STATE OF MICHIGAN

COURT OF APPEALS

ADAM A. TELESZ,

Plaintiff-Appellant,

v

CATHERINE M. SHEARER,

Defendant-Appellee.

UNPUBLISHED
August 16, 2002

No. 238907
Shiawassee Circuit Court
LC No. 98-002466

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff filed a petition to amend parenting time with his son, born out of wedlock on July 5, 1998 which was granted. During the proceedings in this case, defendant married a United States Army enlistee stationed in Alaska, and she filed a petition to remove the child to Alaska to join her husband. In response, plaintiff filed for custody. The trial court denied plaintiff's petition for change of custody and granted defendant's petition to remove the child to Alaska until July 1, 2004. Plaintiff appeals as of right the trial court's decision to grant defendant her petition to change the child's domicile. We affirm.

This Court reviews for an abuse of discretion a trial court's decision to allow a parent to remove a child from the state. *Mogle v Scriver*, 241 Mich App 192, 202; 614 NW2d 696 (2000); *Anderson v Anderson*, 170 Mich App 305, 309; 427 NW2d 627 (1988). 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).

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, supra* at 309, adopting the factors in *D'Onofrio v D'Onofrio*, 144 NJ Super 200; 365 A2d 27 (1976).]

To support a removal petition, the moving party need only show that such is warranted by a preponderance of the evidence.[1] *Anderson, supra* at 309. Plaintiff recognizes that this is the applicable standard, but argues that the trial court applied a lower standard because the change in domicile was temporary, given that the trial court stated it would have denied defendant's petition if it had been for a permanent change in domicile. However, plaintiff failed to specify what standard he believes the trial court utilized and no other standard is apparent to us. As discussed below, we believe that defendant met her burden of proof on each of the applicable *D'Onofrio* factors; therefore, even if the trial court did apply a lower standard, it did not abuse its discretion in granting defendant's petition for a change in domicile.

First, addressing the first *D'Onofrio* factor, plaintiff argues that the trial court abused its discretion in finding that the move to Alaska had the capacity to improve the quality of life for both defendant and the child. Plaintiff contends that this factor could not be satisfied because the quality of defendant's economic life may not improve. The trial court was aware of the fact that there was no indication that defendant's economic situation would improve as a result of the move, but noted that the move was temporary and looked to Michigan's public policy that favors marriage. *Van v Zahorik*, 460 Mich 320, 332 n 4; 597 NW2d 15 (1999). Preservation of the sanctity of marriage necessarily includes preserving the family unit. *In re Quintero Estate*, 224 Mich App 682, 698; 569 NW2d 889 (1997). Because defendant would be joining her husband in Alaska, the marriage would provide the child with a family unit, which did not exist in Michigan.

The trial court also relied on the finding of the Friend of the Court investigator that defendant had been the child's primary caregiver since his birth, and the child had developed a closer bond with defendant because of his young age and because defendant met his daily needs. While the child had spent alternative weekends with plaintiff, he had not spent more than three consecutive nights with plaintiff.

Furthermore, although not mentioned by the trial court in its findings, the evidence showed that defendant intended to postpone her higher education and stay at home to take care of the child during her two-year stay in Alaska. Not only would this provide the child with the opportunity to have defendant's undivided attention, but it would also provide defendant a two-year respite from the pressures of balancing work, college and caring for a preschool child.

Plaintiff also argues that the trial court failed to take into consideration the stability of the marital relationship, the financial situation of the couple, the fact that defendant gave up her higher education in contemplation of the move to Alaska, the fact that the child had minimal

[1] Plaintiff incorrectly asserts that the trial court's findings regarding each of the *D'Onofrio* factors are reviewed according to the great weight of the evidence standard. This standard only applies to a court's findings regarding child custody issues. In this case, plaintiff is only challenging the trial court's decision with respect to the child's domicile, not custody.

contact with his stepfather, and the fact that there were concerns of environmental contamination near the housing complex in the army base. However, defendant testified that while she and her husband initially had financial problems, those problems had been resolved. Defendant did not give up her studies, but postponed them until her permanent return to Michigan.

Moreover, on this record, plaintiff did not challenge the marital relationship between defendant and her husband or the child's relationship with his stepfather to the extent where this Court should disturb the trial court's decision. Additionally, while plaintiff offered into evidence studies related to environmental concerns regarding possible health hazards from a chemical agent dump site near the army base housing, plaintiff did not show that any health hazard actually occurred or that there was any realistic public health threat. Instead, the report showed that several remedial actions to clean the site had been made.

Plaintiff relies on *Schubring v Schubring*, 190 Mich App 468; 476 NW2d 434 (1991), to support his contention that the move to a military base would not provide the child with a stable environment. However, there is nothing in that case to indicate that this Court generally disfavors children moving into army base homes. The *Schubring* Court only held that, based on the facts of the case, a change in domicile was not warranted. *Id*. at 471. Plaintiff's reliance on *Schubring* is misplaced.

Thus, in finding that defendant's reason for changing the child's domicile for a period of two years was to join her husband, foster a marital relationship and establish a family unit, we conclude that the trial court correctly determined that defendant proved by a preponderance the move would improve both her and the child's quality of life.

Second, with respect to the second *D'Onofrio* factor, plaintiff asserts that the trial court abused its discretion in finding that the move to Alaska was not inspired by defendant's desire to defeat or frustrate visitation by plaintiff. The trial court believed defendant had no intention to frustrate plaintiff's visitation with the child, finding defendant's testimony credible. When reviewing the trial court's findings of fact, this Court defers to the trial court on issues of credibility. *Mogle, supra* at 201. The trial court was free to believe defendant's testimony, and therefore, did not abuse its discretion when it found that defendant had no desire to defeat or frustrate visitation by plaintiff.

Plaintiff also asserts that the trial court failed to rule on the issue of whether defendant was likely to comply with the substitute visitation order where she would no longer be subject to the jurisdiction of the courts of this state. Although the trial court did not expressly state it believed defendant would comply with the new visitation schedule, the trial court did repeatedly state that it found defendant's testimony credible and that she was not requesting a change in domicile merely to frustrate plaintiff's visitation. We believe the logical inference, given that the trial court granted defendant's petition, is that the trial court believed defendant would comply with the temporary visitation order while she lived in Alaska. Therefore, we conclude that it cannot be said that the trial court's finding regarding the second factor was "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* at 29.

Third, regarding the fourth *D'Onofrio* factor,[2] plaintiff contends that the trial court abused its discretion in finding that there was a realistic opportunity for visitation that would provide an adequate basis for preserving and fostering the parental relationship with plaintiff. Under the fourth *D'Onofrio* factor, the new visitation plan need not be equal to the prior visitation plan in all respects. *Mogle, supra* at 204. It only needs to provide a realistic opportunity to preserve and foster the parental relationship previously enjoyed by the noncustodial parent. *Anderson, supra* at 310-311. This Court has acknowledged the possibility that "extended periods of visitation will foster, not hinder, an even closer father-child relationship" than a typical weekly visitation schedule. *Anderson, supra* at 311.

Here, the new visitation schedule provided plaintiff with seven different parenting blocks consisting of about twenty-seven days, every four months, until defendant's permanent return to Michigan on July 1, 2004. Also, the trial court ordered that the transportation costs of the child and defendant to and from Michigan would be shared equally by the parties. This was suggested and agreed upon by the parties at the hearing for the petitions to change custody and parenting time. Defendant testified that she and her husband could afford these travel expenses and, in the event they could not, she was willing to charge her portion of the expenses to her credit card. The trial court found her testimony credible. We conclude that defendant produced sufficient evidence to establish by a preponderance that under the new visitation plan plaintiff had a realistic opportunity for visitation which would preserve and foster a relationship between plaintiff and the child.

The record reflects that defendant presented evidence to support her petition for change in domicile. The trial court carefully considered the issues raised by the parties and the testimony presented. Accordingly, we hold the trial court's order granting defendant's petition for a change in domicile did not constitute an abuse of discretion.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski

[2] The third *D'Onofrio* factor was not an issue in this case and plaintiff does not assert otherwise on appeal.