DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

STEPHANIE ALEXANDER,
Appellant,

v.

KIRK J. ALEXANDER,
Appellee.

No. 4D06-3694

[February 28, 2007]

WARNER, J.

The mother appeals the trial court's order denying her petition to relocate with her children from their home in Broward County to Tallahassee. Although she claims that the trial court used the wrong standards to judge her petition, we disagree. We conclude that the trial court carefully considered all of the statutory factors and affirm the exercise of its discretion.

The mother and father were divorced in 2003. They have two daughters, currently ages twelve and eight, with the mother designated as the primary residential parent. Both parents grew up in South Florida, and the family lived in Broward County throughout the marriage. Each grandmother also lives there. When the parties divorced, they agreed that "neither shall remove the children's permanent place of residence from Broward County, Florida, without prior written consent of the other party or prior Court Order."

In 2006, the mother, a lawyer, petitioned to relocate with the children to Tallahassee, Florida, where her law firm intended to open an office. She expected to significantly increase her income through the move. The father objected, because he would lose the close relationship he has with his daughters. The court appointed a guardian ad litem who submitted a report and testified at the hearing, recommending that the relocation petition be denied. After hearing extensive testimony from the mother, father, an education expert, the court-appointed guardian ad litem, and the children's grandmothers, the court entered a lengthy order denying the petition.

The court acknowledged that the mother was presented with a "golden opportunity" to increase her practice by moving to Tallahassee. However, she was not in danger of losing her position should she not move, nor would her salary be decreased. When faced with this opportunity, and without consulting the father, the mother applied to register both girls at a private school in Tallahassee and even sold their Broward County home before the hearing.

The father had stable employment in Broward County in a company with which he had worked for twenty years. Although well-compensated, his managerial position provided him little time flexibility. This would limit his ability to visit the children if they moved north.

The father exercised all of his liberal visitation rights. An outgoing person, he provided the daughters with social interaction with friends. The mother, on the other hand, did not socialize outside work, and concentrated on her children's schooling. Because her time was more flexible, she was able to attend their school events more frequently than the father. She perceived that the private school in Tallahassee would greatly enhance their education. The court expressed concern in the final judgment that the children would become isolated in Tallahassee because of the mother's historical inattention to their social needs.

The children have access to both of their grandmothers in Broward County and are bonded to each. Thus, a strong family support system exists in Broward County, which the mother and daughters would lose by moving to Tallahassee.

As to their educational needs, the court expressed admiration at the older daughter's sterling academic record and believed that she, in particular, deserved to be in a school of the quality of the Tallahassee private school. In accordance with the testimony of the education expert, the court noted that the Tallahassee school had a "sister school" in Broward, and other good schools were present in Broward.[1]

Although the mother expressed concern regarding the children's exposure to what she termed the "South Beach lifestyle" in Broward County, which she considered detrimental to the children, the court

[1] It is worth noting that the mother's educational expert merely compared the Tallahassee private school to public schools that the mother thought would be the best for the girls if they stayed in Broward. The expert acknowledged that he did not compare the Tallahassee private school to any private schools in Broward.

discounted her concern. It noted that no testimony was presented that the children would not be exposed to similar influences in Tallahassee or anywhere else.

Applying the criteria of section 61.13(2)(d), Florida Statutes (2005),[2] the court found that while the quality of the mother's life might improve by the move, the children's lives would not, because they would lose their close family support from their father and their grandmothers. It also found that no substitute visitation would allow the father to maintain his close relationship with his children. The father could not see his children as often, both because of his limited vacation time from his business and the cost of travel.

Considering all of the evidence presented, the court determined that the move was not in the best interests of the children. It denied the petition, and the mother appeals.

In evaluating whether to allow a parent to relocate with children after a dissolution of marriage, the court cannot apply a presumption either for or against relocation and must consider the factors listed in section 61.13(2)(d). The mother contends that the court misapplied the first factor. That factor requires the court to determine "whether the move would be likely to improve the general quality of life for both the residential parent and the child." The mother maintains that, instead of following the statute, the court pitted her quality of life *versus* the quality of life of the children. We disagree.

Although no Florida case addresses the "conjunctive" aspect of the first statutory factor that the move would improve the general quality of life for *both* the residential parent *and* the child, the Illinois Supreme Court analyzed a similar provision in *In re Marriage of Collingbourne*, 791 N.E.2d 532 (Ill. 2003). Similar to Florida law, Illinois law requires the trial court to first consider the proposed move in terms of its likelihood for enhancing the general quality of life for both the custodial parent and the children. *Id.* at 545. The court clarified that the appropriate test considers "the potential of the move for increasing the general quality of life for both the custodial parent and the child, including any benefit the child may experience stemming from the parent's life enhancement." *Id.* at 547. The court further noted that "there is a nexus between the quality of life of the custodial parent and the quality of life of the child."

