STATE OF MICHIGAN

COURT OF APPEALS

CHARLOTTE WILLIAMS, Plaintiff-Appellee,	UNPUBLISHED May 10, 2016
v	No. 330794 Oakland Circuit Court Family Division
CEDRIC MAURICE WILLIAMS, Defendant-Appellant.	LC No. 2009-758994-DM

Before: MURPHY, P.J., and CAVANAGH and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiff's motion to change the domicile of the parties' minor child from Michigan to Texas. We affirm.

Defendant challenges the trial court's rulings pertaining to the grant of plaintiff's motion for a change of domicile in addition to the alternative or modified parenting schedule to be implemented. As discussed by this Court in *Rains v Rains*, 301 Mich App 313, 324-325; 836 NW2d 709 (2013) (citations and quotation marks omitted):

> This Court reviews a trial court's decision regarding a motion for change of domicile for an abuse of discretion and a trial court's findings regarding the factors set forth in MCL 722.31(4) under the great weight of the evidence standard. 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. This Court may not substitute [its] judgment on questions of fact unless the facts clearly preponderate in the opposite direction. However, where a trial court's findings of fact may have been influenced by an incorrect view of the law, our review is not limited to clear error. A trial court's findings regarding the existence of an established custodial environment are reviewed under the great weight of the evidence standard and must be affirmed unless the evidence clearly preponderates in the opposite direction. This Court reviews questions of law de novo.

It has been repeatedly recognized that a trial court uses a four-step approach when considering motions for a change of domicile.

> First, a trial court must determine whether the moving party has established by a preponderance of the evidence that the factors enumerated in MCL 722.31(4) . . . support a motion for a change of domicile. Second, if the factors support a change in domicile, then the trial court must then determine whether an established custodial environment exists. Third, if an established custodial environment exists, the trial court must then determine whether the change of domicile would modify or alter that established custodial environment. Finally, if, and only if, the trial court finds that a change of domicile would modify or alter the child's established custodial environment must the trial court determine whether the change in domicile would be in the child's best interests by considering whether the best-interest factors in MCL 722.23 have been established by clear and convincing evidence. [*Id.* at 325.]

Using MCL 722.31 as a starting point, subsection one of this statutory provision prohibits "a parent of a child whose custody is governed by court order [from changing] a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued." MCL 722.31(1). In evaluating a request for a change of domicile, with the child as its predominant focus, a trial court must consider several factors as delineated in MCL 722.31(4):

> (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.
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> (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.
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> (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.

"The party requesting the change of domicile has the burden of establishing by a preponderance of the evidence that the change is warranted." *Rains*, 301 Mich App at 326-327 (citation omitted).

If the court determines that a change of domicile is appropriate, it then turns to the issue whether an established custodial environment exists. *Id.* at 327. In accordance with MCL 722.27(1)(c):

> The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

An established custodial environment has been described to encompass:

> [an environment] of significant duration in which a parent provides care, discipline, love, guidance, and attention that is appropriate to the age and individual needs of the child. It is both a physical and a psychological environment that fosters a relationship between custodian and child and is marked by security, stability, and permanence. [*Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 336 (2008).]

"After the trial court determines that the moving party has shown by a preponderance of the evidence that a change of domicile is warranted and if there is an established custodial environment, the trial court must determine whether the change in domicile would cause a change in the established custodial environment." *Rains*, 301 Mich App at 328. "If the trial court concludes that a change in an established custodial environment would occur, then the party requesting the change of domicile must prove by clear and convincing evidence that the change is in the child's best interests." *Id.* However, if it is established that a change of domicile in accordance with MCL 722.31 is supported by a preponderance of the evidence and that the domicile change would not alter the child's established custodial environment, then a trial court need not undertake a best-interest analysis under MCL 722.23. See *Spires v Bergman*, 276 Mich App 432, 437 n 1; 741 NW2d 523 (2007); *Brown v Loveman*, 260 Mich App 576, 598 n 7; 680 NW2d 432 (2004).

I. MCL 722.31(4)

Defendant challenges the trial court's determination that a review of the factors identified in MCL 722.31(4) supports plaintiff's request to change the child's domicile from Michigan to Texas by a preponderance of the evidence. Defendant does not challenge or take issue with the trial court's findings regarding factors (d) and (e) pertaining to a financial motivation underlying the change or opposition to the move and the history or influence of the child's exposure to incidents of domestic violence, respectively. MCL 722.31(4)(d), (e). As a result, defendant's contentions of error focus on whether the evidence demonstrated that (a) the change of domicile would improve the quality of life for plaintiff and the minor child, (b) the degree to which each parent has utilized their parenting time with the child and whether the change in residence is an attempt to "defeat or frustrate" the current parenting time awarded, and (c) whether a modification of parenting can be fashioned to adequately preserve and foster the child's relationship with each parent and the potential for compliance with the newly implemented schedule. MCL 722.31(4)(a), (b) and (c).

Addressing the quality of life issue, evidence was presented that the move to Texas would afford plaintiff and the minor child their own home with plaintiff's new husband, rather than continued residence with plaintiff's father. Documentation pertaining to the home demonstrated that it was spacious and that the minor child would have her own bedroom. Evidence was also submitted to the trial court regarding the location where plaintiff and the minor child would be residing, indicating it was a developing and growing urban area. Testimony and documentation was provided regarding the child's proposed school and district, demonstrating that ratings pertinent to its performance and ranking exceeded those of the minor child's current school system. It was noted that the school was within four blocks of the child's proposed residence and that numerous like-aged children lived in the vicinity. The child would also be provided the opportunity to engage in extracurricular activities, including the continuation of her participation in Girl Scouts and voice lessons.

Defendant takes issue with plaintiff's relinquishment of her current employment with the Michigan Department of Corrections for uncertain employment in Texas. While this is a concern, plaintiff was able to demonstrate that she was seeking gainful employment in Texas and that possibilities existed, as evidenced by her procurement of a job interview with one employer, albeit at a reduced wage. Although plaintiff's temporary unemployment is a concern, it does not result in financial instability for plaintiff and the minor child as her current husband's yearly income from employment and a Navy disability are sufficient to meet their needs in the interim period and plaintiff's husband has indicated a willingness to assume primary financial responsibility until plaintiff can secure employment.

Defendant further contends that the move would separate the minor child from other relatives in Michigan, specifically her step-sister, her grandfather (plaintiff's father), and her grandmother (defendant's mother). Currently, it appears that the minor child interacts with the step-sister during her alternating weekend parenting time with defendant and by electronic contact. There was no specific evidence submitted regarding the frequency of interaction or depth of relationship between the minor child and her paternal grandmother. As noted by the trial court, however, the amount of parenting time to be provided defendant under the modified parenting time schedule is commensurate with the amount of time he currently exercises. As such, the paternal relatives will continue to have the same opportunity for interaction with the minor child. The minor child's grandfather has expressed his satisfaction and approval of the relocation.

While the trial court acknowledged that the move is more advantageous to plaintiff than to the minor child, it did not err in finding that the change of residence "ha[d] the capacity to improve the quality of life for both the child and the relocating parent." MCL 722.31(4)(a).

With regard to MCL 722.31(4)(b) involving "[t]he degree to which each parent has complied with, and utilized his or her time" under the current parenting time order, the trial court discussed and defendant acknowledged his routine use of his alternating parenting weekends. Defendant also utilized his holiday parenting time with the minor child but has consistently not used his consecutive weeks of summer parenting time. While defendant has attended some of the child's extracurricular activities such as soccer and a dance recital and has demonstrated some minimal involvement in school activities and teacher contact, he does not actively seek additional parenting time with the child during the week and has, on occasion, returned the child

early from his parenting time on the weekends. Although defendant asserted that plaintiff's active refusal to communicate with him has affected his ability to schedule summer parenting time and to attend other events, there was no demonstration by defendant that he has attempted through the trial court or the Friend of the Court to secure plaintiff's cooperation to obtain his court-ordered parenting time. Hence, although defendant has consistently used some of his parenting time he has not actively sought to use or procure all of his potential parenting time with the minor child. While defendant has implied that plaintiff is seeking to frustrate his parenting time schedule with the minor child, he has concurrently acknowledged that she has not denied him parenting time.

Defendant further expressed concern and opposition to the move based on its interference with his ability to participate or involve himself in the child's extracurricular activities and education. Testimony was elicited that defendant did attend the minor child's soccer games, at least one dance recital and a school fieldtrip. It is true that his ability to attend such activities will not be available given the distance involved. The testimony, however, suggested that defendant's participation was minimal and selective. Testimony indicated that defendant did not attend the minor child's school conferences, but instead communicated on two occasions with her teachers by email. This option continues to remain available to defendant to apprise himself of the child's progress or discuss academic concerns, given his continued joint legal custody, regardless of the distance involved. Plaintiff's assertion that she is responsible for the drop off and pick up of the minor child at school on a daily basis and provides for the child's needs during the week was undisputed. At the evidentiary hearing, defendant did not produce any evidence or testimony to suggest his involvement in the child's weekly homework or school attendance, which renders his concern specious with regard to the proposed move.

Defendant also makes a vague reference to a previous change of domicile motion initiated by plaintiff, but which did not result in any hearings, rulings or alterations in the minor child's domicile. The lower court record denotes plaintiff filing a motion for payment of bills and to change domicile on November 9, 2011. The lower court record does not indicate that the trial court held a hearing on this matter or that any further action was pursued, with reference to the indication that plaintiff would seek a change of domicile. Other than referencing this prior motion, defendant does not indicate how the earlier motion is relevant to the current proceeding or provide any legal authority to suggest its relevance. "This Court will not search for authority to support a party's position, and the failure to cite authority in support of an issue results in its being deemed abandoned on appeal." *Goldstone v Bloomfield Twp Pub Library*, 268 Mich App 642, 658; 708 NW2d 740 (2005), aff'd 479 Mich 554 (2007) (citation omitted).

Based on defendant's failure to fully exercise his court-ordered parenting time with the minor child and plaintiff's predominant caretaker role, the trial court did not err in finding that MCL 722.31(4)(b) weighed in favor of plaintiff's request for a change of domicile.

The trial court spent considerable time in assuring that the modified parenting schedule would continue to foster defendant's contact and relationship with the minor child. Defendant's modified parenting schedule provides him with an equivalent number of overnights with the minor child as are afforded in the initial parenting time order. The proposed parenting time schedule also provides for additional parenting time when the minor child is in Michigan and if defendant seeks additional time with the child on long or extended weekends or at other mutually

agreeable times. In particular, the trial court noted defendant's financial constraints and sought to assure that the opportunity to exercise parenting time was available by requiring plaintiff to initially cover the costs of all transportation for the minor child the first year, with plaintiff being responsible for the cost of transportation for parenting time for at least two visits in subsequent years. There was no evidence adduced to substantiate defendant's claim that plaintiff was uncooperative in the scheduling of parenting time or that she had denied him parenting time as currently scheduled.

Defendant contends that the trial court's statement, "Off the top of my head I'm saying Christmas and Summer, but if, in some Summer, she goes to cheerleading camp for two months and he can't see her, then mother would pay for another trip," demonstrates that plaintiff will have unilateral control of scheduling the minor child's parenting time trips. First, the trial court was explicit regarding when parenting time for specified periods would initiate and conclude; delimiting plaintiff's discretion regarding the scheduling of defendant's parenting time. Second, defendant takes this remark out of context as it occurred when the trial court was discussing allocation of the cost of parenting time transportation. The comment constitutes recognition by the trial court that as the child ages certain events may conflict with defendant's parenting time but that any adjustments would continue to result in plaintiff's responsibility to pay the transportation costs associated with at least two trips for the minor child on a yearly basis.

As such, the preponderance of the evidence on MCL 722.31(4)(c) weighs in favor of the trial court's determination.

II. ESTABLISHED CUSTODIAL ENVIRONMENT

Defendant also takes issue with the trial court's determination that the child's established custodial environment was solely with plaintiff. Specifically, defendant contends that the trial court misapplied or misconstrued MCL 722.27(1)(c) and that the trial court's findings were contrary to the great weight of the evidence. Defendant contends that these errors were compounded by the resulting failure of the trial court to evaluate the best interest factors delineated in MCL 722.23.

The trial court found that the child's established custodial environment was solely with plaintiff. This did not constitute error and was not contrary to the great weight of the evidence. The original custody order awarded plaintiff sole physical custody of the minor child with plaintiff's residence designated as being primary. Undisputed testimony indicated that plaintiff was responsible for the minor child the majority of the time, including taking her to and from school, medical appointments, extracurricular activities and providing for her daily needs. While defendant had parenting time with the minor child on alternating weekends and holidays, no evidence was presented regarding an entrenched involvement in his child's life and activities. Defendant only attended medical appointments for the child when she became ill in his custody. Although he asserted that he purchased clothing for the child, he did not pay or contribute to the costs associated with her participation in extracurricular activities. He did not attend her school conferences or assume any responsibilities for the child outside of the necessities arising from his scheduled parenting time, other than his asserted purchase of unspecified clothing items for the minor child.

