STATE OF MICHIGAN

COURT OF APPEALS

OUSSAMA JAWAD BACHIR, Plaintiff-Appellant,	UNPUBLISHED January 20, 2011
v	No. 296339 Wayne Circuit Court Family Division
SHANNA LYNN PEVELER-STROMIK, Defendant-Appellee.	LC No. 00-011668-DC

Before: FORT HOOD, P.J., and MURRAY and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for change of domicile. Because the trial court's factual determinations regarding the change of domicile were not against the great weight of the evidence, because the trial court did not abuse its discretion in allowing the change, and because the change in domicile was in the minor child's best interests, we affirm.

Plaintiff and defendant, though never married, have a minor child in common (DOB 3/27/99). In 2000, plaintiff initiated an action to determine issues concerning the custody and care of the minor child. The parties quickly entered a consent order in the matter, which provided, in part, that defendant would have primary physical custody of the child, that the parties would share joint legal custody, and that the domicile of the minor child would not be removed from Michigan without judicial approval. Issues arose concerning plaintiff's parenting time with the child in 2003 and again in 2005, but were ultimately resolved. In 2009, defendant moved for a change in the minor child's domicile, indicating that her and the minor child's quality of lives would drastically improve if they were permitted to relocate to Florida. Defendant's motion was scheduled for an evidentiary hearing, at the conclusion of which the trial court granted plaintiff's motion for a change of the minor child's domicile to the state of Florida. This appeal followed.

Plaintiff argues on appeal that the trial court's findings of fact with regard to the change of domicile factors delineated in MCL 722.31 were against the great weight of the evidence. We disagree.

The trial court's decision on a petition to change the domicile of a minor child is reviewed for an abuse of discretion. *Rittershaus v Rittershaus*, 273 Mich App 462, 464; 730 NW2d 262

(2007). The trial court's factual findings in reaching its decision are reviewed under the great weight of the evidence standard. *Id.*

When a parent of a child whose custody is governed by court order seeks to move with the minor child to a location more than 100 miles away from his or her current legal residence, and the parent does not have sole legal custody, the trial court must consider the following factors before permitting the requested legal residence change:

> (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).]

Plaintiff argues that the trial court erred in finding that factor (a) favored defendant because there was no evidence presented that defendant's and the child's quality of life would improve by relocating to Florida. We disagree.

Defendant testified at the evidentiary hearing that she had an increased earning potential in Florida because she had obtained a position as a nurse in a labor and delivery department at the Orange Park Medical Center, a job that paid approximately $14,000 a year more than her current job at Henry Ford, and was in the medical department in which she preferred to work. In addition to the increase in salary, defendant testified that she would be working better hours, which would allow her to spend more time with her children, and she would have the opportunity to pursue a Master's degree in midwifery, paid for in part by her new employer. Defendant further testified that her brother and her husband's parents would be moving to Florida with them, which would allow the child to continue having a relationship with them. Defendant's husband, Ryan Stromik, testified that he would also have greater earning potential as an insurance investigator in Florida than in Michigan because of the downturn in the Michigan economy.

Plaintiff argues that defendant could have obtained a similar position in Michigan, but that she failed to look for one. However, defendant testified that she did search for positions in Michigan and throughout the country, but did not find one. An increase in the earning potential of the parent as a result of a change of domicile may increase the child's quality of life. *Rittershaus*, 273 Mich App at 466. At the same time, the trial court should consider the potentially detrimental effects of physically severing the bond between siblings in cases where the children likely have already experienced serious disruption in their lives, as well as a sense of deep personal loss. *Brown v Loveman*, 260 Mich App 576, 602; 680 NW2d 432 (2004).

It is unclear from the record whether the school in Florida would be better or worse than the child's Michigan school, and moving to Florida would likely have a negative effect on the relationship between the child and plaintiff and the child and his brother, Noah. However, in addition to the economic advantage the move would bring, defendant testified that the community in which she, the child and the rest of her family would be living had superior schools and was family-oriented with many activities available for the child and his sisters. The testimony also revealed that defendant would be working a schedule much more conducive to the family schedule. Despite the potential drawbacks that a move would bring, we conclude that trial court's finding that this factor favored defendant is not against the great weight of the evidence.

Plaintiff next argues that the trial court erred in finding that factor (b), whether each parent has utilized his or her parenting time, was neutral when it should have found that this factor favored plaintiff. We disagree.

