

STATE OF MICHIGAN
COURT OF APPEALS

GRECIA T. DAVENPORT, f/k/a GRECIA T.
MOSHOLDER,

UNPUBLISHED
September 9, 2010

Plaintiff-Appellee,

v

DENNIS M. MOSHOLDER, JR.,

No. 295852
Ingham Circuit Court
LC No. 06-001439-DM

Defendant-Appellant.

Before: GLEICHER, P.J., and ZAHRA and K.F. KELLY, JJ.

ZAHRA, J., (*concurring in part and dissenting in part*).

I concur in the conclusion of the majority that “[b]ecause the move would alter DMM’s established custodial environment, the circuit court erred by declining to examine whether the move clearly and convincingly would enhance DMM’s best interests. MCL 722.23.” I write separately because I also conclude the trial court’s finding that the father had an adequate opportunity to preserve and foster his relationship with DMM, contravened the great weight of the evidence. The majority’s analysis supports my conclusion:

The record supports that the father enjoyed almost daily contact with DMM, attended and helped coach his flag football practices, and served as the child’s scout den leader. DMM and the father regularly read together, played catch and golf, and worked on science projects of the father’s design. *Viewed from DMM’s standpoint, a move to Georgia would disrupt the child’s ready access to his father and impair the child’s ability to receive guidance, structure, and comfort from his father.* (Emphasis added.) (*Ante* at 6)

In short, given the record support that the father played a critical and daily role in the development and structure of DMM’s life, I conclude the proposed change of domicile denied the father of the opportunity to preserve and foster his relationship with his son. Accordingly, I would not remand “for the circuit court to determine whether clear and convincing evidence supports that the move to Georgia serves DMM’s best interest.” Rather, I would reverse and remand with instructions that the change of domicile be denied.

/s/ Brian K. Zahra