

STATE OF MICHIGAN
COURT OF APPEALS

BRITTNEY ASHLEY REIS,
Plaintiff-Appellee,

UNPUBLISHED
December 10, 2015

v

No. 326850
Lapeer Circuit Court
Family Division
LC No. 13-046297-DS

MATTHEW RAY KOSS,
Defendant-Appellant.

Before: METER, P.J., and WILDER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant Matthew Ray Koss appeals as of right an order granting plaintiff Brittney Ashley Reis's¹ motion for change of domicile, granting Reis sole legal and physical custody of two children, modifying the parenting-time schedule, and referring the matter to the Friend of Court for a new child-support determination. We affirm.

I. STATEMENT OF FACTS

This case arises out of Reis's motion for a change of custody and to change the domicile of the parties' children from Michigan to Hawaii. The parties have two children: MRK and AK, both under the age of five. The parties dated for seven years, but their relationship was tumultuous, and they broke up in October 2012. In 2013, the parties entered into a consent order that provided for joint legal and physical custody of the children, with the parties exercising week-on-week-off parenting time. Reis remarried in 2014.

Following her marriage to Marine Corps Gunnery Sergeant Robert Bryson, Reis filed a motion for change of custody and change of domicile to move the children to Hawaii. The Friend of the Court referee found that Reis failed to establish by a preponderance of the evidence that her motion for a change of domicile should be granted. Because the referee found that there was insufficient support for a change of domicile, he did not engage in an analysis under the best interests factors. Reis filed an objection to the Friend of the Court recommendation, requesting a

¹ Reis has since married and changed her last name to Bryson.

de novo review. The trial court rejected the Friend of the Court's recommendation and granted Reis's motion for a change of domicile.

II. DOMICILE

This Court reviews for an abuse of discretion a trial court's decision on a petition to change the domicile of a minor child. *Rains v Rains*, 301 Mich App 313, 324; 836 NW2d 709 (2013). The trial court's findings of fact with respect to the statutory change-of-domicile factors are reviewed under the great-weight-of-the-evidence standard. *Brown v Loveman*, 260 Mich App 576, 600; 680 NW2d 432 (2004). This Court will not substitute its 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). However, "where a trial court's findings of fact may have been influenced by an incorrect view of the law, [this Court's] review is not limited to clear error." *Id.*

When parties have joint legal custody, a parent may not change the children's legal residence over 100 miles without consent from the nonmoving parent or permission of the trial court. MCL 722.31. Before the trial court can consider whether a change of domicile is warranted, it must first consider the factors from MCL 722.31(4).

The party seeking the change in domicile must show by a preponderance of the evidence that the change is warranted. *Rains*, 301 Mich App at 326-327. If the party seeking the change establishes that a change is warranted, then the trial court must determine the issue of the children's established custodial environment and decide whether the change in custody, resulting from the change in domicile, is in the best interests of the children by applying an analysis of the factors detailed in MCL 722.23. *Id.* at 327-328.

A. CLEAR LEGAL ERROR

Koss first argues that the trial court committed clear legal error by granting Reis's motion for a change in domicile without explicitly stating its findings and conclusions with respect to each of the domicile factors. We disagree.

Koss ignores that the trial court made findings and conclusions with respect to the domicile factors by adopting the legal analyses and factual arguments of Reis as detailed in her objections to the Friend of the Court recommendation regarding factors (a) and (c). This implies, with regard to factors (b), (d), and (e), that the trial court adopted the analyses of the Friend of the Court referee, because Reis did not challenge these findings. Reis's legal and factual analyses in her objection are extremely detailed. They delineate the multitude of factual and legal mistakes the Friend of the Court made when it recommended the denial of her motion. By adopting her analyses, the trial court satisfied its mandate to "consider" each of the domicile factors. MCL 722.31(4).

B. GREAT WEIGHT OF THE EVIDENCE

Koss next appears to be arguing that, in the event this Court disagrees and finds that the trial court made findings of fact on the domicile factors, these findings were against the great

weight of the evidence. Because the trial court adopted Reis's legal and factual arguments regarding the domicile factors, the trial court made findings of fact. These factual findings were not against the great weight of the evidence.

1. MCL 722.31(4)(a)

Factor (a) concerns whether "the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent." MCL 722.31(4)(a). "[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" under this factor. *Brown*, 260 Mich App at 601. Also, an increase in earning potential may improve a child's quality of life. *Rittershaus v Rittershaus*, 273 Mich App 462, 466; 730 NW2d 262 (2007).

