

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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|-------------------------------|---|-------------------------------------|
| TIMOTHY P. VILLAGOMEZ, |) | Civil Action No. FCD 99-0004 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| ALICE F. VILLAGOMEZ |) | ORDER GRANTING IN PART |
| (nka) ALICE FLEMING |) | MOTION TO MODIFY CHILD |
| |) | CUSTODY AND CHILD SUPPORT |
| Respondent. |) | |
| <hr/> |) | |

I. NATURE OF CASE

¶1 On January 24, 2001, Respondent Alice F. Villagomez, now known as Alice Fleming, filed her request to modify custody of the minor children and for leave of court to relocate with the children from Saipan to Las Vegas, Nevada. Petitioner opposes the motion. The matter came before the court for hearing on May 2, 2001 and was continued until May 15, 2001. For the following reasons, the Court GRANTS the motion in part but declines to order the relief requested by the Respondent.

II. BACKGROUND

¶2 Four children were born or adopted during the marriage of Respondent and her former husband, Timothy Pangelinan Villagomez: Renaesha F. Villagomez, born March 28, 1987; Jose F. Villagomez, born April 12, 1991; Rita F. Villagomez, born April 21, 1993; and Juanita Villagomez, born September 12, 1996. The parties were divorced in 1999, and the order determining custody subsequently entered by the court provided that the parties would share joint legal and physical

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[p. 2] custody of the children. The Order also required Petitioner to pay child support in the amount of \$1,608.99 per month, less credits for the payment of school tuition and medical insurance.

¶3 On January 23, 2001, Respondent filed her motion to modify the decree, asserting that a material change in circumstances had occurred in the following particular respects: (1) On February 9, 2001, she would be leaving the CNMI and relocating to Las Vegas, Nevada, (2) the children did not enjoy being with the Petitioner because he was never around to spend time with them, and (3) the children have expressed their desire to follow her to Nevada. Respondent sought to have sole legal and physical custody of the children placed with her and asked the court for leave to relocate with the children to Las Vegas in early June, after the school year ends.

¶4 Petitioner filed his response to the motion on February 14, 2001, essentially arguing that the move to Las Vegas offered no actual advantage to the children and would disturb the functioning joint custody arrangement. He also contended that the relocation of one party to a joint custody arrangement did not constitute a change in circumstances sufficient to warrant a custody modification. On or about March 27, 2001, the court ordered the parties to mediation. When no resolution was reached, they brought this matter back before the court.

¶5 In response to the court's Order directing Respondent to explain her claim that a substantial change in circumstances had occurred, warranting a change in the existing order, Respondent filed a memorandum on May 2, 2001, asserting that she had exhausted her career opportunities in the Commonwealth and had already established a residence in one of the best areas of Las Vegas. Respondent thus contended that the move was necessary for her to find a "fresh start." Respondent has represented to the court that two of her sisters have also relocated to Las Vegas, that she has other family living there, and that she was able to secure employment with Dillard's Department Store at \$10.50 per hour.¹ Respondent further indicated that the eldest child, Renaesha, has expressed a desire to spend more time with her mother, and has particular needs that can be satisfied only by

¹ It is not entirely clear to the court whether Respondent still has a job at Dillard's, in that she elected to resign in order to return to Saipan for the hearing on this matter.

[p. 3] living with her mother. According to Respondent, Juanita, the youngest child, has been traumatized by the brief separation from her mother and become physically ill. Respondent maintained that the move was not predicated on an attempt to limit or curtail Petitioner's visitation rights, and thus it would serve the best interests of the children if the decree were modified to appoint her as the primary custodian and to permit the children to relocate to Las Vegas with her. Respondent also contended that child support should be recalculated based upon the cost of living in Nevada plus any increase in the medical and dental insurance for the children.²

¶6 In response, Petitioner argued that Respondent's living arrangements were inappropriate for the children, and that once Respondent found work, the children would effectively be relegated to the care of a maid or some other third party while she worked or socialized. Petitioner, moreover, strongly objected to relocating his children to the "gambling and prostitution capital of the world," and has expressed his concerns about the damage that could be caused to their education and their relationships with paternal and maternal family members. Petitioner also maintained that Respondent failed to meet her legal burden of showing a substantial change in circumstances warranting modification of the existing custody and support order. According to Petitioner, relocations should not be permitted absent a showing of exceptional circumstances, as they would effectively remove the noncustodial parent from regularly interacting with the children. *See, e.g., Pasco v. Nolen*, 546 N.Y.S.2d 215, 217 (Sup.Ct. 1989) (alleged economic betterment insufficient to allow relocation). Petitioner contends that Respondent has failed to establish not only that something new has happened that somehow renders him unfit, but also that she is now the better custodial parent. Reply at 2.

¶7 The court held an evidentiary hearing to address the custody modification and Respondent's motion to relocate. During the hearing, the court heard extensive testimony from the parties regarding their parenting strengths, weaknesses, abilities, and patterns. Their testimony indicated that both parties were caring, responsible parents, each with only minor complaints about the parenting

² Respondent, however, has only informed the court of the amount she is spending on monthly rent. She has not informed the court of any other costs associated with maintaining a household in Las Vegas consisting of herself and her four children.

[p. 4] style of the other. The hearing also reflected that the joint custody arrangement in place since the divorce was operating without significant problems.

III. ISSUE

¶8 In the absence of a statute spelling out the factors to be applied in child custody modifications, whether the court is bound to apply a standard governed by the best interests of the child, a substantial change in circumstances, or some other criteria.

¶9 What burden of proof should be applied where the party seeking removal does not have sole custody, but shares joint legal and physical custody.

¶10 Whether Respondent has met her burden of proof to require custody modification in this case.

IV. EFFECT OF JOINT LEGAL AND PHYSICAL CUSTODY

A. Applicable Legal Standard

¶11 The parties apparently agree that 8 CMC § 1718 and 1311 invest the court with jurisdiction to modify child custody and child support matters.³ Whereas 8 CMC § 1311 has been interpreted to mean that the applicable legal standard in custody and visitation rights issues is the best interests of the child,⁴ neither 8 CMC §1718 or §1311, however, address the legal standard governing the modification of child custody orders or the burden of proof to be applied when the party seeking removal does not have sole custody, but shares joint legal and physical custody with the other

³ Although Commonwealth statutes do not specifically address the legal standard to be employed in assessing a custody modification, 8 CMC § 1718 provides that the court has continuing jurisdiction to modify or revoke a judgment or order for future education and support. 8 CMC § 131, moreover, provides that “[i]n granting or denying an annulment or a divorce, the court may make such orders for custody of minor children for their support ... as it deems justice and the best interests of all concerned may require. Any decree as to custody or support of minor children or of the parties is subject to revision by the court at any time upon motion of either party and such notice, if any, as the court deems justice requires.”

⁴ See *Robinson v. Robinson*, 1 N.M.I. 82, 88 (1990).

[p. 5] parent.⁵ Commonwealth courts, moreover, have yet to address a case where a joint physical custodian desires to relocate and the factors which the court must consider.

¶12 Ordinarily, custody of a minor child will not be modified unless there has been a material change of circumstances showing that the custodial parent is unfit or that the best interests of the child require such action. *E.g.*, *Smith-Helstrom v. Yonker*, 249 Neb. 449, 544 N.W.2d 93 (1996). The party seeking modification of a decree of dissolution bears the burden of showing a material change of circumstances affecting the best interests of a child. *Parker v. Parker*, 234 Neb. 167, 449 N.W.2d 553 (1989).

¶13 Courts that have addressed shared physical custody cases, however, treat them differently than cases involving a primary residential parent. *See, e.g.*, Terry, *Relocation: Moving Forward or Moving Backward*, 31 TEX. TECH. L. REV. 983 (2000); Richards, *Children's Rights v. Parents' Rights: A Proposed Solution to the Custodial Relocation Conundrum*, 29 N.M. L.REV. 245 (1999).⁶ Several courts have held that when one party files a removal motion in a joint physical custody situation, neither party bears the burden of proving that relocation of the child is either favorable or detrimental to the child's best interests. Rather, each party carries an equal burden to prove that the new custody arrangement proposed by that party should be adopted by the court. *See, e.g.*, *In re Marriage of Burgess*, 13 Cal.4th 25, 913 P.2d 473, 51 Cal.Rptr.2d 444 (1996); *Ayers v. Ayers*, 508 N.W.2d 515 (Minn.1993); *Jaramillo v. Jaramillo*, 113 N.M. 57, 823 P.2d 299 (1991); *In re Marriage of Chester*, 907 P.2d 726 (Colo.App.1995). In these cases, the existing presumption in [p. 6] favor of allowing relocation of a custodial parent in sole custody cases was deemed

⁵ "Joint legal custody has been generally defined as joint " 'authority and responsibility for making "major" decisions regarding the child's welfare' ".... In contrast, joint physical custody has been described as "joint 'responsib[ility] for "minor" day-to-day decisions' and the exertion of continuous physical custody by both parents over a child for significant periods of time." *Elsome v. Elsome*, 257 Neb. 889, 601 N.W.2d 537, 544 (1999) (citations omitted). There is no dispute that the instant case is one of joint legal and physical custody.

⁶ *See also* Peterson, *Relocation of Children by the Custodial Parent*, 65 AMJUR TRIALS 127 (Suppl. 2000) (summarizing applicable state laws); Comment, *Relocation Cases as Change in Custody Proceedings: "Judicial Blackmail" or Competing Interests Reconciled?* 51 S.C. L. REV. 885 (2000); Debele, *A Children's Rights Approach to Relocation: A Meaningful Best Interests Standard*, 10 J. AM. ACAD. MATRIM. LAW. 75 (1998).

inappropriate in instances of joint physical custody. *Compare Farag v. DeLawter*, 743 N.E.2d 366 (Ind. App. 2001) (joint custodial mother's relocation was not reason enough to impose the burden of proof upon her to modify child custody, but rather, due to substantial change of circumstances created by the relocation to child's permanence and stability, each parent bore burden of showing that he or she was in a better position to serve child's interests) with *In re Marriage of Condon*, 62 Cal.App.4th 533, 73 Cal.Rptr.33 (1998) (to prevail on a motion to remove a minor child to another jurisdiction, the non-custodial parent must show that the child will be placed at risk of specific and real harm by reason of living with the custodial parent in the new location and that he would be substantially better off if his custody were changed to the other parent).

¶14 At least one court has ruled that an existing presumption in favor of a custodial relocating parent should be reversed where joint physical custody is concerned, so that the relocating parent bears the burden of proving the benefits of the relocation. *See Voit v. Voit*, 317 N.J.Super. 103, 721 A.2d 317 (1998). Other jurisdictions continue to apply a single test for relocation regardless of whether the parties have operated under a joint custody arrangement. *See, e.g., Blaich v. Blaich*, 114 Nev. 1446, 971 P.2d 822 (1998) (same burden placed on relocating parent regardless of joint custody); *McQuade v. McQuade*, 901 P.2d 421 (Alaska 1995) (best interests test applied *de novo* regardless of joint custody); *In re Marriage of Creedon*, 245 Ill.App.3d 531, 615 N.E.2d 19, 185 Ill.Dec. 724 (1993) (statute establishing best interests test applied to all relocation cases). Yet other jurisdictions require, in a joint custodial situation, the parent seeking to relocate to establish a legitimate reason for leaving the state, and, after clearing that threshold, to demonstrate that it was in the children's best interests to continue living with him or her. *E.g., Brown v. Brown*, 621 N.W.2d 70 (Neb. 2000). Regardless of the standard used, virtually every case turns on its own facts.

¶14 Petitioner argues that because Respondent seeks a modification of the custody arrangements as well as leave to move to Las Vegas, she must prove that the change “substantially affects the welfare of the minors” and that the altered custody arrangement will improve the children’s lives in [p. 7] a positive manner. Mem. at 2, citing *Sander v. Peacock*, 288 S.W.2d 548, 549-50 (Tex. 1956). Petitioner further contends that because modification of a prior custody order is at issue, Respondent

must also establish that Petitioner is somehow a “bad custodial parent.” Mem. at 3-4, *citing Hendrickson v. Hendrickson*, 358 P.2d 507, 509 (Or. 1960) (Party seeking to alter custodial arrangement must establish that the children have been “injuriously affected” as a result of a change in circumstances so serious as to warrant altering the custodial parents rights).

¶15 The court is persuaded that Respondent, in seeking to modify the custody arrangement from joint legal and physical custody to sole custody, bears the burden of showing a material change in circumstances such that the best interests of the children require such action. Contrary to the standard proposed by Petitioner, however, the court will not require Respondent to prove unfitness or that Petitioner is a “bad custodial parent.” Instead, the court adopts a test similar to that articulated in the seminal case of *D’Onofrio v. D’Onfrio*⁷ to hold that, in order to prevail on a motion to remove the minor children from the Commonwealth, the relocating parent must first satisfy the court that she or he has a legitimate reason for leaving the Commonwealth *and then* demonstrate that it is in the children's best interests to live with that parent in the new location. *See, e.g., Brown v. Brown*, 260 Neb. 954, 621 N.W.2d 70 (2000). As a practical matter, the existence of a joint physical custody relationship is likely to make it more difficult for the relocating parent to meet these burdens. Nonetheless, whether the court is considering a modification of custody or a proposed removal from the Commonwealth, the best interests of the children are the paramount considerations in the court’s determination. *See Robinson v. Robinson*, 1 N.M.I. 82, 88 (1990); *see also Schwartz v. Schwartz*, 107 Nev. 378, 712 P.2d 1208 (1991) (addressing factors to be considered in making determination).

¶16 The court has concerns that requiring a parent seeking leave to remove a child from the Commonwealth to prove a material change of circumstances beyond a legitimate reason and intent to move, as Petitioner urges, would deny a parent with joint legal and physical custody the [p. 8] opportunity to seek leave to relocate prior to some change in another, unrelated circumstance, and effectively sentence such a parent to immobilization. *See McGuinness v. McGuinness*, 114 Nev. 1431, 1435, 970 P.2d 1074, 1078-1079 (1998); *Harder v. Harder*, 246 Neb. 945, 524 N.W.2d 325 (1994)

⁷ 365 A.2d 27 (N.J.1976).

(award of custody not to be interpreted as sentence to immobilization). Furthermore, such a rule could encourage parents to change the circumstances by moving without permission, presenting the court with a *fait accompli* demanding consideration of the issue.⁸

¶18 For these reasons, the court concludes that a better rule is that a parent sharing joint legal and physical custody must first prove a material change in circumstances affecting the best interests of a child by evidence of a legitimate reason to leave the Commonwealth, together with an expressed intention to do so. *See Brown v. Brown*, 621 N.W.2d at 79, citing *Blaich v. Blaich*, 114 Nev. 1446, 971 P.2d 822 (1998); *McQuade v. McQuade*, 901 P.2d 421 (Alaska 1995); *Osteraas v. Osteraas*, 124 Idaho 350, 859 P.2d 948 (1993). Proving such an intent does not necessitate that physical custody be modified, but the intent to move illustrates the likelihood that there is a need for considering some sort of modification that would reflect the new circumstances. *See Brown*, 621 N.W.2d at 79.

¶19 Once the party seeking modification has met this threshold burden, then the separate analyses of whether custody should be modified and whether removal should be permitted necessarily become intertwined. *Brown*, 621 N.W.2d at 79. Thus, in order to prevail on her motion to modify physical [p. 9] custody, Respondent must show that such a modification is in the best interests of the children. The court cannot consider those best interests, however, without also considering the effect on the children of the move to Las Vegas that Respondent proposes to make. In short, because Respondent seeks modification of custody so that she can move to Las Vegas, the question of whether

⁸ The California Supreme Court articulated the relevant public policy in *In Re Marriage of Burgess*, 13 Cal.4th 25, 51 Cal.Rptr.2d 444, 913 P.2d 473, 480- 81 (Cal.1996):

As this case demonstrates, ours is an increasingly mobile society. *Amici curiae* point out that approximately one American in five changes residences each year. Economic necessity and remarriage account for the bulk of relocations. Because of the ordinary needs for *both* parents after a marital dissolution to secure or retain employment, pursue educational or career opportunities, or reside in the same location as a new spouse or other family or friends, it is unrealistic to assume that divorced parents will permanently remain in the same location after dissolution or to exert pressure on them to do so. It would also undermine the interest in minimizing costly litigation over custody and require the trial courts to "micromanage" family decisionmaking by second-guessing reasons for everyday decisions about career and family.

modification is in the best interests of the children and whether the move to Las Vegas is in the best interests of the children merge into the single question of whether the best interests of the children are furthered by Respondent's obtaining sole physical custody and moving the children to Las Vegas.

¶20 Despite the children's best interests being the central concern, in that this is an issue of first impression in the CNMI, the court deems it helpful to set forth appropriate factors to consider in analyzing the children's best interests in a proposed removal from the Commonwealth under joint custody circumstances. First, removal of a child from the Commonwealth, without more, does not amount to a change of circumstances warranting a change of custody. *See, e.g., Brown*, 621 N.W.2d at 78. Nevertheless, when considered in conjunction with other evidence, relocation could qualify as a change of circumstances that would warrant a modification of the custody decree. *E.g., Marez v. Marez*, 217 Neb. 615, 350 N.W.2d 531 (1984). Accordingly, the court holds that in cases of joint legal and physical custody, a legitimate reason for leaving the state, taken together with an expressed intent to do so, may constitute a material change in circumstances affecting the best interests of a child, sufficient to require examination of the best interests of the child.

¶20 In reaching this determination in a parental relocation case, the court weighs the following 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) the integrity of the noncustodian's motives in resisting the motion for permission to remove, and to what extent, if any, the [p. 10] 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. *See D'Onofrio*, 365 A.2d 27; *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991).

¶21 The court may also consider any number of additional factors that may be helpful 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. *Brown*, 670 N.W.2d at 81. The foregoing list is by no means all-inclusive and only illustrates the many sub-factors that the court may, in the exercise of 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. *Id.*

B. Application of Standard to Facts

¶22 To warrant a custody modification, Respondent must first establish that she has a legitimate reason for leaving the Commonwealth. After clearing that threshold, Respondent must then demonstrate that it is in the children's best interests to continue living with her. *See Brown*, 621 N.W.2d at 80. For the reasons set forth below, the court finds that Respondent has failed to meet her burden that it is in all of the children's best interests to relocate to Nevada with her in this case.

¶23 Although a firm offer of employment, combined with a flexible schedule in close proximity to the relocating parent's extended family may constitute a legitimate reason to modify joint custody [p. 11] in a removal case,⁹ the court is not convinced that either a firm offer of employment exists or that the presence of Respondent's two sisters in Nevada are all that permanent. Even assuming that Respondent did satisfy her initial burden of showing a legitimate reason to leave the

⁹ *See Brown*, 670 N.W.2d at 80-81.

Commonwealth, however, the court is not satisfied that removal to Las Vegas would be in each minor child's best interests.

1. Each Parent's Motives/ Compliance with Orders of the Court

¶24 No evidence was presented to permit the conclusion that either party was seeking to frustrate the custodial rights of the opposing party or otherwise acting in bad faith. While Respondent argues that Petitioner is an absent parent, and Petitioner argues that Respondent does not really believe that her life would be improved by the supposed job at Dillard's, these arguments are unsupported by the evidence. Rather, the record depicts two parents who both care deeply about their children and want to do what is best for them. There is no evidence that if permission to remove is granted, either party would fail to comply with and respect any substitute visitation orders issued by the court. Nor is there any evidence that either party intends to secure a financial advantage in the form of ongoing support obligations or otherwise by the position he or she takes on the issues presented. Thus the court concludes that each party has valid reasons for their respective positions on Respondent's proposed relocation.

2. Quality of Life

¶25 In determining the potential that the removal to another jurisdiction holds for enhancing the quality of life of the parent seeking removal and of the children, courts have routinely considered several pertinent factors, including: (1) the emotional, physical, and developmental needs of the children; (2) the children's opinion or preference as to where to live; (3) the extent to which the relocating parent's income or employment will be enhanced; (4) the degree to which housing or living conditions would be improved; (5) the existence of educational advantages; (6) the quality of the [p. 12] relationship between the children and each parent; (7) the strength of the children's ties to the present community and extended family there; and (8) the likelihood that allowing or denying the move would antagonize hostilities between the two parties. *See Brown*, 671 N.W.2d at 81.¹⁰

¹⁰ This list should not be misconstrued as setting out a hierarchy of factors. Depending on the circumstances of a particular case, any one factor or combination of factors may be variously weighted. *Brown*, 671 N.W.2d at 81.

¶26 Not surprisingly, the parties have each chosen to emphasize different factors in this case. Generally, Respondent's argument rests upon the first, second, third, and sixth factors, as she urges this court to consider the children's respective emotional needs and their close ties to her. Petitioner relies more upon the third, fourth, fifth and seventh factors and argues that the advantages of the move, to the extent that they are even present, are outweighed by the harm of separating the children from him and their extended families in Saipan.

(a) Emotional Needs of the Children/ Children's Preference

¶27 Respondent points to Dr. McCullough's 1999 custody evaluation to support her claim that Renaesha and Juanita require the support and counseling of their mother at this stage of their respective developments. Respondent further asserts that Petitioner is unable or unwilling to devote significant periods of time for the children.

¶28 "When a child is of sufficient age, intelligence, and discretion to exercise an enlightened judgment, his or her wishes, though not controlling, may be considered by the court, with other relevant factors in determining child custody rights." *In re Marriage of Hunt*, 476 N.W.2d 99, 101 (Iowa App. 1991). A child's preference, however, "is entitled to less weight in a modification action than would be given in an original custody proceeding." *Id.* The court has heard from Renaesha and Jose in chambers, and with the exception of Renaesha, the court is not convinced that all of the children wish to accompany their mother to Las Vegas. Renaesha has voiced her desire to spend more time with her mother than she currently has under the present joint custody arrangement, and while concerned about the effect of removing her from her siblings, the court recognizes that the need to be with her mother during adolescence may be greater. The court therefore finds that, at least with [p. 13] respect to Renaesha, it would be more beneficial for her to spend more time with her mother. The court cannot find the same with respect to the other children. Accordingly, the court finds that with the exception of Renaesha, this factor does not weigh in favor of relocation.

(b) Enhancement of Income or Employment

¶28 Respondent indicates that based upon the job offers she received when she was in Las Vegas, she would be earning twice as much as she earned here in Saipan. This factor would weigh in favor of granting leave to relocate the children if Respondent were granted sole custody, as the living conditions and employment opportunities for the mother are interwoven with the well-being of the custodial parent. *See Farnsworth v. Farnsworth*, 257 Neb. 242, 597 N.W.2d 592 (1999).

