STATE OF MICHIGAN

COURT OF APPEALS

ASHLEY ANN PAGE, also known as ASHLEY BENNETT and ASHLEY ANN DEVENPORT, Plaintiff-Appellee,	UNPUBLISHED June 18, 2019
v	No. 346872 Muskegon Circuit Court
ROBERT LEE PAGE, JR., Defendant-Appellant.	LC No. 2013-258839-DM

Before: K. F. KELLY, P.J., and FORT HOOD and REDFORD, JJ.

PER CURIAM.

Defendant, Robert Lee Page, Jr., appeals as of right the trial court's order granting plaintiff's, Ashley Ann Page, motion to change the domicile of the parties' three children from Michigan to Louisiana. Defendant also appeals the trial court's denial of his motion for stay while his appeal of this order was pending in this Court. For the reasons stated in this opinion, we affirm.

This case arises out of plaintiff's request to move the parties' children from Michigan to Louisiana. The parties were married, and they had three children together during the marriage. The judgment of divorce stated that both parties shared joint legal and joint physical custody of the children. The judgment further provided that father would have parenting time three weekends a month. In the summer, father would have parenting time 14 days a month.

Plaintiff, acting *in propria persona*, filed a motion to change the children's domicile. She explained that she wished to move to Louisiana with her husband and the three children because she was given the opportunity for good employment and adequate housing for the entire family. Plaintiff asserted that the move would be good for education because Louisiana had great school districts. Defendant opposed the motion. After holding a hearing in which both plaintiff and defendant testified, the trial court granted plaintiff's motion. Defendant filed an appeal in this Court. Thereafter, defendant filed a motion for a stay of the proceedings in the trial court pending this Court's decision; however, the trial court denied that motion.

First, defendant argues that the trial court abused its discretion in granting plaintiff's motion for a change of domicile. We disagree.

"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 this case, "an abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id*. This Court reviews questions of law for clear legal error. *Id*. "A trial court commits legal error when it incorrectly chooses, interprets, or applies the law." *Id*. "This Court reviews a trial court's findings in applying the *D'Onofrio* test[1] under the great weight of the evidence standard." *Brown v Loveman*, 260 Mich App 576, 600; 680 NW2d 432 (2004). "The trial court's findings of fact are reviewed under the great weight of the evidence standard." *Yachcik v Yachcik*, 319 Mich App 24, 31; 900 NW2d 113 (2017). "This Court may not substitute [its] judgment on questions of fact unless the facts clearly preponderate in the opposite direction." *Rains v Rains*, 301 Mich App 313, 324; 836 NW2d 709 (2013) (quotation marks and citation omitted).

According 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."

In addition, this Court stated:

> A motion for a change of domicile essentially requires a four-step approach. 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.]

In pertinent part, MCL 722.31 states:

> (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

[1] *D'Onofrio v D'Onofrio*, 144 NJ Super 200, 206-207; 365 A2d 27 (1976).

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.

* * *

(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.

"[T]his Court has held that a substantial increase in income that will elevate the quality of life of the relocating parent and child supports a finding that a party has met its burden of proof under the first *D'Onofrio* factor." *Brown*, 260 Mich App at 601. "Moreover, the burden of proof by a preponderance of the evidence recognizes the increasingly legitimate mobility of our society." *Id*. at 601-602 (quotation marks and citation omitted).

In this case, contrary to defendant's argument, the trial court did consider the factors in MCL 722.31(4). For Factor (a), the trial court found that plaintiff's testimony established that the move had the capacity to improve the quality of life for both plaintiff and the children. The trial court did not further explain this finding; however, it appears that it was based on plaintiff's new employment in Louisiana. Indeed, plaintiff testified that she would be earning twice as much delivering materials for the pipeline in Louisiana than she earned at her current job in Michigan. The evidence does suggest that the move certainly had the capacity to improve the quality of life for plaintiff and the children, considering that plaintiff would receive a substantial raise. *Brown*, 260 Mich App at 601; see also *Phillips v Jordan*, 241 Mich App 17, 31; 614 NW2d 183 (2000) ("Instead, the trial court must consider whether the move has the capacity to

improve the quality of life for both the custodial parent and the child and whether there will be a realistic opportunity to preserve and foster the parental relationship with the noncustodial parent."). Even if this factor was close, we do not believe that the trial court's finding was against the great weight of the evidence. See *Brown*, 260 Mich App at 601.

In regard to Factor (b), the trial court found that the current parenting-time agreement was "loosely complied with," but the trial court did not believe that plaintiff had a secret motive to keep the children from defendant. This finding is also supported by plaintiff's testimony because she offered defendant parenting time for the entire summer and on alternate holidays. She also offered to meet defendant halfway for parenting-time exchanges. Plaintiff stated that she believed that this arrangement would be an improvement to the current practice because defendant often worked on the weekends in which he had the children. Considering plaintiff's testimony, this finding was not against the great weight of the evidence. See *id*.

For Factor (c), the trial court stated that it was possible to order a modification of the parenting-time schedule in a manner that could provide an adequate basis for preserving and fostering the parental relationship between the children and defendant. The trial court ordered that defendant would have the children over the entire summer (minus five days before school started), during hunting season, Thanksgiving, spring break, and 80% of Christmas break. This conclusion was not against the great weight of the evidence. See *id*. The trial court's new parenting-time schedule provided more consecutive parenting time than the current arrangement of the parties because defendant had the children every other weekend, and 14 days a month during the summer. The trial court also advised that defendant should learn how to use FaceTime to communicate with the children while they were in Louisiana. See *Mogle v Scriver*, 241 Mich App 192, 204; 614 NW2d 696 (2000) (stating: "the new visitation plan need not be equal to the prior visitation plan in all respects. It only need provide a realistic opportunity to preserve and foster the parental relationship previously enjoyed by the noncustodial parent").

