

STATE OF MICHIGAN
COURT OF APPEALS

ANN MARIE GRANITI, a/k/a ANN MARIE
LANGENSTEIN,

UNPUBLISHED
January 28, 2010

Plaintiff-Appellant,

v

CRAIG ALLEN GRANITI,

No. 289707
Macomb Circuit Court
LC No. 2001-004027-DM

Defendant-Appellee.

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Plaintiff claimed an appeal from the circuit court's order denying her request to change the domicile of her and defendant's minor children, and requiring that she pay defendant \$3,687 in attorney fees. Previously, this Court determined that the issue relating to domicile did not affect a change in custody, and that this appeal would go forward in connection with only the issue relating to attorney fees. We now affirm.

The parties divorced in 2002. The trial court entered a consent judgment in the matter, according to which the parties shared legal custody of their two teenaged minor children, and plaintiff assumed primary physical custody.

Plaintiff remarried in 2006, and she and her husband thereafter obtained new jobs in Utah and purchased a home there. Plaintiff filed a motion to change the domicile of the children in July 2008.

The trial court described the events that led to the instant controversy as follows:

Plaintiff packed all of her[] and the minor children's belongings the first week of August 2008 and shipped them to Utah. The parties can agree they had some conversation regarding the children accompanying their mother to Utah on or about August 9th, 2008 to help unpack, but defendant testified credibly that he believed the children would be returning to Michigan [after] just a week or so, so that Kayla could participate in cheerleading activities prior to the start of school after Labor Day. The testimony was unrefuted that plaintiff had purchased and utilized one-way tickets to Utah for the minor children, enrolled the children in the . . . school district in Sandy, Utah, required the children to start classes at

Brighton High School, transferred their bank accounts to a Utah bank and failed to respond to defendant's request to return the minor children to Michigan. Her conduct clearly demonstrates an intent to change the domicile of the minor children in a manner contrary to both the laws of the state and court order.

As a result of plaintiff's conduct, on August 27th, 2008, defendant was forced to file an emergency motion for return of the minor children. . . . This Court heard that motion on August 28th, 2008 [T]he court awarded temporary physical custody of the children to their father, ordered that Kayla and Tyler be re-enrolled at Rochester Adams High School and that the children's personal belongings and clothing be returned to Michigan

The court went on to weigh the applicable factors relating to the motion for a change of domicile, see MCL 722.31, and then concluded that plaintiff had failed to show that a change was warranted.

The court further concluded that plaintiff was entitled to recover his attorney fees invested in preparing, filing, and presenting his emergency motion for return of the children, on the ground that "plaintiff knowingly and voluntarily violated the law in Michigan and this Court's order prohibiting the minor children's change of domicile without the consent of the defendant." The court elaborated:

[P]laintiff's actions speak louder than words. Defendant testified credibly that when he spoke to plaintiff regarding the children's trip to Utah in early August, he was assured it would be for a week or so. This is especially credible since all the parties were aware that Kayla needed to return to Michigan to promptly participate in cheerleading prior to the beginning of school. Plaintiff purchased one-way tickets for herself and the children, transferred their bank accounts and school records, moved every item of personal items belonging to the children in her possession to Utah and enrolled them in school and required them to begin attendance. Defendant testified credibly that he called plaintiff when the children informed them that there were no plans for their return and plaintiff failed to return his call.

The children did eventually return with plaintiff, who had made plans to travel to Michigan for the August 28th hearing date, but the Court is persuaded that the children's travel plans were made as an afterthought and only after the defendant's emergency motion had been filed the previous day. The conclusion is supported by the fact that plaintiff and the children arrived in the early morning hours of August 28th, clearly a rushed decision and not in the best interest of the children. Therefore, the Court is persuaded that the costs incurred by defendant are the direct result of plaintiff's unreasonable conduct and non-compliance with this Court's order.

The court additionally noted that the fees requested were not refuted and appeared reasonable. On appeal, plaintiff argues that no award was proper because defendant's attorney fees were not incurred because plaintiff refused to comply with the consent judgment as it then stood. See MCR 3.206(C)(2)(b).

We review a trial court's award of attorney fees for an abuse of discretion. See, e.g., *In re Condemnation of Private Property for Highway Purposes (Dep't of Transportation v Curis)*, 221 Mich App 136, 139-140; 561 NW2d 459 (1997); see also *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006).

We review a trial court's findings of fact under the clearly erroneous standard. MCR 2.613(C); see also *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Plaintiff, citing her own testimony, protests that it was never her intention to keep the children indefinitely in Utah without the court's permission, and that defendant did not demand that the children be returned to Michigan before he resorted to litigation. Plaintiff points out that she had filed her motion for a change of domicile, and asserts that she had the children start school in Utah "in hopeful anticipation that her Motion would be granted." Plaintiff additionally disparages defendant's testimony that he came to doubt that the children would ever come back from Utah, and complains that defendant himself testified to making only a single telephone demand for the children's return before calling the police.

In fact, defendant testified that he had left a message for plaintiff, asking for the children's return, but that the call was never returned. Defendant additionally testified that he continued communications with the children, through which they indicated that they thought they were staying in Utah and were upset about it.

Plaintiff points out that it was defendant's idea that the children accompany plaintiff to Utah in the first instance. She notes that defendant stated that he was expecting the children to remain in Utah for only a matter of days, then notes that defendant waited 19 days to file his motion to have the children returned; she asserts that his delay did not comport with his testimony that he expected the trip to be so short. However, we cannot agree that allowing 19 days to pass between issuing an unanswered telephone demand and resorting to legal process undercuts defendant's account of having expected the children to return to Michigan after a short visit to Utah, then developing real concerns that plaintiff had unilaterally decided on a permanent change.

In sum, in challenging the trial court's factual findings plaintiff merely points to contrary testimony and offers alternative ways to interpret the evidence. However, "[a]n appellate court recognizes . . . the judge's unique opportunity to observe the witnesses, as well as the factfinder's responsibility to determine the credibility and weight of trial testimony." *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). It is not our purpose to entertain plausible alternative interpretations of the evidence presented; the test is whether the trial court's findings were clearly erroneous. MCR 2.613(C); *Beason*, 435 Mich at 805. In this case, we conclude that they were not.

The trial court had an ample evidentiary basis for concluding that plaintiff took the children to Utah with the intent that they remain there permanently, in violation of the existing custody arrangement, thus indeed forcing defendant to litigate for their return. The court thus

did not abuse its discretion in awarding defendant his attorney fees relating to this matter, in accord with MCR 3.206(C)(2)(b).

Affirmed.

/s/ Pat M. Donofrio

/s/ Patrick M. Meter

/s/ Christopher M. Murray