(c) Educational Advantages/Crime Statistics

¶29 With respect to the fifth factor, the existence of educational advantages for the children, Respondent testified generally that the schools in Las Vegas would be adequate for the needs of the children. Respondent did not establish, however, that the primary and secondary schools in Las Vegas were any better or worse than the schools in Saipan. Petitioner, on the other hand, provided the court with information from the internet to support his concern about the poor quality of the Las Vegas schools. Consequently, on the basis of the information provided, the court cannot conclude that the move to Las Vegas will substantially, if at all, improve the children's educational opportunities. Conversely, if relocation is not permitted, the children will remain in the same schools and community where they are apparently doing well.

¶30 Petitioner has also asked the court to take notice that the crime rate in Las Vegas is more than 300% higher than that in an average city in the United States. Combined with a greater exposure to violence and gangs, Petitioner argues the children would be at risk, were relocation permitted. Although Respondent has provided the court with an unsworn statement from the property manager of the apartment complex where she resides concerning the safety of the neighborhood and the presence of burglar alarms in Respondent's unit, Respondent has not convinced the court that the [p. 14] children would be safer in Las Vegas than in Saipan. The court therefore finds that this factor weighs against relocation.

(d) Quality of Relationship Between Children and Parents

¶30 Respondent relies upon the sixth factor, the quality of the relationship between the children and each parent, in support of her decision to relocate. Although each party pointed to flaws of the

opposing party at the hearing of this matter, the testimony of both parties established that both parents are actively involved in the lives of their children. It is uncontested that the children spend approximately half their time with each parent and that both parents have been intimately involved in all aspects of raising the children.

¶31 Testimony at the hearing also established that Petitioner has very close relationships with all of the children. While moving to Las Vegas would preserve the relationship of the children with Respondent, the move would, as discussed in more detail later in this opinion, detrimentally affect the close relationship between Petitioner and the children. The court also notes that Respondent's intent to work full time, would seem to interfere, especially during the school year, with her own ability to maintain her relationship with the children. Overall, this factor weighs significantly against relocation of the children.

(e) Ties to Community and Extended Family

¶32 Evidence brought out at the hearing indicated that living in Las Vegas could place the children closer to two sisters who are temporarily living with Respondent and an aunt who also lives there. Petitioner testified, however, that the remaining members of Respondent's extended family, along with who are extremely close, live in the Commonwealth, as does his extended family. Petitioner also emphasizes that the close family network existing between his siblings, himself and his parents provides a better environment in which to raise children. Removing the children from Saipan for contact with Respondent's aunt must be balanced against contact with the children's extended family and, perhaps most importantly, their extremely close ties to the community. On balance, the court concludes that this factor weighs significantly against permitting relocation of the children. [p. 15]

(f) Remaining Factors

¶33 There is little dispute over the remaining factors. There is no evidence from which the court can conclude that allowing or denying the move would antagonize hostilities between the parties in that, aside from the dispute over relocation, the parties seem to have established a relatively positive and commendable relationship where the welfare of the children is concerned.

(g) *Quality of Life--Conclusion*

¶34 Based on the above-mentioned factors, the court concludes that while Respondent presented evidence that the quality of life for the children might be improved by certain aspects of living in Las Vegas, this improvement would be offset, if not outweighed, by the effect of diminishing the relationship between Petitioner and the children.

3. *Impact of Move on Contact Between Petitioner and Children*

¶35 The final consideration the court considers is the impact of relocation upon Petitioner's ability to maintain a meaningful relationship with his children. *See Kalkowski v. Kalkowski*, 258 Neb. 1035, 607 N.W.2d 517 (2000). Respondent's testimony established that she was willing to permit Petitioner extensive visitation during summer and school holidays and to pay some of Petitioner's travel expenses.¹¹ Nonetheless, even Respondent does not dispute that the move to Las Vegas would dramatically affect Petitioner's contact with the children.