In regard to Factor (d), the trial court found that the motion was not motivated to secure a financial advantage because plaintiff did not wish to continue receiving child support. Although this factor addresses the opposing party's financial motivation (MCL 722.31(4)(d)), we do not believe that defendant's opposition was financially motivated considering he was currently paying child support, but would no longer have to pay child support if plaintiff moved to Louisiana.

Finally, the trial court did not consider Factor (e), and defendant does not advance any argument regarding domestic violence on appeal. As a result, we will not address this factor. Based on the foregoing, the trial court's findings concerning the change-of-domicile factors in MCL 722.31(4) were not against the great weight of the evidence. See *Brown*, 260 Mich App at 601.

However, pursuant to *Rains*, 301 Mich App at 325, because the trial court concluded that the factors in MCL 722.31(4) supported plaintiff's motion for a change of domicile, the trial court was also required to determine whether an established custodial environment existed, and if so, whether the change of domicile would modify the established custodial environment.

MCL 722.27(1)(c) states, in pertinent part, that:

> 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.

According to this Court,

> [a]n established custodial environment is one of significant duration in which a parent provides care, discipline, love, guidance, and attention that is appropriate to the age and individual needs of the child. It is both a physical and a psychological environment that fosters a relationship between custodian and child and is marked by security, stability, and permanence. [*Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 336 (2008).]

"An established custodial environment may exist with both parents where a child looks to both the mother and the father for guidance, discipline, the necessities of life, and parental comfort." *Id*. at 707. "While an important decision affecting the welfare of the child may well require adjustments in the parenting time schedules, this does not necessarily mean that the established custodial environment will have been modified." *Pierron v Pierron*, 486 Mich 81, 86; 782 NW2d 480 (2010). Further, "[i]f the required parenting time adjustments will not change whom the child naturally looks to for guidance, discipline, the necessities of life, and parental comfort, then the established custodial environment will not have changed." *Id*.

In this case, the trial court granted plaintiff's motion for a change of domicile and memorialized this decision in its order regarding change of domicile, dated November 28, 2018. At ¶ (E)(5), the court found the requested change of domicile will not change the children's established custodial environment.[2] Additionally, at the January 8, 2019 hearing, the trial court discusses the established custodial environment, and father's counsel acknowledges that the established custodial environment is with the mother.

Because the trial court found that the change of domicile was appropriate and that the proposed domicile change did not alter the children's established custodial environment, the trial court was not required to consider the children's best interests. See *Spires v Bergman*, 276 Mich App 432, 437 n 1; 741 NW2d 523 (2007) (stating that "[o]nly when the parents share joint physical custody and the proposed change of domicile would also constitute a change in the child's established custodial environment is it also necessary to evaluate whether the change of domicile would be in the child's best interest"). Therefore, the trial court did not abuse its

[2] The court's order was on a State Court Administrative Office approved form (FOC 29).

discretion in granting plaintiff's motion to change the children's domicile from Michigan to Louisiana. See *Sulaica*, 308 Mich App at 577.

Next, defendant argues that the trial court abused its discretion in denying his motion for a stay of proceedings. We disagree.

This Court reviews a trial court's decision regarding a motion for a stay of proceedings for an abuse of discretion. See *People v Bailey*, 169 Mich App 492, 499; 426 NW2d 755 (1988). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Ronnisch Constr Group, Inc v Lofts On the Nine, LLC*, 306 Mich App 203, 208; 854 NW2d 744 (2014) (citation omitted).

Defendant brought his motion for a stay of proceedings pursuant to MCR 2.614(A)(2)(e), which provides that orders in a domestic-relations action concerning the custody of minor children and expenses "may be enforced immediately after entry unless the court orders otherwise on motion for good cause." The trial court denied the motion, concluding that defendant failed to show "good cause" warranting a stay.

The trial court's denial to grant a stay was not an abuse of discretion. See *Bailey*, 169 Mich App at 499. First, defendant argues that the trial court erred in refusing to grant the stay for many of the same reasons that he contends that the trial court erred in granting plaintiff's motion for a change of domicile. As discussed earlier in this opinion, the trial court did not abuse its discretion in granting plaintiff's motion to move the children to Louisiana. In addition, because the trial court found, and defendant seemed to agree, that the established custodial environment existed with plaintiff and that the established custodial environment would not change if the children moved to Louisiana with plaintiff, the trial court was not required to consider the children's best interests. See *Spires*, 276 Mich App at 437 n 1.

Second, the trial court explained that defendant's appeal in this Court would not be decided until summer 2019. As a result, the higher paying job that plaintiff sought in Louisiana may not remain available for that long. Considering that the higher-paying employment was one of the main reasons that plaintiff sought to move and that fact was heavily relied on by the trial court in its decision to grant the change-of-domicile motion, the trial court did not abuse its discretion in denying the motion for a stay to allow plaintiff to accept that job. See *Bailey*, 169 Mich App at 499.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood
/s/ James Robert Redford