With respect to factor (b), the trial court concluded that each parent had substantially complied with the parenting requirements with the child's best interests in mind, and that defendant was not moving to Florida because of her desire to interfere with plaintiff's parenting time. Both defendant and plaintiff testified that they regularly spent time with the child during their parenting time. Consistent with having sole physical custody of the child, defendant testified that she was the child's primary caregiver and took him to doctor and dentist appointments, went to his parent teacher conferences and PTA meetings, and organized his extracurricular activities. The child visited with plaintiff every other weekend and, during the change of domicile proceedings, every Tuesday and Thursday. Prior to the most recent proceedings, plaintiff did not regularly use his allotted visiting times on Tuesday and Thursday. At the same time, defendant testified that occasionally she offered, and plaintiff utilized extra time with the child. Both parties also testified that, at some point, the other interfered with their time with the child. Based on the evidence, a finding that both parents generally utilized their parenting time and that factor (b) favored neither party is not against the great weight of the evidence.

Plaintiff further argues that factor (b) should have favored him because defendant was motivated to move to Florida in part by a desire to limit plaintiff's parenting time with the child. Although Dr. Larry Mark Frieberg testified that defendant and her husband, Stromik, had concerns about some of plaintiff's activities and they may have wanted the child to spend less time with plaintiff, plaintiff provided no real evidence that a substantial reason for the proposed move was because defendant wanted to keep the child away from plaintiff. The evidence in the record indicates that defendant wanted to move to improve the quality of life for herself and her

family, including the child. Defendant found a job in Florida, doing exactly what she had always dreamed of doing, with much better working hours and the potential for job growth. Moreover, her husband had greater career opportunities in Florida than in Michigan. Defendant found a child-friendly community with great schools and housing they could afford. While plaintiff argues that defendant could have searched for positions in Michigan, defendant testified that she searched for jobs in Michigan, but did not find any in the same department and with the same pay and advantages as that offered in Florida. Moreover, there is no legal requirement that defendant must search for positions in her current location, before she can seek to change her domicile. Furthermore, as the trial court found, the move to Florida would result in plaintiff having the same or more time with the child than he would have had if the child stayed in Michigan. Taken together, the trial court's findings with regard to factor (b) are not against the great weight of the evidence.

Plaintiff further argues that the trial court erred in finding that factor (c), the degree to which the trial court is satisfied that the modification in the parenting time schedule will adequately preserve the relationship between the child and both parents, favored defendant. We disagree.

The trial court found that defendant's visitation plan, which, in the event of the move to Florida, allowed plaintiff extended visitation with the child during the summer and spring holidays, made up for the changes in the parenting schedule. The trial court concluded that relocating the child to Florida would not interfere with plaintiff's relationship with the child. This finding is supported by the great weight of the evidence.

The evidence in the record indicates that for the majority of the child's life, plaintiff had parenting time with the child every other weekend for a total of 52 nights a year. Plaintiff also had parenting time with the child every Tuesday and Thursday after school until 8:00 p.m., but plaintiff rarely utilized that time because of the driving distance between his house and defendant's house and because the child had afterschool activities that interfered. Under the plan defendant agreed, in the event that defendant and the child move to Florida, plaintiff would have parenting time every summer from July 1 until August 15 for a total of 46 nights, every spring break for a total of ten nights, and every other Christmas for a total of 12 nights. Every year, plaintiff would thus have between 56 and 68 nights with the child. In addition, defendant agreed to allow the child to speak to plaintiff twice a week through a web camera via the computer. Defendant also testified that plaintiff could spend as much time with the child as he wanted whenever plaintiff was in Florida. While it is true that plaintiff would not see the child as often if the child moved to Florida, plaintiff and the child would have more concentrated time together, which could be just as beneficial and may, as indicated at one point by the trial court, reduce the friction between the parties. In total, the trial court's finding that the parenting time schedule would adequately preserve plaintiff and the child's relationship is not against the great weight of the evidence.

Plaintiff next argues that the trial court erred in finding that the move to Florida would be in the child's best interest. We disagree.

If a modification of custody would change the established custodial environment of a child, there must be a showing that the change is in the child's best interest by clear and

convincing evidence. MCL 722.27(1)(c); *Sinicropi v Mazurek*, 273 Mich App 149, 178; 729 NW2d 256 (2006). A determination whether an established custodial environment exists is a question of fact. *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). The trial court's findings of fact are reviewed under the great weight standard and will be affirmed unless the evidence clearly preponderates in the opposite direction. *McIntosh v McIntosh*, 282 Mich App 471, 474-475; 768 NW2d 325 (2009).

