STATE OF MICHIGAN

COURT OF APPEALS

JESSICA L. VANDERHOFF,

Plaintiff-Appellant,

v

COREY R. VANDERHOFF,

Defendant-Appellee.

UNPUBLISHED
February 12, 2019

No. 344839
Oakland Circuit Court
LC No. 2016-843956-DM

Before: JANSEN, P.J., and BECKERING and O'BRIEN, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's opinion and order denying her motion to change the domicile of the parties' minor daughter from Michigan to Texas. We affirm.

On appeal, plaintiff argues that the trial court made several findings of fact that were against the great weight of the evidence, and committed error requiring reversal by improperly applying the *D'Onofrio*[1] factors in MCL 722.31(4). We disagree.

All orders and judgments in child custody disputes "shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28. "This Court reviews for an abuse of discretion a trial court's ultimate decision whether to grant a motion for change of domicile." *Sulaica v Rometty*, 308 Mich App 568, 577; 866 NW2d 838 (2014). In matters of child custody, "[a]n abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias." *Phillips v Jordan*, 241 Mich App 17, 29; 614 NW2d 183 (2000). Questions of law are reviewed for clear error, which occurs when the trial court "incorrectly chooses, interprets, or applies the law." *Sulaica*, 308 Mich App at 577. The trial court's factual findings in the context of child custody are reviewed under the great weight of the evidence

[1] *D'Onofrio v D'Onofrio*, 144 NJ Super 200; 365 A2d 27 (1976), aff'd 144 NJ Super 352 (1976).

standard. *Rains v Rains*, 301 Mich App 313, 324-325; 836 NW2d 709 (2013); *Brown v Loveman*, 260 Mich App 576, 600; 680 NW2d 432 (2004). This Court "may not substitute [its] judgment on questions of fact unless the facts clearly preponderate in the opposite direction." *Rains*, 301 Mich App at 324 (quotation marks and citation omitted; alteration in original).

Pursuant to MCR 3.211(C)(3), "a parent whose custody or parenting time of a child is governed by [a custody order] shall not change the legal residence of the child except in compliance with . . . MCL 722.31." MCL 722.31 provides, in relevant part:

> (1) A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.
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> * * *
>
> (4) Before permitting a legal residence change otherwise restricted by subsection (1), the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:
>
> (a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.
>
> (b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.
>
> (c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.
>
> (d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.
>
> (e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Under MCL 722.31(4), the court is required to consider each factor by the Legislature's use of the word, "shall," which is unambiguous, and used to denote mandatory, rather than discretionary, action. *Yachcik v Yachcik*, 319 Mich App 24, 36-37; 900 NW2d 113 (2017). However, the statute does not require the court to "specifically delineate its findings with regard

to each factor." *Id*. at 37. The party requesting the change of domicile of the minor child has the burden of establishing by a preponderance of the evidence that the change is warranted. *Id*. The preponderance of the evidence burden of proof recognizes the increasingly legitimate mobile nature of society. *Brown*, 260 Mich App at 601.

When a parent moves for leave to change a child's domicile more than 100 miles, the trial court uses the following four-part analysis to consider the request:

> First, a trial court must determine whether the moving party has established by a preponderance of the evidence that the factors enumerated in MCL 722.31(4), the so-called *D'Onofrio* factors, support a motion for a change of domicile. Second, if the factors support a change in domicile, then the trial court must then determine whether an established custodial environment exists. Third, if an established custodial environment exists, the trial court must then determine whether the change of domicile would modify or alter that established custodial environment. Finally, if, and only if, the trial court finds that a change of domicile would modify or alter the child's established custodial environment must the trial court determine whether the change in domicile would be in the child's best interests by considering whether the best-interest factors in MCL 722.23 have been established by clear and convincing evidence. [*Rains*, 301 Mich App at 325 (citation omitted).]

I. FINDINGS OF FACT

On appeal, plaintiff asserts that several of the trial court's findings of fact were against the great weight of the evidence, namely, that defendant was an involved father, that plaintiff's fiancé had geographical instability, and that plaintiff lacked close family in Texas, amongst others. We disagree.

First, plaintiff argues that the trial court finding that defendant was an "involved father" was against the great weight of the evidence. She challenges the trial court's findings that "[Defendant] clearly is an involved father who sees [the parties' minor daughter] every week," "the proposed relocation will not provide a realistic opportunity [for defendant] to remain engaged in [the parties' minor daughter's] life through social, academic, and extracurricular activities," and the trial court's concern that plaintiff's and her fiancé's testimony "that their proposed home will provide the child with more love and stability than the current environment, with father not being a part of the child's daily life." Plaintiff argues that the great weight of the evidence does not support the court's findings that defendant is an involved father, or engaged in the minor child's life activities.

