

STATE OF MICHIGAN
COURT OF APPEALS

KRYSTAL JEAN PERREAULT,

Plaintiff-Appellant,

v

DAVID MICHAEL SULLIVAN, JR.,

Defendant-Appellee.

UNPUBLISHED

June 3, 2008

No. 281727

Baraga Circuit Court

LC No. 06-005527-DM

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court’s order denying her motion to change the domicile of the parties’ minor child from Baraga County in Michigan’s Upper Peninsula, to a Lower Peninsula city located more than 400 miles away. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

The parties married in 2003, and their daughter, Makenna, was born in 2004. The circuit court entered a consent judgment of divorce on December 8, 2006, granting the parties joint legal and physical custody of Makenna. Thereafter, Makenna resided primarily with plaintiff. Defendant’s parenting time consisted of alternate weekends “from Thursday to Monday morning,” and two nights a week during the weeks that he did “not have weekend parenting time.” Defendant availed himself of almost 100 percent of his parenting time.

On July 16, 2007, plaintiff filed a motion seeking the court’s permission to relocate with Makenna to Hubbardston, Michigan. Plaintiff alleged that the move would “improve her life,” and allow her to “obtain a better job.” Plaintiff and Makenna moved to Hubbardston in August 2007, in advance of an evidentiary hearing conducted on October 16, 2007.

Plaintiff testified at the hearing that she earned four dollars an hour plus tips while employed in the Upper Peninsula, and earned ten dollars an hour at her new employment in Hubbardston. She described her Hubbardston residence, with a separate bedroom and a full, connected bathroom for Makenna, as “better than what we were living in up there.”

The circuit court denied plaintiff’s motion. In its written opinion, the court explained, “Despite the fact that plaintiff-mother has a higher paying job and nicer housing, the Court is not convinced that the change of legal residence has the capacity to improve the quality of life for the child.” Plaintiff now appeals that ruling.

We review for an abuse of discretion a circuit court's ultimate decision regarding a petition to change a minor child's domicile. *Brown v Loveman*, 260 Mich App 576, 600; 680 NW2d 432 (2004). "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." *Id.* at 600-601 (internal quotation omitted). This Court reviews the circuit court's factual findings "under the great weight of the evidence standard." *Rittershaus v Rittershaus*, 273 Mich App 462, 464; 730 NW2d 262 (2007).

A parent with joint legal custody who seeks to relocate more than 100 miles away must establish by a preponderance of the evidence that a change in the minor's domicile is warranted. *Rittershaus*, *supra* at 464-465; 730 NW2d 262 (2007); *Mogle v Scriver*, 241 Mich App 192, 203; 614 NW2d 696 (2000). In considering a proposed change of a child's domicile after a divorce, a court must consider the *D'Onofrio*¹ factors, which are codified at MCL 722.31(4), and provide that a court must address the following:

(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.

After reviewing the record in this case, we find that the circuit court considered each factor mandated by MCL 722.31(4). In addition to finding that plaintiff had not sufficiently

¹ *D'Onofrio v D'Onofrio*, 144 NJ Super 200, 206-207; 365 A2d 27, *aff'd* 144 NJ Super 352; 365 A2d 716 (1976), adopted by the courts of this state in *Dick v Dick*, 147 Mich App 513, 517; 383 NW2d 240 (1985). The New Jersey courts have since modified the test for determining whether a change in domicile should be granted. *Holder v Polanski*, 111 NJ 344, 349-354; 544 A2d 852 (1988).

demonstrated that the change of Makenna's residence had the capacity to improve her quality of life, the circuit court determined that although plaintiff's move "does not appear inspired by any obvious desire on her part to defeat the parenting time schedule," it nevertheless frustrated defendant's ability to exercise his parenting time pursuant to "the current parenting time schedule." The court found the other factors inapplicable.

Plaintiff contends that the circuit court failed to properly consider the benefit to Makenna inherent in plaintiff's ability to earn a higher income. Our review of the record convinces us, however, that the circuit court examined and weighed all of the testimony presented on this subject, and determined that the preponderance of the evidence did not support a conclusion that plaintiff's additional income or her improved housing had the capacity to benefit Makenna. The record reveals that Makenna has no family in Hubbardston other than plaintiff, while a large and extended family exists in the Upper Peninsula community where Makenna resided until plaintiff's move. Although we may have decided that plaintiff's higher wages did have the capacity to elevate the quality of Makenna's life, this is a close question, and we cannot characterize the circuit court's finding in this regard as against the great weight of the evidence. And because the circuit court's denial of plaintiff's motion rested on properly supported findings of fact, we cannot characterize the court's ultimate denial of the motion as an abuse of discretion.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher