NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA 08-363

HEATHER L. VELA, APPELLANT V. SHERVIN DJAFARZADEH, APPELLEE	**Opinion Delivered** 8 OCTOBER 2008 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. DR 2001-959] HONORABLE MACKIE M. PIERCE, JUDGE AFFIRMED

D.P. MARSHALL JR., Judge

In this change-of-custody case, Vela appeals the circuit court's decision granting Djafarzadeh custody of their only child. The parties divorced in 2001 and the court granted them joint custody of their daughter, N.G. In 2005, the court approved Vela relocating with her daughter to Houston, Texas and ordered continued joint custody. Vela soon developed problems in her new marriage, and she and the child returned to Arkansas in July 2006. After reconciling with her husband, Vela filed a motion to return to Texas. Djafarzadeh responded with his own motion for a change of custody. The circuit court awarded Djafarzadeh legal and physical custody of N.G.

Relocation? Vela first argues that the circuit court erred on relocation. The court summarily rejected Vela's motion to relocate and focused on the main issue, custody.

The court had granted Vela's 2005 motion to relocate, and thus no need existed for her to get judicial approval before returning to Texas with the child. The court made no error on relocation.

A Material Change In Circumstances And Best Interests? Vela next argues that the circuit court erred in finding a material change in circumstances. "Custody will not be modified unless it is shown that there are changed conditions demonstrating that a modification is in the best interest of the child." *Hodge v. Hodge*, 97 Ark. App. 217, 219, 245 S.W.3d 695, 697 (2006). As our supreme court held in *Hollandsworth v. Knyzewski*, the relocation of a child's primary custodian alone is not a material change. 353 Ark. 470, 476, 109 S.W.3d 653, 657 (2003). Whether Vela lived in Texas or Arkansas, therefore, was immaterial to the parties' most recent dispute over custody. The circuit court's decision follows this case law faithfully.

The circuit court's bench ruling and order contains some murkiness because the court combined its analysis of changed circumstances and its analysis of best interests. The better practice is for the court to make specific findings about each issue. No party, however, sought specific findings of fact pursuant to Rule 52. And we may look to the record as a whole in evaluating the circuit court's combined ruling for clear error. *Word v. Remick*, 75 Ark. App. 390, 395, 58 S.W.3d 422, 426 (2001). Here we see none.

The court noted that the recent instability in Vela's life, and thus in the child's life, was the overriding changed circumstance. Between the 2005 and 2007 custody hearings, Vela moved six times—three times in Texas, and three times in Arkansas. Those moves forced N.G. to change schools four times—twice in 2005 and twice in 2006.

The circuit court also took Vela's recent financial and marital difficulties into consideration. Not long after Vela moved to Texas to be with her new husband, they began having financial and marital problems. These problems led to their separation and Vela's return to Arkansas. The court concluded that, even though Vela and her husband had reconciled, the underlying problems that led to the original separation were still present.

Last, the court heard testimony that Djafarzadeh had been, for the most part, his daughter's primary custodian since Vela and the child returned to Arkansas in mid-2006. N.G. lived with Djafarzadeh full-time from mid-summer 2006 throughout the fall 2006 semester and continued to stay with her father at least four nights a week during the spring 2007 semester. The court concluded that Vela's primary custody had changed into a fifty-fifty arrangement.

Our cases support the circuit court's decision to change custody in these changed circumstances. In *Gray v. Gray*, our court upheld the circuit court's decision

awarding sole custody of the parties' children to the father. 101 Ark. App. 6, ___ S.W.3d ___ (2007). The circuit court focused on the stability of the children's lives: they had a stable home environment, a stable academic environment, and were performing well in school and extracurricular activities. 101 Ark. App. at 9, ___ S.W.3d at ___. The children's mother, however, wanted to move with the children to Missouri, lacked financial and employment stability, and showed no motivation to get a job or further her education. 101 Ark. App. at 7, 9–10, ___ S.W.3d at ___. This case is similar. Here, the circuit court implicitly found that Vela's recent instability in several areas of her life was a material change in circumstances and explicitly found that N.G.'s interests were best served by staying with her father. We see no clear error in those conclusions on this record.

Vela also argues that the circuit court erred by changing custody based on conditions that Djafarzadeh had to meet in the future. Vela faults the court for instructing Djafarzadeh—in its bench ruling and order—to do certain things regarding N.G.'s care: set a bedtime for her, get her to school on time, keep her physically active, and monitor her diet. The circuit court did not make an anticipatory ruling conditioned on Djafarzadeh's future action; it admonished him about some parenting particulars. This was not error.

Testimony From The Ad Litem? Vela also argues that the circuit court erred by

relying on comments made by N.G.'s attorney ad litem during his closing argument and by allowing him to "testify" in closing. For example, Vela highlights the following statement in the bench ruling: the ad litem "made a very pertinent point, I thought, and that is that [N.G.] doesn't want to choose." While the judge attributed the comment to the ad litem, the testimony of several witnesses, including Vela, established that N.G. did not want to choose between her parents. Even though the court referred to the ad litem's summary of the proof in closing argument, the court's statements were rooted in the witnesses' testimony. We see nothing in the court's ruling that was solely the product of the ad litem's argument. And it is apparent that the court considered all the evidence in making its decision.

Affirmed.

ROBBINS and VAUGHT, JJ., agree.