Our review of the lower court record leads us to conclude that the trial court's factual findings are not against the great weight of the evidence, and do not clearly preponderate in the opposite direction. *Id*. at 324. The trial court determined that a relocation would not allow defendant to "remain engaged" in the minor child's life through her social, academic, and extracurricular activities. However, some of the evidence established that defendant was not "*engaged*" in the minor child's social, academic, and extracurricular activities to begin with. Plaintiff testified that defendant did not exercise equal parenting time, and only had the minor

child on the weekends. He did not take a full week of parenting time during the summer. Defendant was not a part of the minor child's daily life because he did not see her daily, and would forgo weekend parenting time if he had other plans, or if the minor child had plans or appointments. Instead of taking the minor child to a friend's birthday party during defendant's weekend parenting time, he dropped her off at plaintiff's house for plaintiff to take her to the party. Plaintiff sent defendant the minor child's school calendars, but he still missed the daddy daughter dance in April 2017, the Halloween party in October 2017, and donuts with dad and the choir concert in February 2018. He did not attend the minor child's gymnastics practices, or provide financial support for her to participate. Defendant testified that the minor child hardly ever had homework. He acknowledged that he could have contacted the minor child's school, but did not, and relied on plaintiff for such information.

Regardless, the court's finding that defendant was involved, and a relocation "*will not provide a realistic opportunity* [for defendant] to remain engaged" does not clearly preponderate in the opposite direction of the evidence presented at the evidentiary hearing. *Id*. The parties' consent judgment of divorce provided that they would agree to a parenting time schedule that was flexible for their work schedules. Although the parenting time schedule that they agreed to was not 50/50, defendant testified that they agreed to this schedule to accommodate his work schedule.

Although plaintiff and defendant both testified regarding school activities that defendant missed, a lot of these activities took place during the work week when the minor child was not in defendant's care, and defendant was working, possibly out of town. Math and science night in February 2017, kindergarten graduation in June 2017, meet the teacher in August 2017, the first day of school, a parent meeting, and curriculum night in September 2017, the "Okay to Say" presentation in October 2017, conferences in November 2017, and math and science night and the choir concert in February 2018, were all on weeknights Monday through Thursday. Gymnastics was on Monday nights. Defendant testified that even when he was not working out of town, it could still take him three hours to get home after work, and he would have to go home to shower and change before attending any event because he worked with hazardous materials.

Defendant testified regarding the activities that he would do with the minor child over the weekend, including helping her with math homework when she had it. He would take her to see his family members, watch television and play games together, go shopping at Field and Stream together, attend the movies, go fishing, or visit the zoo. The minor child also enjoyed attending holidays, birthdays, barbeques, and pool parties at the homes of his family members. Indeed, relocation from Michigan to Texas would inhibit defendant's opportunity to engage in such things with the minor child in the future on a regular basis. Therefore, the trial court's findings of fact regarding defendant being an "involved father" were not against the great weight of the evidence.

Next, plaintiff argues that the trial court mischaracterized her fiancé's geographical stability, and that mischaracterization was contrary to the great weight of the evidence. We disagree.

In summarizing the testimony of plaintiff's fiancé in its opinion and order, the lower court recalled,

> [Plaintiff's fiancé] stated that he does not anticipate leaving the military for at least another seven years and that he felt it unlikely the military would move him to another duty station with his skillset. . . . On cross-examination, he acknowledged the possibility of a future transfer but stated that it may be a year or two before the possibility arose. He stated that during his 13-year career, the military ordered him to relocate to Nebraska, Maryland, Virginia, in addition to deployments in Iraq and Afghanistan.

The court found this testimony to be "credible but generally not germane to the court's legal obligations in determining this motion."

Plaintiff argues on appeal that the trial court mischaracterized her fiancé's testimony, and there was no evidence to substantiate its findings that "imply" that he could be transferred within a few years. This argument lacks merit. Plaintiff's fiancé testified that he had been in the Air Force for 13 years. He was an active duty technical sergeant and cyber warfare operator. He was previously stationed in Nebraska, Maryland, and Virginia, and deployed to Iraq and Afghanistan. Regarding being transferred, he testified:

> In the military it's always possible. That's one of the things with the military. Luckily I just moved to a different unit a couple months ago, and with that being said, they usually keep you after you move for a year or two or even longer before they would even consider like moving you out of another base. Like I said earlier, yeah, it's – the chances are unlikely because of my specific skill set and the area I'm in and I really can't talk about that anymore.

Plaintiff's fiancé further testified that if he were transferred, he would likely remain in Texas, and there were many air bases near San Antonio. Therefore, the trial court's findings regarding his testimony were not against the great weight of the evidence.

Next, plaintiff argues that although the trial court found her testimony to be credible, it still discounted her testimony about her extended family in Texas. The trial court included in its summary of plaintiff's testimony:

> [Plaintiff] stated that she [has] a cousin living in San Antonio and that her brother is moving to a home within [an] hour or so of San Antonio. . . . However, [plaintiff] later acknowledged that she did not visit her cousin in San Antonio during the marriage.

In discussing factor (a) of MCL 722.31(4), the court noted that plaintiff "has no close family in San Antonio." In reaching its conclusion, the court stated that plaintiff "has no family or support in San Antonio," whereas plaintiff's aunt provided support and childcare in Michigan.

The trial court's findings of fact are not against the great weight of the evidence. Plaintiff testified that her brother was moving to San Antonio, and when asked what their relationship was like, plaintiff said that she had "no issues" with him. Plaintiff also testified that she has a cousin who lives within driving distance of San Antonio, and that cousin has three children. Plaintiff testified that she and her cousin are not "virtual strangers," they spent time together growing up, and the cousin attended the parties' wedding. However, plaintiff could not name the city in

Texas where her cousin lived. Plaintiff's cousin did not visit the parties' home during their marriage, and plaintiff did not visit her. However, plaintiff testified that she had visited her cousin in Texas after she began dating her fiancé. Defendant testified that it was possible that he met this cousin, but he did not specifically remember her. Therefore, the trial court's finding of fact that plaintiff lacked "close" family in San Antonio was not against the great weight of the evidence.

Next, plaintiff asserts that the court noted the upward deviation in child support, but failed to note that the upward deviation "would only be so" if defendant was exercising full 50/50 parenting time, and he was not. In the opinion and order, the court took judicial notice of the consent judgment of divorce, and noted that the parties agreed to an upward deviation in child support. The court also noted that the parties entered a uniform child support order, and an order exempting the case from the Friend of the Court, contemporaneously with the consent judgment of divorce. This was not against the great weight of the evidence.

The consent judgment of divorce included the upward deviation in child support, and nowhere provided that the deviation is dependent upon 50/50 parenting time. A uniform child support order and deviation addendum was entered, ordering defendant to pay the upward amount. Plaintiff argued that she should be receiving more in child support because defendant was not exercising 50/50 parenting time in her motion to change domicile, and defendant noted in his response that the parties agreed to the upward deviation knowing that his job would not allow him to have a true 50/50 schedule. However, plaintiff testified that it was her understanding that the amount agreed to was an upward deviation from the amount based on a 50/50 schedule. Therefore, the trial court's findings regarding the child support amount were not against the great weight of the evidence.

Next, plaintiff raises issue with the fact that the opinion and order provided that plaintiff believed that defendant "told [the minor child] that [plaintiff's] first priority was [her fiancé] rather than [the minor child]," but failed to note that defendant admitted saying this to the minor child. Although plaintiff testified that defendant told the minor child that her fiancé was plaintiff's "number one," and the minor child would never be plaintiff's "number one," defendant did not admit to making this statement on the record, nor did he admit to making this statement in the transcript pages cited to by plaintiff in her brief on appeal. Moreover, the court does not have to comment on every matter in evidence or declare acceptance or rejection of every proposition argued. *LaFleche v Ybarra*, 242 Mich App 692, 700; 619 NW2d 738 (2000). Plaintiff's arguments regarding the trial court's failure to address certain evidence in its opinion and order lack merit. *Id*.

Lastly, plaintiff raises issue with the court's finding that plaintiff "provided no reason why she could not relocate to a better area in Michigan given her financial situation." Plaintiff argues that this was a "complete skewing" of the record because plaintiff testified that she lived in the apartment in Madison Heights because that was all that she could afford. Plaintiff testified that her salary was $40,000 each year, and she tried looking for a different place to live before renewing her lease on her Madison Heights apartment, but everything cost more. She testified that she could not financially afford to be in a different situation. She did not otherwise discuss moving to a better or different area within Michigan. Plaintiff also testified on cross-examination that she received "perks" and bonuses on top of her salary, and that defendant gave

her $10,000 in cash for her share of the equity in the marital home. Therefore, the court's finding was not against the great weight of the evidence, as plaintiff did not testify regarding why she could not relocate within Michigan given the additional money she had apart from her salary. *Rains*, 301 Mich App at 324.

In conclusion, the trial court did not make findings of fact in its opinion and order that were against the great weight of the evidence and would prevent this Court from affirming the opinion and order on appeal. MCL 722.28.

II. APPLICATION OF *D'ONOFRIO* FACTORS

Next, plaintiff argues that the trial court failed to correctly analyze the evidence under the statutory factors, and should have granted plaintiff's motion for change of domicile. We disagree.

A. FACTOR (A)

The trial court found that the first factor, MCL 722.31(4)(a), favored defendant. The court noted plaintiff's testimony that she would move from an apartment building in Michigan to a suburban home in Texas, and because the minor child is enrolled through school of choice in Michigan, spending time with classmates outside of school was difficult. The court also noted that plaintiff testified that she could earn more in San Antonio, but she was not planning to work, and would be totally financially dependent on her fiancé. Plaintiff offered no evidence beside her own opinion that the school in San Antonio was better. Finally, although plaintiff was engaged, she was not yet remarried and had no close family in San Antonio, whereas the minor child had close relationships with plaintiff's aunt, defendant, and defendant's family, who all resided in Michigan.

Although the relocation could improve plaintiff's quality of life, the evidence established that plaintiff's *and* the minor child's living situation would improve in Texas. In Michigan, plaintiff and the minor child currently lived in a noisy, chaotic apartment building, and in Texas, they would move into a nice suburban home, in a neighborhood with other kids and a community pool. This Court has held that a substantial increase in income that elevates the quality of life of the relocating parent and child is sufficient to meet the burden of proof under factor (a). *Brown*, 260 Mich App at 601. Plaintiff testified that she could earn $10,000 more in San Antonio than in Michigan; however, she had no plans to return to work right away. She said that she would take time to help the minor child adjust, and could eventually work part-time, but she did not need to because her fiancé would financially support the family.

Plaintiff testified that she did thorough research on government websites regarding both the minor child's current school district and the new school district in Texas. Plaintiff recalled that the websites addressed class size, college preparedness, and test scores, etc., and in her opinion, the new school in Texas was a "wonderful school." The court noted that it had nothing to substantiate plaintiff's testimony, and was "just going on [plaintiff's] review of whatever these websites were." Attached as an exhibit to plaintiff's motion for change of domicile are printouts from the Texas Education Agency website and other online information regarding the elementary school that the minor child would attend. However, nothing was attached to plaintiff's motion

regarding the minor child's current elementary school in Royal Oak. Plaintiff merely testified that the class sizes at the San Antonio school were smaller than in Royal Oak.

In *Yachcik*, this Court noted that the "plaintiff fail[ed] to recognize that she did not proffer any evidence regarding the credentials of [the minor child's] current school, which would have provided a basis for the trial court to determine whether the change in schools had the capacity to actually *improve* the child's 'quality of life.' " *Yachcik*, 319 Mich App at 42 (emphasis in original). Plaintiff testified that it was difficult for the minor child to have play dates with children from school because none of them lived near their apartment or on defendant's street; however, it was plaintiff's choice to enroll the minor child in Royal Oak Schools through school of choice rather than the Madison Heights district where they resided. Moreover, the minor child's school was only one or two miles from plaintiff's apartment. Therefore, plaintiff failed to meet her burden and demonstrate the capacity for improvement in the minor child's life by attending the school in San Antonio. *Rains*, 301 Mich App at 326-327.

Additionally, this Court has recognized that living in close proximity to immediate and extended family members, and remaining in a stable environment, are relevant considerations under factor (a). See *Rittershaus v Rittershaus*, 273 Mich App 462, 466-467; 730 NW2d 262 (2007) (recognized the importance of having relatives in close proximity where childcare is needed). Plaintiff argues on appeal that the trial court should not have considered the fact that she was not yet remarried because both she and her fiancé testified that they were engaged, and had a 2019 wedding date. However, the trial court's finding of fact that they were not married was not against the great weight of the evidence because both plaintiff and her fiancé testified that they have not yet married.