The trial court found that Reis established that the move had the capacity to improve the quality of life for Reis and the children in various ways. The Friend of the Court referee ignored that a denial of the motion to change domicile would divide Bryson's and Reis's family. The evidence was clear that the children were bonded with their stepfather and stepbrothers. This Court has held that it may be preferable, in terms of stability, for children to grow up in a traditional nuclear family environment, as opposed to a single parent environment. *Mogle v Scriver*, 241 Mich App 192, 199-200; 614 NW2d 696 (2000).

The trial court also rejected the Friend of the Court's finding that Bryson and Reis could afford to maintain two households if Reis were not permitted to move. There was no evidence presented to establish that Reis could afford to maintain her own household without Bryson's income. As Reis detailed in her objection, she "is not required to prove that she is unable to support herself if she cannot move, only that the move had the potential for improving the quality of life for her and the children." To that end, Reis presented evidence that the move would improve her quality of life by allowing her to return to school full-time to increase her earning potential, give Bryson job security by allowing him to remain employed, and increase Bryson's future pension.

Koss's argument is supported to the extent that the move to Hawaii would impede the children's opportunity to grow their relationship with their extended family. While this Court has recognized that a child's close proximity to relatives can improve the child's quality of life, *Rittershaus*, 273 Mich App at 469, this fact alone does not defeat the substantial evidence that the children's and Reis's quality of life would improve in Hawaii. Thus, it was not against the great weight of the evidence for the trial court to find that this factor weighed in favor of the motion for change of domicile.

2. MCL 722.31(4)(b)

Factor (b) concerns "[t]he 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." MCL 722.31(4)(b). Reis did not object to the Friend of the Court referee's findings regarding factor (b); thus, by adopting Reis's arguments, the trial court adopted the referee's findings of fact relative to factor (b). The referee found that factor (b)

weighed against granting the motion to change domicile. It is doubtful that Koss challenges the trial court's findings under this factor when its findings weighed in his favor. The referee found that Koss had exercised all of his parenting time since October 2013. The referee did not find that Reis was motivated to move in order to defeat or frustrate Koss's parenting time.

3. MCL 722.31(4)(c)

Factor (c) concerns whether there is a way to modify the existing parenting-time schedule to preserve and foster the relationship between the nonmoving parent and the children, "and whether each parent is likely to comply with the modification." MCL 722.31(4)(c). This factor takes into consideration that "weekly visitation is not possible when parents are separated by state borders." *Brown*, 260 Mich App at 603 (citation and quotation marks omitted). The modified parenting-time schedule need not be equal to the current plan; rather, it need only "provide a realistic opportunity to preserve and foster the parental relationship previously enjoyed by the non-relocating parent." *McKimmy*, 291 Mich App at 583 (citation and quotation marks omitted). The court may consider modern technology, given that "[t]he separation between a parent and child can be diminished" by its use. *Id.* (citation and quotation marks omitted). The trial court must also consider the feasibility of the proposed visitation plan, both practically and financially, along with the ages of the children. See *Brown*, 260 Mich App at 605.

Koss argues that the trial court's findings under this factor were against the great weight of the evidence because the move will change his parenting time from 182 days a year with the children to 77 days a year. He also argues that the financial costs of the visitations are high, which supports a finding that this factor does not weigh in favor of the change of domicile.

In *McKimmy*, 291 Mich App at 579-580, this Court considered a very similar situation; the trial court denied the plaintiff's motion to change domicile because, although the move had the capacity to improve the children's quality of life, it would have decreased the defendant's parenting time from every weekend to essentially only summer and holiday parenting time. *McKimmy*, 291 Mich App at 579-580. The trial court also rejected the plaintiff's contention that Skype and email contact was a meaningful way to continue to foster the parental relationship. *Id.* This Court reversed, holding that the trial court erred when it "essentially compared [the] plaintiff's proposed parenting-time schedule with the current visitation plan" *Id.* at 584. The inquiry for the trial court is not which plan is the *best* plan, but whether the proposed parenting-time plan allows for a realistic opportunity to preserve and foster the parental relationship. *Id.*

The Friend of the Court referee essentially made the same error that the trial court made in *McKimmy*. The trial court in this case corrected this error by adopting Reis's legal analysis. The proposed parenting-time plan, while perhaps not the best, provided a realistic opportunity to foster a relationship between Koss and the children.

Koss also argues that the transportation costs would inhibit his parenting time. However, Reis proposed to forego child support to the extent it would offset Koss's travel expenses, so the children could exercise parenting time with Koss. The trial court did not make findings against the great weight of the evidence in finding that this factor favored the change in domicile.

4. MCL 722.31(4)(d)

Factor (d) concerns “[t]he 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.” MCL 722.31(4)(d). Reis did not object to the Friend of the Court referee’s findings regarding factor (d). By adopting Reis’s arguments, the trial court adopted the referee’s findings of fact relative to factor (d). The referee found that factor (d) did not weigh in favor of either party because there was no evidence to show that Koss was opposing the change in domicile simply to secure a financial advantage. Again, it is doubtful that Koss intends to challenge the trial court’s findings under this factor when its findings had no bearing on the decision to change domicile. Nonetheless, a review of the record supports the referee’s and the trial court’s finding that factor (d) did not weigh in favor of either party because there is no evidence that Koss opposed the motion to change domicile solely to avoid his support obligation.

5. MCL 722.31(4)(e)

Factor (e) requires the trial court to consider domestic violence. Koss argues that domestic violence was not relevant to the instant case because the only evidence of domestic violence occurred while the parties were in a relationship, and now that they are no longer in a relationship, it is not a concern. Again, Reis did not challenge the Friend of the Court’s findings under factor (e). The Friend of the Court found that factor (e) “provides marginal support for a change of domicile, when the parties’ relationship has been marred by domestic violence, and when [Koss] believes, wrongly, that all his anger issues are [Reis’s] fault.” The evidence supports this finding. Reis testified that throughout their relationship Koss committed several acts of domestic violence against her, including holding her against a wall by her neck with her feet off the ground, holding her down on the bed with his knee on her chest, and breaking two of her cellular telephones. Koss explained that he had anger issues in the past, but he was not in need of mental health treatment because Reis was the source of all of his anger. Koss’s mental health and anger issues have not just placed others in harm’s way. In April 2013, Koss held a gun to his head while intoxicated and had to be transported to a hospital. Koss maintained that he has no mental health issues, insisting that he had been drunk and simply wanted attention. The great weight of the evidence supports that factor (e) weighed in favor of the change of domicile.

III. CUSTODY

This Court must affirm “all orders and judgments of the circuit court” under the Child Custody Act “unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.” MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). A clear legal error occurs when the trial court “errs in its choice, interpretation, or application of the existing law.” *Shade v Wright*, 291 Mich App 17, 21; 805 NW2d 1 (2010) (citation and quotation marks omitted).

Once a party has established by a preponderance of the evidence that a change in domicile is warranted, “the trial court must determine whether a custodial environment exists.” *Rains*, 301 Mich App at 327. A custodial environment 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.” *Id.* (citation and quotation marks omitted). An 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.” *Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 336 (2008). It is “marked by security, stability, and permanence.” *Id.* If the change in domicile will alter the child’s established custodial environment, then the party seeking the modification must show by clear and convincing evidence that the change is in the best interests of the children. *Rains*, 301 Mich App 328. If the modification would not alter the child’s established custodial environment, then the moving party need only show that the modification is in the child’s best interests by a preponderance of the evidence. See, generally, *Brown*, 260 Mich App at 594-595. The trial court found an established custodial environment.² Koss does not contest that there is an established custodial environment with both parties.

When making a custody determination, the finder of fact must consider and make conclusions with respect to each best interests factor. *Rittershaus*, 273 Mich App at 475. The best interests factors are enumerated in MCL 722.23.

“[T]rial courts are in a superior position to make accurate decisions concerning the custody arrangement that will be in a child’s best interests.” *Fletcher v Fletcher*, 447 Mich 871, 889-890; 526 NW2d 889 (1994). A trial court’s custody decision is entitled to “the utmost level of deference.” *Berger*, 277 Mich App at 705-706.

Koss first argues that the trial court erred by engaging in a best interests analysis because Reis failed to meet her burden of proof under MCL 722.31(4). As discussed *supra*, Reis demonstrated that the change in domicile was warranted.

Koss next argues that the trial court committed clear legal error and abused its discretion when it failed to explicitly state its findings and conclusions with respect to each factor; he argues that he is at a minimum entitled to a remand so the trial court can explicitly state its findings and conclusions regarding the best interests factors. However, the trial court made reviewable findings of fact by adopting Reis’s analyses specifically under factors (b), (e), (g), (j), (k), and (l), and detailing its own additional findings under factor (l). Koss cites no authority indicating that the trial court committed clear legal error by adopting Reis’s proofs. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.” *Bronson Methodist Hosp v Mich Assigned Claims Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012) (citation and quotation marks omitted).³

² It is difficult to discern whether the trial court found an established custodial environment with Reis alone, or with both parties. Nonetheless, it is irrelevant because the trial court noted that Reis met her burden by both clear and convincing evidence and a preponderance of the evidence.

