

STATE OF MICHIGAN  
COURT OF APPEALS

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NANCY JEAN VISOVATTI,

Plaintiff-Appellee,

v

MARK ANDREW VISOVATTI,

Defendant-Appellant.

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UNPUBLISHED

February 23, 1999

No. 207010

Washtenaw Circuit Court

LC No. 92-044716 DM

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Defendant appeals of right from the trial court's post-judgment order granting plaintiff's motion for change of domicile. We affirm.

This Court has adopted the so-called "*D'Onofrio*" test for determining whether to grant a request to remove a child from the state. *Overall v Overall*, 203 Mich App 450, 458; 512 NW2d 851 (1994); see *D'Onofrio v D'Onofrio*, 144 NJ Super 200; 365 A2d 27 (1976), *aff'd* 144 NJ Super 352; 365 A2d 716 (1976). Under this test, the trial court must consider: (1) whether the prospective move has the capacity to improve the quality of life for both the custodial parent and the child; (2) whether the move is inspired by the custodial parent's desire to defeat or frustrate visitation by the noncustodial parent and whether the custodial parent is likely to comply with the substitute visitation orders where he or she is no longer subject to the jurisdiction of the courts of this state; (3) the extent to which the noncustodial parent, in resisting the move, is motivated by the desire to secure a financial advantage in respect of a continuing support obligation; and (4) the degree to which the court is satisfied that there will be a realistic opportunity for visitation in lieu of the weekly pattern which can provide an adequate basis for preserving and fostering the parental relationship with the noncustodial parent if removal is allowed. *Overall, supra* at 458-459. To support a removal petition, the moving party must show that removal is warranted by a preponderance of the evidence. Once the trial court utilizes the *D'Onofrio* test, and makes its decision, this Court reviews that decision for an abuse of discretion. *Overall, supra* at 459.

On appeal, defendant argues that the trial court abused its discretion because the factors of the *D'Onofrio* test were not met. We disagree. The trial court's findings under the *D'Onofrio* test are

supported by a reasonable interpretation of the evidence. We are unpersuaded that the trial court failed to consider whether plaintiff was motivated by a desire to frustrate visitation, given the trial court's express findings that the evidence clearly indicates plaintiff's willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the children and defendant and that plaintiff would cooperate with any parenting schedule ordered by the court. We also reject defendant's contention that the trial court improperly relied upon its observation of defendant's demeanor as a witness. See MCR 2.613(C).

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff