

Court of Appeals, State of Michigan

ORDER

Alexandrea Del Gado v Rueben Munoz Jr.

Docket No. 278870

LC No. 07-708437-DC

Michael J. Talbot
Presiding Judge

Kirsten Frank Kelly

Christopher M. Murray
Judges

In lieu of granting the delayed application, the Court orders, pursuant to MCR 7.205(D)(2), that the May 25, 2007, order of the Wayne Circuit Court denying plaintiff's motion to change domicile hereby is REVERSED. The Court questions whether the circuit court should have exercised jurisdiction over the child given that California arguably has a closer connection with the child. Notwithstanding, the record reflects that no custodial environment was established for either parent in Michigan when the circuit court heard plaintiff's motion. Thus, the appropriate standard of proof is a preponderance of the evidence. *Schubring v Schubring*, 190 Mich App 468, 471 n1; 476 NW2d 434 (1991). A review of the record reflects that the evidence clearly preponderates in favor of permitting plaintiff to move the child to California. The child, who was born in California, had lived half of his short life in California. Plaintiff was raised in California. The child's doctor is in California. The child's maternal grandmother and paternal grandfather live in California, as do other relatives. Although the child's paternal grandmother lives in Michigan, the child has few other ties to Michigan. As for the statutory factors of MCL 722.31, the materials provided to this Court demonstrate that plaintiff has the capacity to earn a higher salary once she obtains her high school diploma and a college education, so the court erred in ruling that this factor favored defendant. Further, where plaintiff has expressed an openness to consider all parenting time options in California and where defendant failed to comply with the Michigan visitation schedule set forth by the court, the second factor favors plaintiff. Although the move to California may interfere with the relationship between defendant and the child, the record shows that defendant has sufficient ties to California that may enable him to further foster the relationship in the future. The Court agrees with the circuit court that defendant's opposition to the move was not motivated by financial considerations. Finally, the Court cannot agree with the circuit court that the domestic violence factor only "slightly" favors plaintiff considering the findings on page two of the court's opinion of May 25, 2007. The case is REMANDED to the circuit court for the immediate entry of an order allowing plaintiff to change the child's domicile from Michigan to California. Further issues regarding child custody, visitation and support should be resolved in California, MCL 722.1101 *et seq.*

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 30 2007

Date

Sandra Schultz Mengel
Chief Clerk