³ This Court has found that while a trial court must state its factual findings and conclusions on each best interests factor, it need not include consideration of every piece of evidence entered

Koss then argues, in the alternative, that if the trial court did not err by considering the best interests of the children, the trial court's findings regarding the best interests of the children did not comport with the great weight of the evidence. Specifically, Koss challenges the trial court's findings concerning the best interests factors in MCL 722.23(b), (e), (g), (j), (k), and (l), contending that the trial court's findings on each contravened the great weight of the evidence.

Factor (b) concerns the "capacity and disposition" of the parents to provide the child with "love, affection, and guidance" and to continue the child's education and religious upbringing. MCL 722.23(b). The trial court favored Reis on this factor, adopting Reis's arguments that she "bears all of the burden of the responsibilities" with respect to the children's medical needs, schooling, daily hygiene, and daily routines. Koss argues that factor (b) should weigh in favor of both parties because the parties share custody, and therefore, they are both responsible on a weekly basis for providing the children with love, affection, and guidance. Koss argues that Reis only attempts to prevail on factor (b) because she enrolled MRK in some extracurricular activities without communicating with Koss on the matter.

The record reflects that Koss was minimally involved in the children's schooling, and he admitted that he relied on Reis to inform him of school events. The evidence was uncontroverted that Reis is the primary caregiver of the children's medical and dental needs. There were concerns raised regarding Koss's ability to care for the children's hygiene regularly. Evidence was presented that MRK had returned from parenting time with Koss with matted hair because it had not been brushed, and further evidence showed that Koss would forget to brush the children's teeth. AK had returned from parenting time with a rash because Koss failed to apply the cream she needs to treat a skin condition, and he neglected to discover a staph infection that developed during his parenting time. The great weight of the evidence plainly supports the trial court's finding that factor (b) favored Reis.

Koss also challenges the trial court's findings under factor (e), "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes." MCL 722.23(e). Factors (d) and (e) have some degree of overlap. *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996). The focus of factor (e) is "the child's prospects for a stable family environment." *Id.*

Koss argues that the trial court erred by focusing on the acceptability of Reis's potential home in Hawaii when that home is transitory at best. Koss's argument lacks merit. By adopting Reis's arguments on this factor, the trial court found that Reis had an established family unit with Bryson and his children, and plans for a stable home and to further herself in her career. The evidence supports that Reis had a stable nuclear family environment with Bryson and his children, and that the children were bonded with their stepfather and stepsiblings. This Court has

and argument raised at trial. *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 451-452; 705 NW2d 144 (2005). Further, MCR 3.210(D), which governs factual findings in child-custody matters, incorporates by reference MCR 2.517, which provides in relevant part that "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts."

held that it may be preferable, in terms of stability, for children to grow up in a traditional nuclear family environment, as opposed to a single parent environment. *Mogle*, 241 Mich App at 199-200. Koss, although he has had stable housing for many years, does not have steady income. The evidence showed that Koss had been laid off from two jobs, and in four or five years he has had five jobs and a “couple” of periods of unemployment. Further, Koss blames Reis for the loss of one of his positions. This evidence supports a lack of stability for the children if they were to remain with Koss in Michigan. The trial court’s findings regarding factor (e) were not against the great weight of the evidence.

Koss also challenges the trial court’s findings under factor (g), which addresses the mental and physical health of the parties. *Wellman v Wellman*, 203 Mich App 277, 283-284; 512 NW2d 68 (1994); MCL 722.23(g). By adopting Reis’s arguments on this factor, the trial court found that Koss attempted suicide and has anger-control issues, for which he refuses to seek treatment. Koss argues that the only evidence that supported the trial court’s finding was the alleged suicide attempt, which occurred in March 2013, and there was no testimony of any other incidents that would inhibit his ability to parent his children. However, this Court need not ignore uncontroverted evidence that suggests that Koss may have had, and may continue to have, mental health issues, including his inability to control his anger. In particular, this Court need not ignore that Koss minimized his suicide attempt and episodes of anger as either a cry for attention or Reis’s fault. It was not against the great weight of the evidence for the trial court to find this factor favored Reis.

