

STATE OF MICHIGAN  
COURT OF APPEALS

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BOBBIJO WOODWARD,

Plaintiff-Appellee,

v

GREGORY MARK WOODWARD,

Defendant-Appellant.

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UNPUBLISHED

March 4, 2010

No. 294441

Lapeer Circuit Court

LC No. 08-040752-DM

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right a circuit court custody and support order that also granted plaintiff's motion for a change of domicile. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court's factual findings are reviewed under the great weight of the evidence standard, while its decision to grant a petition for a change of domicile is reviewed for an abuse of discretion. *Brown v Loveman*, 260 Mich App 576, 600; 680 NW2d 432 (2004). "Under the 'great weight of the evidence' standard, a trial court's findings should be affirmed unless the evidence clearly preponderates in the opposite direction." *Mogle v Scriver*, 241 Mich App 192, 196; 614 NW2d 696 (2000). An abuse of discretion in matters involving child custody exists where 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. *Shulick v Richards*, 273 Mich App 320, 324-325; 729 NW2d 533 (2006).

When parents share joint legal custody of their children and one parent proposes to relocate more than 100 miles away, a motion for change of domicile is governed by MCL 722.31. *Spires v Bergman*, 276 Mich App 432, 436-437; 741 NW2d 523 (2007); *Rittershaus v Rittershaus*, 273 Mich App 462, 465; 730 NW2d 262 (2007). That statute provides, in pertinent part:

Before permitting a legal residence change. . . , the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:

(a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.

(d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

(e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child. [MCL 722.31(4).]

The party seeking a change of domicile has the burden of proving by a preponderance of the evidence that the change is warranted. *Brown*, 260 Mich App at 600.

Defendant argues that the trial court erred by finding that factor (a) favored permitting the relocation because plaintiff failed to establish that a move to Marblehead, Massachusetts, would improve the quality of the children's lives. However, plaintiff was not required to prove that the move would improve the quality of their lives, only that it had the capacity to do so. As the trial court found, the evidence showed that the children would have basically the same lifestyle regardless of where they lived, apart from the diminution in time spent with defendant. There was a suitable home in a suitable neighborhood in both communities, there were good schools in both communities, the children had friends in both communities, and they had a chance to see nearby relatives in both communities. However, plaintiff, who had been the children's sole source of financial support because defendant had been unemployed, had lost her job and been unable to find new employment in Michigan, whereas she had at least some work available to her immediately in Marblehead. "It is well established that the relocating parent's increased earning potential may improve a child's quality of life[.]" *Rittershaus*, 273 Mich App at 466. The trial court tacitly recognized this in its finding that if plaintiff were to remain in Michigan without work, the children's quality of life could be detrimentally affected. Therefore, the trial court's conclusion with respect to factor (a) is not against the great weight of the evidence.

Regarding factor (b), the trial court found that defendant had not taken full advantage of his parenting time. Although the custody and support order entered in 2005 was not admitted into evidence, defendant admitted that it gave him parenting time for half the summer and that he had not exercised that time, apparently because of all the extra time he had spent babysitting the children. While defendant was seeing the children on a regular basis almost daily, the time spent with them for a few hours while plaintiff was at work and on alternate weekends is not the same as being a full-time parent for five or six weeks at a time. Therefore, the trial court's conclusion with respect to this aspect of factor (b) is not against the great weight of the evidence.

Regarding factor (c), the trial court found that it would be possible to work out a new visitation schedule adequate to preserve defendant's relationship with the children. That finding is supported by plaintiff's testimony that defendant had maintained regular telephone contact with the children during an extended vacation to Marblehead, and by her testimony regarding a proposed visitation schedule. While telephone calls and extended visits throughout the year are no substitute for daily personal contact and sole custody every other weekend, such a heightened level of contact is impossible when the children move any great distance away. Further, "the new visitation plan need not be equal to the prior visitation plan in all respects. It only need provide a realistic opportunity to preserve and foster the parental relationship previously enjoyed by the noncustodial parent." *Mogle*, 241 Mich App at 204. The order entered by the trial court left it to the parties to devise a parenting time schedule and presumably any agreement that was mutually satisfactory to both parties would be sufficient to maintain the relationship between defendant and the children. Although the parties were unable to agree, the court's subsequent order granting defendant extended visitation in Michigan during school holidays, and unlimited visitation in Massachusetts provided an adequate basis to preserve and foster defendant's relationship with the children. See *Anderson v Anderson*, 170 Mich App 305, 311; 427 NW2d 627 (1988). Therefore, the trial court's conclusion with respect to this aspect of factor (c) is not against the great weight of the evidence.

Defendant does not challenge the trial court's findings regarding factors (d) and (e). Therefore, after considering the record presented, we conclude that the trial court's decision to grant plaintiff's motion for change of domicile was not an abuse of discretion.

We affirm.

/s/ Deborah A. Servitto

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood