

STATE OF MICHIGAN  
COURT OF APPEALS

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BARBARA A. MILLER,

Plaintiff-Appellee,

v

DOUGLAS J. MILLER,

Defendant-Appellant.

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UNPUBLISHED  
November 7, 1997

No. 200564  
Keweenaw Circuit Court  
LC No. 93-000281-DM

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

The parties married in 1982 and divorced in 1994. They had two children. The judgment of divorce gave both parties' joint legal custody, with plaintiff having physical custody and defendant granted expansive visitation. Defendant petitioned the circuit court to modify the custody provision, and plaintiff sought permission to move the children from their home in the Keweenaw peninsula to Boulder, Colorado. Following a joint hearing, the trial court denied defendant's petition and granted plaintiff's. Defendant appeals as of right. We affirm.

I

Defendant argues that the trial court erred by finding that the children had an existing custodial environment with plaintiff. We disagree. Although defendant was actively involved with his children and engaged them in numerous activities, the evidence showed that the children's residence was with plaintiff and that plaintiff was their primary custodian who provided guidance, discipline, the necessities of life, and parental comfort over an appreciable time. MCL 722.27(1)(c); MSA 25.312(7)(1)(c). The trial court's factual finding was not contrary to the great weight of the evidence. MCL 722.28; MSA 25.312(8); *Ireland v Smith*, 214 Mich App 235, 241-242; 542 NW2d 344 (1995), affirmed as modified 451 Mich 457; 547 NW2d 686 (1996). Nor did the trial court err by finding that defendant had not shown either proper cause or a change in circumstances that would justify reopening the question of child custody. MCL 722.27(1)(c); MSA 25.312(7)(1)(c). In this regard, plaintiff's move to Boulder was not sufficient, and the trial court could not consider the statutory best interest factors

listed in MCL 722.23; MSA 25.312(3). *Dehring v Dehring*, 220 Mich App 163, 164-165; 559 NW2d 59 (1996); *Rossow v Aranda*, 206 Mich App 456, 457-458; 522 NW2d 874 (1994).

## II

Defendant argues that the case must be remanded because the trial court improperly limited his trial counsel's cross-examination. We disagree. Defense counsel assented to the time limits imposed and the resulting limits placed on cross-examination. Furthermore, our review of the lower court record indicates that defense counsel did not accept the trial judge's offer to return the next day if the parties were unable to get all of their evidence in on December 17, 1996. We find no abuse of the trial court's discretion. *Wischmeyer v Schanz*, 449 Mich 469, 474-475; 536 NW2d 760 (1995).

## III

Defendant argues that the trial court abused its discretion in allowing plaintiff to change the children's domicile. We disagree. The court considered the proper factors and did not abuse its discretion by permitting the move. *Overall v Overall*, 203 Mich App 450, 458-459; 512 NW2d 851 (1994); *D'Onofrio v D'Onofrio*, 144 NJ Super 200; 365 A2d 27 (1976). Although defendant asserts that some of the trial court's factual findings were against the great weight of the evidence, we do not find this claim to be true.

## IV

Finally, defendant argues that the trial court abused its discretion by refusing to order a psychological evaluation of the parties. We disagree. Defendant has presented no sound reasons why a psychological examination would be necessary or helpful in determining the relevant issues. Although defendant states that one of the twelve best interest factors (i.e., the factor concerning the parties' mental health) cannot be adequately addressed without the psychological evaluations, we have already stated that the trial court could not consider the statutory best interest factors listed in MCL 722.23; MSA 25.312(3). The trial court did not abuse its discretion by denying defendant's motion. *Cooper v Cooper*, 93 Mich App 220, 227; 285 NW2d 819 (1979).

We affirm.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Richard A. Bandstra