

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AULDEN JAMES SIGMON,

Plaintiff/Counterdefendant-Appellant,

v

SARAH LYNN JOHNSON, formerly known as  
SARAH LYNN SIGMON,

Defendant/Counterplaintiff-Appellee.

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UNPUBLISHED

April 23, 2020

No. 350254

Clinton Circuit Court

Family Division

LC No. 2016-026583-DM

Before: BORRELLO, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

Plaintiff Aulden James Sigmon appeals the trial court's order granting defendant Sarah Lynn Johnson's motion to change the minor child's domicile. We affirm.

**I. RELEVANT FACTS AND PROCEDURAL BACKGROUND**

Plaintiff and defendant were married in February 2010, and they had a child together during the marriage. In April 2016, plaintiff filed for divorce when the minor child was two years old. After their divorce in December 2016, the parties shared joint legal and physical custody of the minor child. Defendant was the minor child's primary custodian, and plaintiff was granted parenting time. Plaintiff received overnight parenting time on Tuesdays and Wednesdays and every other weekend. The parties alternated holidays and had an additional three weeks of parenting time during the summer that could be exercised.

In May 2019, defendant filed a motion to change the minor child's domicile from Dewitt, Michigan to Nevada. Defendant had become engaged to a man who lived in Las Vegas, and she had been offered a job in Nevada. The new position offered financial improvement over defendant's current employment in Michigan and offered better benefits, including paid vacations and holidays. Defendant was also accepted into an exclusive program at the University of Nevada, Las Vegas, where she planned to obtain a Bachelor's Degree in order to increase her earning capacity. Defendant alleged that moving to Nevada would improve the minor child's quality of life because defendant and her fiancé would be able to provide her with a stable, dual-income household. Defendant further alleged that she would be able to offer the minor child more

educational and recreational opportunities in Nevada and would be able to spend more time with the minor child because of defendant's new work hours. Defendant argued that plaintiff had failed to exercise all of his parenting time, had difficulty maintaining housing and employment, and was behind on his child support obligations. Defendant alleged that an established custodial environment existed exclusively with her and that, in the event the trial court granted the motion, plaintiff and the minor child's relationship could be preserved through regular communication and by extended parenting time visitation during the summer.

Plaintiff objected to the motion, arguing that although the relocation might improve defendant's life, it would remove the minor child from where she had lived for her entire life and would take the child away from plaintiff and his extended family. Plaintiff disputed defendant's allegations that he had failed to exercise all of his parenting time and that he was unable to provide stable housing to the minor child. Plaintiff argued that an established custodial environment existed with both him and defendant.

After a two-day hearing, the trial court granted defendant's motion to change the minor child's domicile in a July 26, 2019 opinion and order. In so holding, the trial court found that an established custodial environment existed exclusively with defendant. The trial court also modified plaintiff's parenting time schedule. This appeal followed.

## II. ANALYSIS

### A. STANDARDS OF REVIEW

"This Court reviews a trial court's decision regarding a motion for change of domicile for an abuse of discretion . . . ." *Rains v Rains*, 301 Mich App 313, 324; 836 NW2d 709 (2013) (citation omitted). An abuse of discretion occurs when a trial court's decision "is so palpably and grossly violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias." *Id.* (quotation marks and citations omitted). "This Court may not substitute its judgment on questions of fact unless the facts clearly preponderate in the opposite direction. However, where a trial court's findings of fact may have been influenced by an incorrect view of the law, our review is not limited to clear error." *Id.* at 324-325 (quotation marks, citation, and alteration omitted). "A trial court's findings regarding the existence of an established custodial environment are reviewed under the 'great weight of the evidence' standard and must be affirmed unless the evidence clearly preponderates in the opposite direction." *Id.* at 325 (citation omitted).

### B. DISCUSSION

#### 1. ESTABLISHED CUSTODIAL ENVIRONMENT

Plaintiff first argues that the trial court's finding that an established custodial environment existed exclusively with defendant was against the great weight of the evidence. We disagree.

Contained within the Child Custody Act of 1970, MCL 722.21 *et seq.*, is MCL 722.31(1), which provides:

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.

This Court has enumerated the four steps that a trial court must undertake in deciding whether to grant or deny a motion to change domicile:

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) . . . support a motion for 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.]

There is no dispute on appeal regarding the domicile factors. Rather, plaintiff disputes the trial court's finding that an established custodial environment existed solely with defendant.

The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. [MCL 722.27(1)(c).]

Our Supreme Court has stated that an established custodial environment is demonstrated by

a custodial relationship of a significant duration in which [the child is] provided the parental care, discipline, love, guidance and attention appropriate to his [or her] age and individual needs; an environment in both the physical and psychological sense in which the relationship between the custodian and the child is marked by qualities of security, stability and permanence. [*Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981).]

A child may have an established custodial environment "with both parents where a child looks to both the mother and the father for guidance, discipline, the necessities of life, and parental comfort." *Berger v Berger*, 277 Mich App 700, 707; 747 NW2d 336 (2008). Importantly, a "parenting time provision, by itself, does not establish the actual custodial environment[.]" *Pierron v Pierron*, 486 Mich 81, 87 n 3; 782 NW2d 480 (2010) (citation omitted).

The trial court concluded that the testimony and admitted exhibits supported defendant's argument that an established custodial environment existed exclusively with defendant. The trial court found that defendant provided the minor child with guidance and that plaintiff did not do so. The trial court also found that defendant provided the child with the necessities of life, including a stable home, whereas plaintiff struggled to do so as a result of his self-imposed financial issues

and unaddressed mental-health conditions. Although the trial court acknowledged that plaintiff satisfied the child's "basic needs" during his two days of parenting time each week, it concluded that plaintiff lacked "the ability to provide . . . security, stability, and permanence." Based on these findings, the trial court concluded that permitting a change in domicile would not disrupt the established custodial environment, which existed exclusively with defendant.

The trial court's findings are not against the great weight of the evidence. At the time of the June 2019 hearing on defendant's motion for change of domicile, the minor child was five years old. From the time the parties divorced in December 2016, defendant was the minor child's primary caregiver and provided the child with most of her life necessities. Although plaintiff had parenting time, he did not provide "security, stability, and permanence" to the minor child because plaintiff did not consistently exercise his full parenting time. Defendant testified that she had "helped" plaintiff by caring for the minor child during plaintiff's parenting time approximately 25 to 27 times during the previous nine months. Plaintiff's sister testified that she picked the minor child up from school on Tuesdays when plaintiff was at work and made her dinner and bathed her. Plaintiff had missed some of the minor child's school events, social events, and medical appointments. When asked, plaintiff was unable to recall the name of the minor child's pediatrician. The minor child was also regularly late to daycare when she was in plaintiff's care. Because the daycare offered a structured learning environment, the minor child would miss certain curriculum as a result. Additionally, the daycare had threatened to disenroll the minor child in the past because plaintiff had failed to pay an outstanding bill. The record supports that plaintiff was not financially stable and that he was not consistent with managing his mental health issues, which defendant believed affected his ability to provide consistency and stability to the minor child.<sup>1</sup>

Although the record supports that plaintiff was an involved and loving father, the record also supports that the minor child was not always properly cared for when plaintiff exercised parenting time. Defendant testified that, at times, it did not look like the minor child had been bathed or that her teeth had been brushed. Defendant testified that she had noticed redness on the minor child's "privates" several times and that the minor child had complained of her "butt" hurting. A preventative exam summary that was drafted by the child's pediatrician reflected that the minor child had redness in her perineal area. Although plaintiff rented a three-bedroom home, he did not provide the minor child with her own bedroom. Instead, the minor child slept in plaintiff's bed with him. Overall, the record establishes that the minor child was primarily cared for by defendant and that she naturally looked to defendant for "guidance, discipline, the necessities of life, and parental comfort." See MCL 722.27(1)(c). Therefore, the trial court's finding that an established custodial environment existed only with defendant was not against the great weight of the evidence. See *Rains*, 301 Mich App at 325.

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<sup>1</sup> To the extent that plaintiff challenges defendant's credibility on appeal, we must defer to the trial court's credibility determinations. *Berger*, 277 Mich App at 705. It is clear from the trial court's written opinion and order that the court considered defendant's testimony and found her to be credible.

## 2. BEST-INTEREST FACTORS

Plaintiff also argues that the trial court was required to analyze the best-interest factors. We disagree.

As previously discussed, when deciding whether to grant a motion to change domicile, the trial court must determine if an established custodial environment exists and, if it does, whether the change would alter or modify that environment. *Rains*, 301 Mich App at 325. If the trial court determines that the environment would be altered or modified, then the trial court must “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.” *Id.* In this case, the trial court found that the change in domicile would not cause a change in the established custodial environment because the environment existed exclusively with defendant. This finding was not against the great weight of the evidence. See *id.* Consequently, the trial court was not required to analyze the best-interest factors.<sup>2</sup>

Affirmed.

/s/ Stephen L. Borrello  
/s/ Colleen A. O’Brien  
/s/ Thomas C. Cameron

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<sup>2</sup> Plaintiff argues in an entirely cursory manner that the trial court was required to analyze the best-interest factors because the modification of his parenting time resulted in a change of custody. We disagree. “Modifications in parenting time are not necessarily changes in custody.” *Rains*, 301 Mich App at 340. A trial court is required to consider the best-interest factors when considering a proposed change of parenting time “[w]hen a modification in parenting time would amount to a change of the established custodial environment . . . .” *Pierron v Pierron (Pierron I)*, 282 Mich App 222, 249; 765 NW2d 345 (2009). Because the change to plaintiff’s parenting time did not alter the established custodial environment, which the trial court found existed solely with defendant, the trial court was not required to analyze the best-interest factors before modifying parenting time.