much of the disparity and inequity in the law resulting from the preconditions of prior marital status and gender.

There is still more work to be done. AB 263 was never going to be a major overhaul of Nevada's custody and visitation statutes. But it will act to assure that decisions in the trial courts are increasingly based only on the best interests of the children. **NL**

1. Formerly NRS 126.031.
2. Formerly NRS 125.460.
3. Formerly NRS 125.480(1).
4. Formerly NRS 125.490(2); see also the pre-2015 NRS 125.480(3)(a).
5. Formerly NRS 125.490(1).
6. *Schwartz v. Schwartz,* 812 P.2d 1268 (1991) (creating factors for the court to consider); *Potter v. Potter,* 119 P.3d 1246 (2005) (resolving joint physical custodial determinations).
7. 327 P.3d 511 (Nev. 2014).
8. See also NRS 128.005(1) ("[T]he preservation and strengthening of family life is a part of the public policy of this State.")
9. This was added as additional guidance to the courts when making child support and alimony determinations.
10. The undefined term "meaningful relationship" was chosen over a hard rule (either by defining "meaningful" or by setting a bright-line distance rule based upon an arbitrary distance) in order to allow the trial court the ability to make determinations on a case-by-case basis, based upon the best interests of the child.

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