As discussed more fully under Issue I, the trial court's finding of fact that plaintiff had no close family in San Antonio was not against the great weight of the evidence as plaintiff testified that she had a cousin who lived in Texas, but she did not know the name of the city, and plaintiff's brother was moving there. Rather, the court properly considered the fact that the minor child had close family members in Michigan, and some of them provided childcare. *Rittershaus*, 273 Mich App at 466-467; *Dick*, 147 Mich App at 520-521. Plaintiff testified that the minor child was close with plaintiff's aunt, and that plaintiff's aunt often watched the minor child when plaintiff had to work. Plaintiff testified that her aunt could even watch the minor child if needed for defendant over the summer pursuant to plaintiff's proposed parenting time schedule dependent on the move. Defendant lives in Michigan, and sees the minor child weekly. Defendant testified that the minor child has a good relationship with each of her paternal grandparents, who both live in Michigan, as well as with defendant's brother and his wife.

Therefore, the trial court's findings of fact regarding factor (a) were not against the great weight of the evidence, and the court did not abuse its discretion in concluding that this factor favored defendant.

B. FACTOR (B)

The trial court found that factor (b) did not favor either party. The only parenting time order was the consent judgment of divorce, the parties established their own parenting time schedule, neither filed a motion to modify parenting time, and neither violated the parenting time order. The court noted that plaintiff's proposed parenting time schedule of summers and holidays with defendant may provide defendant with more parenting time overall, but he would still need childcare during the work week over the summer, so it was not as much parenting time as plaintiff suggested. Plaintiff asserts on appeal that discussion of the proposed parenting time plan should have been discussed under factor (c) rather than factor (b). She fails to note that the court "incorporate[d] by reference its analysis under" factor (b) in its discussion regarding factor (c) in the opinion and order. Regardless, these findings were not contrary to the great weight of the evidence.

Plaintiff testified that defendant forfeited some of his parenting time. These were primarily specific occasions when defendant traveled up north, and did not bring the minor child with him. According to plaintiff's calendar from January 2017 to February 2018, there were only four weekends in which defendant did not exercise any of his parenting time at all. One weekend was immediately following a trip of plaintiff, in which she was out of town for over a week, and the other was Halloween 2017, in which the calendar indicates that plaintiff wanted the minor child that weekend to celebrate. Although there were instances where defendant picked the minor child up late, dropped her off early, or brought her to plaintiff's house so that the minor child could attend a special event, he still exercised a portion of his parenting time over that weekend. Accordingly, the evidence does not establish that defendant failed to utilize his parenting time to a degree that factor (b) would favor plaintiff.

Additionally, there was no evidence that plaintiff's desire to change the minor child's domicile was motivated by a desire to defeat or frustrate the parenting time schedule. MCL 722.31(4)(b). Plaintiff testified that she had no intent to interfere with the minor child and defendant's relationship, and defendant would always be the minor child's father. Therefore, the trial court did not abuse its discretion in determining that this factor did not favor either party.

C. FACTOR (C)

The trial court determined that "[i]nterstate custody and parenting time arrangements are difficult at best," and although the parties generally worked well together, this factor favored defendant. The court found that defendant was an "involved father," and was concerned by plaintiff's exclusion of defendant from communications with the San Antonio school, and plaintiff's claim that she did not know that she had to inform defendant about the minor child's medical or therapy appointments. The court did not think that it could craft an appropriate remedy to maintain defendant's relationship with the minor child should plaintiff move to Texas. The court was also concerned by the circumstances giving rise to plaintiff's request to change domicile. The court noted that plaintiff and her fiancé testified that they would provide the minor child with a more loving and stable home, despite the lack of defendant's presence in the minor child's daily life. The court did not find this testimony credible due to the previous friendship between plaintiff's fiancé and defendant, and the fact that defendant learned of plaintiff's engagement through plaintiff's motion to change the minor child's domicile. The trial court concluded that "[s]hould the court grant [plaintiff's] motion, it is extremely unlikely that

the difficult interpersonal situation caused by [plaintiff's] actions will foster a positive co[]parenting relationship between the parties."

"Implicit in factor (c) is an acknowledgement that weekly visitation is not practicable when parents are separated by state borders." *McKimmy v Melling*, 291 Mich App 577, 583; 805 NW2d 615 (2011). When a child's domicile is changed, the proposed visitation plan does not have to be equal to the previous visitation plan because such equality is typically not possible. *Id*. Rather, the proposed plan " 'only need provide a realistic opportunity to preserve and foster the parental relationship previously enjoyed' by the nonrelocating parent." *Id*. (citation omitted). This Court has previously considered that extended visitation periods could foster, rather than hinder, a close relationship between parent and child. *Id*. The trial court should consider the financial feasibility of the proposed visitation plan, the age of the child, and the use of modern technology, as "[t]he separation between a parent and child 'can be diminished by the use of modern communication technology.' " *Id*. (citation omitted).

The trial court did not abuse its discretion in determining that this factor favored defendant. Defendant exercised parenting time with the minor child each weekend. Plaintiff's proposed parenting time schedule upon moving was for defendant to have the minor child all summer until a week before school started, and all major school vacations. She testified that the minor child and defendant could FaceTime frequently, and she would get the minor child her own device to do so. Although this Court may consider the use of modern technology, *id*., defendant testified that maintaining a relationship over FaceTime would not be sufficient, and would not replace the time that he spends with the minor child in person, or how they are physically affectionate with each other. Although defendant would have the minor child for longer periods of time, which this Court has determined may foster a close relationship, *id*., defendant currently has the minor child each weekend he is not working. His time is devoted to the minor child, and he spends time with her doing certain activities. Plaintiff admitted that should defendant have parenting time over the summer, he would still need childcare during the work week. Additionally, the minor child was only seven years old at the time of the evidentiary hearing. As such, plaintiff testified that the minor child could not fly back and forth between Texas and Michigan by herself, and two airline tickets would have to be purchased for each trip. Plaintiff did not testify as to which party would bear this financial burden; however, defendant was currently responsible for all transportation for parenting time exchanges, and plaintiff testified that this was so because she had the "brunt" of all other day-to-day parenting responsibilities. Therefore, the trial court's determination that it could not craft a remedy so that defendant's relationship with the minor child could flourish was not contrary to the great weight of the evidence.

Pursuant to factor (c), the court may also consider whether each parent is likely to comply with the modified parenting time schedule. MCL 722.31(4)(c). The court found that there could be issues given the circumstances surrounding plaintiff's relationship with her fiancé. Defendant testified that he was friends with plaintiff's fiancé since childhood. Plaintiff's fiancé testified that the two were friends in elementary school and junior high, but grew apart in high school because defendant would act "irrational." Plaintiff also knew her fiancé since she was a child. Plaintiff asserted that she and defendant separated on May 1, 2016. She testified that she started dating her now fiancé on June 26, 2016, less than two months later. Clearly, this caused defendant discomfort, as he testified that "I woke up one day and my wife wanted a divorce and

then immediately she's with my friend who I was friends with for 30 years." One of the events that defendant refused to take the minor child to during one of his parenting time weekends was a party with the family of plaintiff's fiancé because he did not feel comfortable. Defendant testified that plaintiff never told him that she was engaged, and the parties never had a conversation about it. Defendant learned that plaintiff was engaged through her motion to change domicile. Given this chain of events surrounding the parties' divorce and relationship, the trial court's determination that positive coparenting would be very difficult was not against the great weight of the evidence.

D. FACTOR (E)[2]

The trial court determined that factor (e) "slightly" favored plaintiff. The court noted that plaintiff testified to aggressive behavior by defendant, but both parties testified that these incidents occurred before the divorce. Additionally, the court found through plaintiff's testimony that the minor child was "afraid" of defendant, plaintiff's credibility was "tempered" because there were no parenting time modifications or emergency motions filed. The incidents complained of occurred before the consent judgment of divorce was entered, which granted the parties joint legal and physical custody, and equal parenting time. These findings were not against the great weight of the evidence.

Ultimately, the trial court found that plaintiff had failed to establish by a preponderance of the evidence a change of domicile was warranted. As explained above, the trial court's findings of fact regarding the *D'Onofrio* factors were supported by the great weight of the evidence. Therefore, the trial court did not abuse its discretion in determining that the factors failed to support plaintiff's requested change of domicile.

Only when the trial court determines that the factors support a requested change of domicile does the court move to the second, third, and fourth steps of the standard, regarding established custodial environment and the child's best interests. *Rains*, 301 Mich App at 325. Only when the court determines that a modification changes the established custodial environment does it have to consider the best interest factors. *Rittershaus*, 273 Mich App at 470-471. Because the trial court did not find that the factors supported a change of domicile, it did not have to determine whether an established custodial environment exists, and move on to the remaining prongs, and the parties have not addressed them on appeal. Because we reach the same conclusion, the remaining steps of the framework need not be addressed.

[2] The lower court determined that factor (d) did not favor either party. Plaintiff has conceded this point on appeal.

Affirmed.

/s/ Kathleen Jansen
/s/ Jane M. Beckering
/s/ Colleen A. O'Brien