

STATE OF MICHIGAN
COURT OF APPEALS

SHYAM THAKKER,

Plaintiff-Appellee,

v

RADHIKA THAKKER, a/k/a RADHIKA
GHEEWALA,

Defendant-Appellant.

UNPUBLISHED

July 30, 2013

No. 312615

Wayne Circuit Court

Family Division

LC No. 09-101611-DM

Before: BORRELLO, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying her motion to change the child's domicile to the United Kingdom (the UK). For the reasons set forth in this opinion, we affirm.

Defendant, a British citizen, moved to Michigan when she married plaintiff in 2001. The parties divorced in 2010, when their child was age six. The trial court entered a consent judgment of divorce granting the parties joint legal custody of the child. The judgment provided that the child would reside primarily with defendant. For parenting time, the judgment provided that plaintiff would have one overnight and one evening each week with the child, as well as alternating weekends and holidays, and alternating two-week periods in the summer.

In 2012, defendant filed a motion for a change of domicile, seeking to return to the UK with the child. In support of the motion, defendant informed the trial court that her financial condition in Michigan was precarious, and that the UK offered better opportunities for her and for the child. Specifically, defendant informed the court that in the UK she had a job offer; she could reduce expenses by living with her parents; she could send the child to a private school; and both she and the child would receive nationally-funded health care. The trial court held a hearing on defendant's motion, and subsequently ruled that defendant had not met her burden of establishing the applicable statutory factors in MCL 722.31(4). Defendant filed a motion for reconsideration, which the trial court denied.

This Court reviews the trial court's decision for an abuse of discretion. *Brown v Loveman*, 260 Mich App 576, 600; 680 NW2d 432 (2004). A trial court has abused its discretion when the court's 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.” *Id.* (internal citation and quotation omitted). We review the trial court’s factual findings on the statutory change of domicile factors under the great weight of the evidence standard. *Id.* We will not substitute our own judgment for the trial court’s factual findings “unless the facts clearly preponderate in the opposite direction.” *McKimmy v Melling*, 291 Mich App 577, 581; 805 NW2d 615 (2011).

In this case, the trial court correctly determined that it could not authorize a change in the child’s domicile unless defendant established by a preponderance of the evidence that the change was warranted. *Id.* at 582. To determine whether the change was warranted, the trial court was required to consider the factors in MCL 722.31(4), as follows:

- (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.

The trial court correctly determined that statutory factor (d), concerning a parent’s motivation to gain an advantage on a support obligation, is inapplicable in this case.

The record generally supports the trial court’s findings and conclusions on statutory factors (a) through (c). On factor (a) (quality of life), the trial court found credibility issues regarding the evidence of defendant’s job offer in the UK, and of the child’s admission to the private school in London. This Court defers to those credibility determinations, given the trial court’s superior position to make the determinations. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011).

Defendant maintains that the trial court erred in its determination on factor (a) by considering the child’s relationship with the paternal grandparents. We disagree. The trial court recognized that the minor child’s relationship with her paternal grandparents was not dispositive in this case. Instead, the court considered the child’s relationship with the paternal grandparents as one aspect of the considerable evidence on factor (a). Cf. *Phillips v Jordan*, 241 Mich App

17, 31; 614 NW2d 183 (2000) (“the role of the extended family cannot be the determining factor in denying a change of domicile”). This evidence, along with the court’s finding that the child has a close relationship with plaintiff, supported the court’s ultimate determination on factor (a).

As to factor (b) (adherence to parenting time), the trial court was within in its discretion in concluding that “while the first part of this factor slightly favors Defendant-Mother, this factor as a whole does not significantly impact the Court’s decision.” Defendant asserts the trial court should have given this factor additional weight. Again, we disagree. Defendant has presented no evidence or precedent to establish that the trial court was required to weigh factor (b) more heavily than the remaining statutory factors.

Regarding factor (c) (preserving parental relationships), the trial court correctly considered the significant time and expense that would be involved in fulfilling plaintiff’s parenting time if the child moved to the UK. See *Brown*, 260 Mich App at 605. This Court has recognized that a parenting time modification arising from a change in domicile need not be equal to the current plan. *McKimmy*, 291 Mich App at 583. Nonetheless, the modified plan must “provide a realistic opportunity to preserve and foster the parental relationship previously enjoyed by the non-relocating parent.” *Id.* (internal citation and quotation omitted). In this case, the trial court was within its discretion to conclude that the modified plan could not provide a realistic opportunity to preserve plaintiff’s relationship with the child. The court discussed plaintiff’s current parenting time schedule and compared it to the proposed schedule if the child moved to the UK. The court found that the lengthy travel time between the United States and the UK could be burdensome on the child and could infringe on plaintiff’s parenting time. The court further found that the parties’ relationship was contentious and the court questioned the practicality of defendant’s proposal to have the child to spend all major holidays with plaintiff. In sum, the trial court’s conclusion that factor (c) weighed against defendant’s motion to change domicile was supported by the evidence.

Regarding factor (e) (domestic violence), the trial court may have misunderstood its role. The court appears to have determined that any evidence of past domestic violence was irrelevant to its decision on the change of domicile motion. To the extent the court disregarded evidence of past domestic violence, the court was in error. A party’s history of domestic violence can be relevant in a change of domicile case. See *Sunde v Sunde*, 488 Mich 917, 917; 789 NW2d 491 (2010). Nonetheless, any error in this regard would not affect the validity of the trial court’s ultimate determination on defendant’s change of domicile motion. Defendant did not argue that her proposed move to the UK was related to domestic violence, and she did not describe any ongoing acts of physical violence. Accordingly, the trial court was within its discretion when it based its decision on the remaining statutory factors.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Michael J. Kelly