Next, Koss asserts that the trial court improperly evaluated factor (j), which addresses “[t]he willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship” with the other parent. MCL 722.23(j). Where there is record evidence of a parent’s unwillingness to facilitate or encourage a close relationship with the children and the other parent, it is proper for the trial court to find this factor in favor of the cooperative parent. *McIntosh v McIntosh*, 282 Mich App 471, 480-481; 768 NW2d 325 (2009). By adopting Reis’s arguments regarding this factor, the trial court found that Koss frequently sent mean or threatening text messages to Reis, Koss rejects Reis’s offers to attend the children’s extracurricular functions or special events when they occur during Reis’s parenting time, and Reis is the only parent that is encouraging the relationship between the children and the other parent.

The evidence supports this finding. Koss admitted to sending Reis text messages that he wished she were dead and that he would never attempt to get along with her. Reis also testified that she extends invitations to Koss to attend the children’s birthday parties, t-ball games, and other extracurricular activities that occur during her parenting time, but that he declines and never offers reciprocal invitations to Reis. There was also, however, evidence that Reis might not be willing to encourage the relationship between Koss and the children. Koss testified that he saw a poster at MRK’s school labeled “My Family,” which did not include a picture of him and only included a picture of Reis, Bryson, and their children. Reportedly, Reis assisted MRK in making the poster. Further, there was some testimony that Reis told Koss that she wished he would “go away” and that Bryson was a better father. It appears that it was a judgment call regarding whether the evidence favored Reis or whether the factor should be weighed neutrally; we defer to the trial court’s conclusions. At any rate, even if this factor were to be weighed

neutrally, it likely would have no effect on the outcome of the custody determination; we note that this Court does not apply a rigid “mathematical formulation” to the statutory factors, and the trial court may assign weight to various factors as it sees fit. *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006); see also *Fletcher*, 447 Mich at 885 (holding that error on one factor is likely harmless). We discern no reason for this Court to disturb the trial court’s findings.

Koss also challenges the trial court’s findings under factor (k), “[d]omestic violence.” MCL 722.23(k). The trial court, adopting Reis’s arguments on the matter, found that during the parties’ relationship there was domestic violence committed by Koss against Reis. Koss also alleged that Reis was violent toward him during the relationship. Koss argues that factor (k) should have been weighed equally because the incidents occurred before the entry of the custody order and both parties have alleged assaultive behavior. Koss further argues that their prior tumultuous relationship was not a proper basis for the trial court’s findings.

Koss’s argument is without merit. When evaluating the child custody factors, the trial court may consider any record information relevant to the children, including information from before the last custody order. See *Thompson v Thompson*, 261 Mich App 353, 355-357; 683 NW2d 250 (2004) (upholding a trial court’s denial of the defendant’s motion in limine attempting to limit evidence to the incidences, occurrences, and events that took place after the entry of a prior temporary custody order). The evidence supports a finding in favor of Reis on this factor. Reis testified to specific incidents where Koss assaulted her during their relationship. In contrast, Koss generally accused Reis of physically assaulting him during these altercations without providing any specifics. This Court will not second-guess the credibility determinations of the fact-finder. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). The great weight of the evidence supports the trial court’s finding that Reis is favored under factor (k).

Finally, best interests factor (l) concerns “[a]ny other factor considered by the court to be relevant to a particular child custody dispute.” MCL 722.23(l). In addressing this factor, the trial court stated, “from the testimony[,] th[is] [c]ourt finds [Reis] has always been the primary caregiver even when the children were not with her, as well as a dash of common sense is added in evaluating [factor (l)].” Koss argues that the trial court’s findings were inappropriate because the fact that Reis was the primary caregiver is addressed in other best interests factors. Koss argues that the trial court erred by failing to take into consideration other relevant facts under factor (l), such as the children having extended family in Lapeer.

The trial court’s finding essentially acknowledged that Koss had an equal opportunity, along with Reis, to take a primary role as a parent, but did not do so. This is a slightly different observation from finding that Reis had the greater capacity and disposition to care for the children, which was considered under factor (b). Nonetheless, even if this Court accepts Koss’s argument that the trial court improperly considered facts that should have been considered under other factors in its findings under factor (l), this is not necessarily error. See *McIntosh*, 282 Mich App at 482-483 (declining to find a trial court’s findings under factor (l) as against the great weight of the evidence despite the fact that the trial court “used factor (l) to comment on various matters” that were relevant to its findings on other factors).

Further, Koss offered little evidence regarding the children's relationship to their extended family, other than to comment that the children attend monthly dinners with his extended family. This one fact, standing alone, does not outweigh the multitude of evidence that Reis was the primary caregiver of the children, despite their shared custody. The trial court's finding under factor (1) was not against the great weight of the evidence.

Affirmed.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Amy Ronayne Krause