Contrary to defendant's contention, the trial court's finding regarding the child's established custodial environment did not ignore or fail to consider the language of MCL 722.27(1)(c), that a "custodial environment of a child is established if over an appreciable time the child naturally looks *to the custodian in that environment* for guidance, discipline, the necessities of life, and parental comfort." Defendant suggests that the statutory language required the trial court to consider the child's behavior or response while in defendant's custody rather than a more generalized or daily response of the minor child. Defendant's contention is without support for two reasons. First, at the evidentiary hearing, defendant failed to demonstrate or provide evidence regarding the minor child's attempts to "secure guidance, discipline, the necessities of life, and parental comfort" when in defendant's custody. Defendant demonstrated the child's physical presence in his home for alternating weekends, but did not provide any evidence regarding the nature of the relationships or interactions with the minor child other than his own generalized assertions. Second, testimony was adduced indicating that the child had concerns regarding defendant's alcohol consumption during his parenting time, with one incident involving the minor child's contacting plaintiff while in defendant's custody because of her discomfort. Although testimony was elicited suggesting the minor child had concerns regarding defendant's alcohol consumption, defendant denied that the child ever sought to discuss these concerns with him or express any level of discomfort. Hence, defendant's denials buttress the trial court's conclusion that the minor child's established custodial environment was with plaintiff based on the imbalance of care and services routinely provided by plaintiff for the minor child coupled with the inability or reluctance of the minor child to express her concerns to defendant when in his custody.

The trial court's determination that the minor child's established custodial environment resided solely with plaintiff was not a failure to properly construe or apply the relevant statutory provision nor contrary to the great weight of the evidence. Because the trial court found by a preponderance of the evidence that a change of domicile was appropriate and that the proposed domicile change did not alter the minor child's established custodial environment, the trial court was not required to undertake a best-interest analysis. See *Spires*, 276 Mich App at 437 n 1; *Brown*, 260 Mich App at 598 n 7. Hence, defendant's subsequent argument that the trial court's error in finding the established custodial environment to be solely with plaintiff resulted in the additional error of failing to evaluate the best interest factors is without merit.

III. MODIFIED PARENTING TIME SCHEDULE

Defendant also challenges the modified parenting time schedule fashioned by the trial court, asserting the trial court failed to consider defendant's complaints regarding plaintiff's lack of cooperation in facilitating communication with the minor child, the lack of specificity in the order, and the failure to consider how the order does not address the inherent reduction in defendant's daily involvement with the minor child.

The modified parenting time order affords defendant the same amount of overnight visits with the minor child as the original order, serving to sustain defendant's relationship with the minor child. While the trial court, for obvious logistical reasons, did not specify particular dates for the parenting time, the order is sufficiently specific in identifying the onset and conclusion of parenting time for the blocks of time or periods identified. Hence, concerns regarding plaintiff's cooperation and communication for scheduling parenting time are minimized given the

delineated time periods. As suggested by the trial court, defendant also bears some responsibility in identifying and securing dates, times, and details regarding transportation for the minor child and cannot merely remain passive, awaiting plaintiff's initiation or response.

Defendant is correct that the trial court's modified parenting time order neglects to include any reference to electronic or telephonic communications with the minor child. Defendant did assert during the evidentiary hearing that plaintiff and the minor child, who has her own cellular telephone, were not responsive or timely in responding to his contacts. While plaintiff may be uncooperative to a degree, the child's lack of response to overtures initiated by defendant in contacting the child by calling her cellular telephone directly cannot necessarily be attributable to plaintiff and defendant's concerns are, to an extent, speculative. Given the asserted problems with communication between the parties defendant may continue to periodically try to engage the minor child by telephone or other electronic sources and if there is a lack of response or difficulties occur, petition the trial court for a more definitive communication requirement and accessibility schedule.

Finally, the physical distance of the child precludes defendant's ability to participate in-person in her weekly school and extracurricular activities. As the joint legal custodian, defendant is entitled to obtain routine information regarding the child's academic involvement and progress and her participation in activities outside of her school, as well as other information pertinent to the child's well-being. Defendant retains the ability to communicate with teachers at her school to discuss any concerns or to receive updates regarding her academic performance, which is consistent with his prior level of involvement. Although defendant is correct that the modified parenting schedule may not afford him the same ability as the prior schedule with regard to involvement in the minor child's school and extracurricular activities, the goal is not necessarily equivalence but rather the establishment of "a realistic opportunity to preserve and foster the parental relationship previously enjoyed by the nonrelocating parent." *McKimmy v Melling*, 291 Mich App 577, 584; 805 NW2d 615 (2011). Defendant is being afforded prolonged periods of parenting time with the minor child under the modified parenting time order. Any disruption in the ability of defendant to participate in the minor child's daily activities is de minimis given his prior level of involvement.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Amy Ronayne Krause