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[2] This was the law in effect during the pendency of the proceedings below. However, effective October 1, 2006, parental relocation of a child is governed by section 61.13001, Florida Statutes. *See* Ch. 2006-245, § 2, Laws of Fla.

Id. at 548. Nonetheless, the court also provided the following caution regarding its decision:

> Our decision today, however, should not be interpreted as standing for the proposition that any enhancement in the quality of life of the custodial parent automatically translates into an improvement in the quality of life for the child, or that such benefits will always be sufficient to warrant removal. However, we emphasize that because there is a nexus between the well-being of the custodial parent and the child who is in this parent's care, all benefits afforded to the child as a result of the move must be considered by the circuit court in making its best interests determination.

Id.

Despite the mother's contention that the court did not consider how the increase in her quality of life would affect the children, the final judgment reveals that the court considered all of the factors but still found the move not in the best interests of the children. Although the mother would most likely make more money and have a nicer house, and the children would have excellent educational opportunities, the trial court found that the isolation of the children from friends and family would be detrimental to the children.

The court's judgment evinces an overarching concern for the children's relationship with their father and their grandmothers and the strong family support system which they would lose. This concern for the close relationship motivated the court to conclude that substitute visitation would not foster a "continuing meaningful relationship" between the children and their father, another issue for which the mother contends that the court used the wrong standard. "The standard applicable to factor four of the statute is whether the proposed substitute visitation is adequate to foster a continuing meaningful relationship, not whether the same degree of frequent and continuing contact would be maintained." *Wilson v. Wilson*, 827 So. 2d 401, 403 (Fla. 2d DCA 2002). Here, the trial court noted that because of the father's work schedule he could not travel to Tallahassee frequently, and, at their age, the children could not travel unaccompanied to Broward County. The mother presented the court with a substitute plan, which relied in part upon video telephone to create the close contact. Having received that evidence, the court stated that it could not envision a substitute visitation plan which would maintain the close relationship that the father had with his daughters. The court did not state that any

substitute visitation plan must duplicate current visitation, but the court did say that the father's close relationship with his daughters should be preserved. The court thus rejected the plan that the mother put forth to retain the closeness of the relationship between the father and the daughters. We do not think that the court applied the wrong tests, or that it abused its discretion in denying the mother's petition.[3]

While the mother vigorously disputes many of the factual findings of the trial court, such as the finding that she is likely to isolate the children, this court is not in a position to reweigh the evidence presented below. Moreover, the statements in the final judgment are either ultimately supported by some evidence, or are not significant to the overall decision. The mother's remaining arguments simply take a different view of the evidence than the trial court took. The determinative findings of the trial court are supported by competent, substantial evidence.

This case is similar to *Flint v. Fortson*, 744 So. 2d 1217 (Fla. 4th DCA 1999). The mother in that case also was a lawyer seeking to relocate to a different city so that she could take a position with a law firm. The trial court denied the petition to relocate, and this court affirmed, noting, "One view of the evidence is that relocation would so drastically curtail this father's active, ongoing participation in his daughters' lives that, in conjunction with other factors, the move was not in the best interest of the children." *Id.* at 1219. The same may be said of the evidence in this case.

The mother supports her position with *Botterbusch v. Botterbusch*, 851 So. 2d 903 (Fla. 4th DCA 2003), which is distinguishable because there, based upon the facts of that case, the trial court *granted* relocation, and this court affirmed as not being an abuse of discretion. There, the father's visitation time would not be curtailed as severely as in this case, nor was the distance between the residence of the father and the relocated city as far as the distance between Broward County and Tallahassee.

Finally, the mother complains that the trial court's order conditionally changed custody should she relocate to Tallahassee. We do not interpret the court's order in the same way. The court entered an injunction

[3] We also find the admission of the guardian ad litem's report over a hearsay objection to be harmless error under the facts of this case. The report was cumulative of hearsay statements that were elicited during trial without objection.

preventing her from relocating to Tallahassee with the children, but denied the father's petition for modification of custody.

The court's conclusion that the move was not in the best interests of the children is a discretionary decision within the evidence presented. *See Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980). We affirm.

GROSS and TAYLOR, JJ., CONCUR.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Arthur M. Birken, Judge; L.T. Case No. FMCE 03-5376 3592.

Stephanie Alexander, Fort Lauderdale, pro se.

Nancy A. Hass of Nancy A. Hass, P.A., Hallandale Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.