Child custody disputes, including changes of domicile that alter established custodial relationships, must be resolved in the child's best interests, according to the factors set forth in the Child Custody Act (CCA) at MCL 722.23. *Harvey v Harvey*, 470 Mich 186, 187; 680 NW2d 835 (2004); *Brown*, 260 Mich App at 590-591. The custodial environment of a child is established if, over an appreciable period of time, the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. MCL 722.27(1)(c); *Pierron v Pierron*, 486 Mich 81, 85-86; 782 NW2d 480 (2010). An established custodial environment may exist with both parents when a child looks to both his mother and father for guidance, discipline, the necessities of life, and parental comfort. *Berger v Berger*, 277 Mich App 700, 707; 747 NW2d 336 (2008).

In this case, the trial court concluded, "relocation of the minor child to the State of Florida would effectively change the established custodial environment as to parenting time, and, therefore, the best interest factors must be considered in conjunction with the statutory factors promulgated under MCL 722.31." After analyzing the best interest factors, the trial court further found:

> [C]hanging the domicile of the minor child from Michigan to Florida would have the capacity to improve the minor child's quality of life, would not be deleterious to plaintiff's ability to foster a parental relationship with the minor child, would not severally [sic] curtail the child's parenting time opportunities between plaintiff and the minor child, is not tantamount to a material change of custody or change in the established custodial environment, and, in effect, would provide plaintiff the benefit of additional uninterrupted and less contentious parenting time with the minor child.

The trial court appears to be contradicting itself by first indicating that the new parenting time schedule would alter an established custodial relationship and then asserting that the parenting time schedule would not alter that relationship. Nevertheless, the trial court proceeded in the more cautious manner, as though the move would, in fact, alter the established custodial environment, and employed the proper analysis in determining whether the move would serve the best interests of the child.

The CCA sets out "the following factors to be considered, evaluated, and determined by the court" to establish the best interests of a child:

> (a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute. [MCL 722.23.]

Plaintiff argues that the trial court erred in finding that factor (d), the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment, favored defendant. We disagree.

The trial court concluded that factor (d) favored defendant because "defendant has proven herself capable of providing a stable environment for the benefit of the minor child." It further found that "the minor's child's primary residence has been with defendant for an appreciable part of his life, and defendant has been successful in providing a stable, nurturing, and dependable living environment for the child over the years." These findings are supported by the evidence.

The evidence in the record indicates that the child spent the majority of his life residing with defendant and Stromik and his two sisters. Defendant and Stromik have provided a stable, nurturing and dependable environment for the child, which has allowed the child to excel in school and to be, by all accounts a generally happy child. Plaintiff, in fact, acknowledged that defendant is a good mother and did a great job teaching the minor child. Plaintiff has also been

there for the child and has provided guidance to the child, but the evidence in the record indicates that he frequently had others involved in the exchange of the child between defendant and plaintiff, and did not utilize all of the parenting time available to him. As a result, the trial court's finding that this factor favored defendant is supported by the evidence.

Plaintiff further argues that the trial court erred in finding that factor (j), the willingness of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, was neutral when it should have found that this factor favored plaintiff. We disagree.

The trial court's finding that this factor is neutral because "the parties mutual lack of an ability to foster an affirmative relationship with the other parent is equally abysmal" is supported by clear and convincing evidence. In this case, although they complied with the court orders, both parties did not seem interested in facilitating a relationship between the child and the other parent. According to Dr. Frieberg, defendant would interrogate the child when he returned from visits with plaintiff. She and Stromik also told the child that plaintiff was a drug dealer and a bad parent. While defendant occasionally denied or interfered with plaintiff's parenting time, she would also occasionally allow plaintiff additional time with the child outside of the parenting schedule. On the other hand, plaintiff told the child that defendant and Stromik were racist, and at least once refused to allow the child to return home to defendant's house after a weekend visitation ended. Plaintiff also forced the child to choose between football practice, which defendant and Stromik wanted him to go to, and time with plaintiff, putting the child in a very difficult position. Altogether, this factor favored neither party.

Plaintiff does not question on appeal the trial court's findings with regard to the other factors in the best interest analysis. As a result, the trial court's findings, that the move to Florida was in the child's best interest, are supported by clear and convincing evidence. Ultimately, given that the trial court did not err with regard to its findings on the factors in MCL 722.31(4) and the best interest factors under MCL 722.23, the trial court did not abuse its discretion in granting defendant's motion for change of domicile.

Affirmed.

/s/ Karen Fort Hood
/s/ Christopher M. Murray
/s/ Deborah A. Servitto