

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

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ANN KATHERINE ARTHUR,  
  
Plaintiff-Appellant,

UNPUBLISHED  
April 17, 2001

v

THOMAS RUSSELL ARTHUR,  
  
Defendant-Appellee.

No. 230437  
Midland Circuit Court  
LC No. 94-003297-DM

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Before: Holbrook, P.J., and McDonald and Saad, JJ.

PER CURIAM.

Plaintiff Ann Katherine Arthur appeals as of right from an order denying her petition to change the domicile of the parties' youngest son, Tyler Arthur. We affirm.

I. Facts and Proceedings

After twenty years of marriage, plaintiff and defendant obtained a judgment of divorce on May 30, 1997. The court awarded the parties joint legal custody of their two minor sons, Kyle, born June 30, 1983, and Tyler, born October 23, 1989, and awarded physical custody to plaintiff. Plaintiff lived with the boys in Midland, where she worked as a real estate agent. Defendant, who also worked in real estate, lived in Bay City and remarried in 1999.

In February 2000, plaintiff sought a position with and received an offer of employment from a real estate sales coaching firm in Bend, Oregon. Plaintiff accepted the job and petitioned for a change of domicile to move Kyle and Tyler out of state. Defendant opposed plaintiff's motion to change Tyler's domicile, but did not contest the motion with respect to Kyle, acknowledging that Kyle expressed a preference to move with plaintiff. With respect to Tyler, however, defendant argued that the change in domicile would interfere with their close relationship and that the proposed visitation would not preserve and maintain that relationship.<sup>1</sup>

Following an evidentiary hearing, the trial court denied plaintiff's petition, concluding that the change in domicile did not have the capacity to improve Tyler's quality of life and that the visitation schedule would not preserve Tyler's relationship with defendant. On October 4, 2000, the trial court entered an order granting the change of domicile for Kyle and denying the motion with regard to Tyler.

II. Analysis

This Court reviews a trial court's decision on a petition to change the domicile of a minor child for abuse of discretion. *Mogle v Sriver*, 241 Mich App 192, 202; 614 NW2d 696 (2000). "An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias." *Phillips v Jordan*, 241 Mich App 17, 29; 614 NW2d 183 (2000), citing *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992).

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<sup>1</sup> Plaintiff offered a visitation schedule which provided that Tyler would stay with defendant throughout his summer vacation and during Christmas and Spring breaks each year.

In deciding a petition to change the domicile of a minor child, the trial court must consider the following factors:

(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. [*Anderson v Anderson*, 170 Mich App 305, 309; 427 NW2d 627 (1988), adopting the factors in *D'Onofrio v D'Onofrio*, 144 NJ Super 200, 206-207; 365 A2d 27 (1976).]

Moreover, the petitioning party must prove that the domicile change is warranted by a preponderance of the evidence. *Mogle, supra* at 203.

Plaintiff contends that the trial court abused its discretion in finding that the move to Oregon did not have the capacity to improve Tyler's quality of life. Plaintiff emphasizes that the move would mean an increased salary with better benefits, the elimination of her need to pay for child care, and a significant reduction in work hours which would allow her to spend more time with Tyler. The trial court acknowledged that plaintiff believed her new job would improve her life because of the reduction in work hours, but questioned how plaintiff could work fewer hours while earning significantly more money. The trial court judge stated that he believed plaintiff's testimony, but he also expressed concern that the new position might be "too good to be true" and questioned whether plaintiff would actually receive the amount of money she anticipated.

The trial court also noted a discrepancy in plaintiff's testimony that she worked sixty to eighty hours per week in Midland, but also consistently participated in Tyler's school and community activities. The court observed that plaintiff appeared to argue inconsistent positions: that the move to Oregon is necessary to allow her to spend significantly more time with her children, but that her prior job allowed her to spend significant time with them also. The trial court viewed this as a failure to show that the move had the capacity to improve Tyler's life.

The trial court appeared to conclude that plaintiff took the position in Oregon to improve her own career but that she failed to show the benefit to Tyler. The court found it particularly significant that plaintiff accepted the new job and moved to Oregon during the proceedings, before the court decided whether Tyler could accompany her. As the court observed, her willingness to leave Tyler behind despite the uncertainty about his future showed "that she was prepared to roll the dice," implying that her primary interest was not in Tyler's quality of life. Further, the trial court judge observed that plaintiff provided limited information regarding the community to which she planned to move, and noted that Midland "is a wonderful place to raise children" and has "great" schools. In fact, the trial court specified that its denial of plaintiff's petition was contingent upon defendant's agreement to move to Midland so that Tyler could remain in his neighborhood and school.<sup>2</sup>

The trial court did not abuse its discretion by denying plaintiff's petition because plaintiff failed to meet her burden to show that the move had the capacity to improve Tyler's life and her own. Although plaintiff maintained that her new job provided various benefits, plaintiff offered little information regarding the Oregon community to support her assertion that a move would benefit Tyler. This is particularly true because relocating to Oregon would remove Tyler from the majority of his family and friends and would prevent his regular, weekly visits with defendant. Therefore, while arguably the move might improve *plaintiff's* quality of life, plaintiff failed to prove by a preponderance of the evidence that her employment change would improve Tyler's life. Accordingly, the trial

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<sup>2</sup> It also appears from the record, and the parties acknowledged during oral argument on appeal, that the trial court conducted an in camera interview with Tyler. The trial court judge did not state for the record what Tyler said during the interview. However, the court observed that Tyler liked living in the Midland community.

court's denial of the petition on this basis did not constitute an abuse of discretion and was not, by any means, "so palpably and grossly violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias." *Phillips, supra*, 241 Mich App 29.

Plaintiff also contests the trial court's decision regarding the fourth factor, that the proposed visitation schedule would not provide a realistic opportunity for visitation sufficient to preserve and foster Tyler's relationship with defendant. The court concluded that the months of separation could not realistically sustain their close father-son relationship and was not a reasonable substitute for their regular, frequent visits. While in some cases this Court has found that similar visitation schedules provide an adequate substitute, the trial court was in a better position to determine the strength and nature of the bond between Tyler and defendant, particularly in light of the court's in camera interview with Tyler and his observation of the witnesses. Accordingly, we cannot conclude from the record that the trial court abused its discretion by finding that periodic, extended visits would jeopardize that relationship.

The record indicates that plaintiff failed to show by a preponderance of evidence that a change of domicile is warranted with regard to Tyler. Indeed, the evidence supports the trial court's conclusions and the record also reflects that the trial court carefully considered the issues raised by the parties and acknowledged the significance of its decision. Accordingly, plaintiff has not shown that the trial court's order denying plaintiff's petition constituted an abuse of the trial court's discretion.

Affirmed.

/s/ Donald E. Holbrook, Jr.  
/s/ Gary R. McDonald  
/s/ Henry William Saad