

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

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LATOYA NICOLE ROBINSON,  
Plaintiff-Appellee,

UNPUBLISHED  
July 10, 2014

v

ALEXANDER SIMPSON,  
Defendant-Appellant.

No. 316242  
Wayne Circuit Court  
LC No. 04-428902-DC

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Before: WILDER, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Defendant appeals by right the order granting plaintiff's motion for change of domicile. We affirm.

On September 16, 2004, this case was initiated when plaintiff filed a petition for sole physical custody of the minor child, child support, immediate return of the child, and an order requiring law enforcement to aid plaintiff in obtaining the child. According to the petition, defendant acknowledged paternity of the child, born June 8, 2003. It was further alleged that defendant "snatched" the child on July 4, 2004, and refused to return the child until plaintiff agreed to joint physical custody. Plaintiff attempted to involve law enforcement to locate the child, but was advised that a court order was required. The petition also asserted that defendant was psychologically and emotionally abusive to plaintiff, and documents indicated that defendant had been arrested for domestic violence. Consequently, plaintiff requested an order granting sole physical custody and interim child support.

On September 24, 2004, the court signed an ex parte interim order awarding plaintiff "sole physical care and custody of the parties' minor child . . . while this case is pending or until further order of the court." This order also indicated that the child's domicile shall not be removed from Michigan without court approval. Defendant was ordered to pay \$329 per month in child support. Although this order allowed defendant to have parenting time, plaintiff sought an abatement of parenting time because defendant had recently threatened and assaulted plaintiff, submitting police reports to support her claim. On December 20, 2004, the trial court signed an order of default for defendant's failure to appear.

In September 2005, plaintiff filed a motion to show cause, to abate parenting time, and to enter a final order. Plaintiff alleged that defendant failed to pay child support as ordered, failed to abide by the parenting time schedule, and failed to timely return the child. It is unclear if a

hearing was held on the show case. However, in December 2005, plaintiff filed another motion to abate, alleging continuing threats, failure to abide by the parenting time order, and failure to exercise parenting time, but rather, assertions that defendant left the child with strangers. Plaintiff further requested entry of a final order. In January 2006, the trial court ordered a referral to the friend of the court for investigation regarding issues of custody, visitation, and support.

On February 17, 2006, the court signed a temporary judgment for custody, child support, and parenting time. This order provided that plaintiff was awarded custody of the minor child until further order of the court with a referral to the friend of the court. On March 20, 2007, the court signed this referee recommendation as an "interim" order. The recommendation indicated that support was to remain at \$100 per month, the parties' consented to parenting time, and the issue of joint physical custody was referred to the family evaluation, mediation and counseling unit of the friend of the court. Although there is an indication that the friend of the court recommended joint physical custody, an order did not enter.

The next activity in the file involved the removal of the child to Texas. Defendant alleged that plaintiff moved the child to Texas without leave of the court or his permission and sought an order compelling the child's return to Michigan. At a hearing held on January 29, 2013, both parties appeared in propria persona, although defendant was employed as a clerk at a law firm seeking admission to the state bar, but experiencing difficulty with character and fitness. During this hearing, the trial court admonished both parties regarding their conduct. The trial court criticized plaintiff for failing to follow the proper procedures for removing the child, and reprimanded defendant for earning an income of \$90,000 per year, but only paying \$100 per month in support until recently agreeing to increase the amount to \$200. Each party challenged the financial support and involvement of the other. The trial court encouraged the parties to negotiate a settlement, and when their efforts failed, ordered a referral to the friend of the court.

Ultimately, plaintiff filed a motion for change of domicile. Although defendant represented that he filed a motion for change of custody, he later conceded that it had not been filed. The friend of the court recommended that plaintiff maintain physical custody of the minor child in Texas, and defendant's parenting time schedule be modified to allow for extended visitation in the summer and electronic communication.

The trial court held a hearing on the friend of the court recommendation and plaintiff's motion for change of domicile. Once again, the parties appeared in propria persona. Consequently, instead of taking testimony, plaintiff stated that a move was necessary. Although she was employed in Michigan, time off because of family matters caused her employer to issue an ultimatum, resign or be fired. Although plaintiff had a home in Michigan, she was behind in her mortgage payments. She obtained employment in Texas that included a raise in salary. The child had adjusted well to a comparable school in Texas and had friends there. Plaintiff questioned defendant's contacts and financial support of the child. She indicated that defendant would give the child to others during visitation and seemingly planned on sending the child to reside with an aunt in Arizona. On the contrary, defendant asserted that the move to Texas was unnecessary and designed to thwart his relationship with the child, and the child's relationship with her siblings. Defendant asserted that he would obtain employment with a forty-hour work schedule. The court questioned whether defendant sought to prevent the child's removal from

the state or if he was concerned about an increase in support consistent with his income. Ultimately, the court adopted the recommendation of the friend of the court. However, the trial court expressly held that the move to Texas was not designed to thwart defendant's exercise of parenting time. The court also noted that there was a history of domestic violence between the parties, although not recent events. From this ruling, defendant appeals.

Defendant first alleges that the lower court erred in granting plaintiff's motion for change of domicile. We disagree. In *Spires v Bergman*, 276 Mich App 432, 433-434; 741 NW2d 523 (2007), the parties never married, but the defendant father acknowledged paternity on the child's date of birth. The plaintiff mother received sole legal and physical custody of the child, and the defendant father received reasonable parenting time. The order establishing paternity and custody provided that the plaintiff could not change the child's domicile without prior approval of the court. In 2004, the plaintiff filed a motion to change the child's domicile from Michigan to Texas. The defendant opposed the request and filed a motion for change in custody. *Id.* at 434. This Court held that "when the parent seeking the change of domicile has sole legal custody of the child, MCL 722.31 does not apply, and the court need not consider the factors" set forth in MCL 722.31(2). *Id.* at 436-437.

In the present case, review of the lower court record reveals that plaintiff obtained sole physical custody of the child on September 24, 2004. In February 2006, the award of custody to plaintiff continued. Although there was a referral to the friend of the court, orders modifying plaintiff's custody or objections to the friend of the court did not enter. There is no indication that an order changing custody was submitted to the trial court. See MCL 522.507(7). Accordingly, the trial court was not required to consider the factors of MCL 722.31; *Spires*, 276 Mich App at 436-437.

For purposes of completeness, we note that the trial court considered the factors of MCL 722.31 in the context of the referee's recommendation. Defendant contends that the trial court erred by granting plaintiff's motion for change of domicile. We disagree. The trial court's decision regarding a motion for change of domicile is reviewed for an abuse of discretion, but the factual findings are reviewed under the great weight of the evidence standard. *Rains v Rains*, 301 Mich App 313, 324; 836 NW2d 709 (2013). Following a review of the friend of the court recommendation, the parties' positions at the hearing, and the trial court's adoption and further factual findings, we cannot conclude that the trial court abused its discretion by granting plaintiff's motion. *Id.* Although defendant questioned the veracity of plaintiff's need to move, plaintiff delineated the circumstances surrounding her departure from her Michigan employment, her financial predicament as a result of the loss of employment, including the potential loss of her home, and the low amount of support obtained from defendant. Additionally, plaintiff questioned the visitation exercised by defendant as opposed to the child's time spent with others. Defendant disputed plaintiff's representations, but the trial court questioned defendant's motivation, particularly in light of the amount of child support that did not mirror the guidelines. We defer to the trial court's assessment of the credibility of the witnesses in matters of child custody. *Thames v Thames*, 191 Mich App 299, 305; 477 NW2d 496 (1991). Accordingly, even though it was not required for the trial court to examine the statutory factors, the trial court's grant of the motion for change of domicile did not constitute an abuse of discretion.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Karen M. Fort Hood  
/s/ Deborah A. Servitto