¶36 The move to Las Vegas is not like a move to Tinian or Rota. While a move from Saipan to Rota or Tinian would necessarily lessen the frequency of visits with the child, the distance between the two islands is not one which would prevent the noncustodial parent from seeing his child on a regular basis. The same cannot be said of the distance between Saipan and Las Vegas, Nevada. The greater distance, less direct travel connections, and the significant expense and time involved in [p. 16] traveling between the two locations are significant factors which the court must consider in evaluating the degree to which the move would affect Petitioner's contact and relationship with his children.

¶37 Although Respondent has offered substantial and commendable concessions on the issue of visitation, it cannot be reasonably questioned that such visitation would allow Petitioner significantly less contact with the children and would make it nearly impossible for him to maintain the relationship

¹¹ Specifically, Respondent proposed that Petitioner would have liberal visitation rights and temporary custody of the children while visiting the Las Vegas area, as well as custody of the children each summer and Christmas holidays every other year. She also proposed to bear 25% of the costs of air transportation, and to have Petitioner pay the remaining 75%.

that he currently enjoys. Respondent's proposed visitation schedule, while generous, would nonetheless be a poor substitute for the daily interaction Petitioner and the children now share. This consideration is significant, given the context of joint legal and physical custody.

(4) Best Interests--Conclusion

¶38 Based on the foregoing, the court concludes that it not in the best interests of all of the children to permit Respondent to relocate with them to Las Vegas. Although Respondent has a legitimate reason for leaving the Commonwealth, and certain aspects of living in Las Vegas could improve the quality of life for her and the children, the court concludes that those facts are outweighed by the detrimental effect that the move would have on the relationship of the children with Petitioner. This conclusion applies to all of the children, although given Renaesha's needs, the court will allow Renaesha to relocate with Respondent while her siblings remain in Saipan. The court does not find this to be a particularly attractive solution, however, given the greater harm that may result in the separation of Renaesha from her siblings and other family members.

CONCLUSION

¶39 The evidence reveals two loving parents actively involved in the lives of four well-adjusted children operating under a joint legal and physical custody arrangement that appears to be working. Accordingly, and for the reasons discussed above, the court concludes that Respondent did not establish that the best interests of all of the children would be served by modifying custody and granting her leave to move with all of the children to Las Vegas. Renaesha, however, presents a different question and the court concludes that it would serve Renaesha's best interests to modify custody and allow her to relocate with Respondent to Las Vegas. [p. 17]

¶40 The court therefore ORDERS:

- A. The parties shall retain joint legal custody of the minor children. The court shall continue to retain jurisdiction over all matters affecting custody, child support, and visitation.
- B. Primary physical custody of Renaesha Villagomez is hereby awarded to Respondent.

- C. Primary physical custody of Jose F. Villagomez, Rita F. Villagomez, and Juanita Villagomez is hereby awarded to Petitioner.
- D. Respondent shall have custody of all of the children each summer and alternate Christmas holidays. The cost of air transportation shall be borne by the parties in the following proportions: Petitioner shall pay seventy five percent (75%), and Respondent shall pay twenty five percent (25%).
- E. While visiting in Las Vegas, Petitioner shall have liberal visitation rights for Renaesha. Petitioner shall also have liberal visitation with all the children while they are in Respondent's custody during the summer vacations periods.
- F. While visiting in the Commonwealth, Respondent shall have liberal visitation rights for Jose, Rita, and Juanita.
- G. At this time, the court lacks sufficient information to make specific findings concerning child support. Accordingly, and within fifteen (15) days of this Order, the parties are directed to file updated Income and Expense Declarations to permit the court to decide this issue.

So Ordered on this 23 day of May, 2001.

/s/
TIMOTHY H. BELLAS, Associate Judge