

STATE OF MICHIGAN  
COURT OF APPEALS

---

CHARLES G. HARTINGER,

Plaintiff-Appellant,

v

ANITA J. HARTINGER,

Defendant-Appellee.

---

UNPUBLISHED

June 16, 2000

No. 222214

Oakland Circuit Court

LC No. 98-610598-DM

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from that portion of the parties' judgment of divorce that granted defendant's petition to change the domicile of the parties' minor child from Michigan to Colorado. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court evaluated the evidence under the four factors set forth in *D'Onofrio v D'Onofrio*, 144 NJ Super 200; 365 A2d 27 (1976), as previously adopted by this Court. See, e.g., *Anderson v Anderson*, 170 Mich App 305, 309; 427 NW2d 627 (1988); *Mills v Mills*, 152 Mich App 388, 394-395; 393 NW2d 903 (1986). The *D'Onofrio* factors are:

(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 who resists 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. [*Mills, supra* at 394-395.]

After evaluating the evidence under these factors, the court indicated that it would also analyze the evidence under the statutory best interests factors set forth in MCL 722.23; MSA 25.312(3), for change of custody determinations. The court concluded that “a change in domicile is in the best interests of the family unit, as it best cares for the special needs of Emily.”

On appeal, plaintiff argues that the lower court abused its discretion in granting the petition to change domicile where the *D’Onofrio* factors were not established by a preponderance of the evidence. See *Mills, supra* at 393-394. Plaintiff acknowledges that because no change of custody was involved it was not necessary for the court to analyze the statutory best interest factors. See *Dehring v Dehring*, 220 Mich App 163, 165-166; 559 NW2d 59 (1996). While plaintiff correctly notes that only the *D’Onofrio* test applies, and that this Court reviews a lower court’s decision to grant an interstate change of domicile for a palpable abuse of discretion, *Mills, supra* at 394, we do not find plaintiff’s factual analysis in light of these standards to be persuasive.

Under the first factor, the court found that the move to Colorado would improve the general quality of life for defendant and Emily. Contrary to plaintiff’s argument, we do not find that the court “glossed over” any of the experts’ opinions on this issue. Although the expert child psychologist was of the opinion that the move itself would not improve the quality of Emily’s life, the expert recommended that defendant remain the child’s primary custodial parent. The Friend of the Court family counselor opined that the daily impact of defendant in Emily’s life was more important than her immediate physical surroundings. Even plaintiff conceded that defendant provided approximately ninety percent of Emily’s daily care. Further, while no one disputed that Emily’s autism makes it especially difficult for her to adapt to change, and moving to another state would be stressful, the court acknowledged this fact when it noted that the divorce itself would disrupt the continuity in Emily’s life.

As to the school issue, the expert hired by plaintiff favored the West Bloomfield program because its experience in dealing with children like Emily was more advanced, but the expert did not discredit the Poudre program, finding it to be similar in many respects to the West Bloomfield program. In evaluating this issue, Judge Moore reasoned:

This Court finds that while the choice of school is a critical one, it is not more important to the health, well-being, and development of Emily than the role of the family. For while Emily may learn certain skills and receive various forms of therapy within the context of the school, all of these efforts will be for naught if they are not supported or the care and attention which Emily presently receives are maintained within the home.

We conclude that the court’s findings as to this factor were supported by a preponderance of the evidence.

Under the second factor, the court found no evidence that the move was intended to defeat or frustrate plaintiff’s visitation. Instead, defendant’s primary motivation for the move was to be near her family, who could help her raise Emily. Plaintiff argues that the fact that defendant’s mother is “elderly” and defendant intended to live an hour away from any family member evidences her ulterior motive to be far away from him. The court did not agree, noting that it was defendant who had maintained a

positive relationship with both her own family and plaintiff's family, and that she had given the court "no reason to believe that she will begin to operate in a fashion detrimental to the interests of Emily once she leaves the state." This finding was not contrary to the evidence.

The third factor—whether plaintiff's resistance to the move was to secure a financial advantage in respect of a continuing support obligation—was properly found by the court to be inapplicable to these facts.

Finally, under the fourth factor, the court found that a realistic opportunity existed to preserve and foster plaintiff's parental relationship with Emily. Besides the fact that plaintiff was awarded liberal visitation, the court noted that, while not ideal, modern communication technology provided a reasonable opportunity to maintain the bond between plaintiff and Emily.

In sum, we conclude that the trial court did not commit a palpable abuse of discretion in granting the petition to change Emily's domicile from Michigan to Colorado. The court's written opinion was supported by a preponderance of the evidence.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra