STATE OF MICHIGAN

COURT OF APPEALS

JESSICA ELIZABETH MASON, Plaintiff-Appellant, v MICHAEL WILLIAM SHIER, Defendant-Appellee.	UNPUBLISHED February 20, 2018 No. 340194 Mecosta Circuit Court LC No. 2016-023399-DM
JESSICA ELIZABETH MASON, Plaintiff-Appellant, v ERIC IAN STEPHENS, Defendant-Appellee.	No. 340216 Osceola Circuit Court LC No. 03-009777-DS

Before: MURPHY, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff, Jessica Elizabeth Mason, moved to change the residence of two of her minor children to Knoxville, Tennessee, where she planned to live with her fiancé, Kenneth Michael Hensley. The father of each child, defendant Michael William Shier and defendant Eric Ian Stephens, opposed the motion, and the trial court denied the motion. Mason appeals the trial court's order as of right in this consolidated appeal.[1] We affirm.

I. BACKGROUND

[1] *Mason v Shier*, unpublished order of the Court of Appeals, entered November 3, 2017 (Docket Nos. 340194 and 340216).

Mason lived with her three children in Hersey, Michigan. Mason's oldest child was the son of defendant Stephens. The father of Mason's middle child was deceased, so Mason had sole custody of this child. Mason's youngest child was the daughter of defendant Shier.

According to the terms of the parenting time order, Mason and Stephens alternated weekends, major holidays, the child's birthday, and spring break each year. They shared summer break by alternating weeks, and they shared Christmas break by splitting it into two portions. Mason and Shier's consent judgment of divorce gave Shier each weekend except for the second weekend of the month. Mason and Shier alternated the child's birthday, major holidays, and spring break each year. They also equally shared summer break by alternating weeks and Christmas break by splitting it in two portions.

Mason became engaged to Hensley in March 2017. Hensley lived in Knoxville, Tennessee. Accordingly, Mason moved for a change of residence to move the children to Knoxville. Mason proposed changing Stephens' parenting time to every summer break (except for the last week to accommodate school registration), in addition to alternating spring break, Thanksgiving break, and winter break. She proposed changing Shier's parenting time to summer break (except for the last week), spring break, Thanksgiving break, and alternating winter breaks. Defendants opposed Mason's motion, and the trial court denied the motion.

II. STANDARD OF REVIEW

This Court reviews a trial court's determination regarding a motion to change the residence of a minor child for an abuse of discretion. *McKimmy v Melling*, 291 Mich App 577, 581; 805 NW2d 615 (2011). The trial court abuses its discretion when its decision falls "outside the range of reasonable and principled outcomes." *Kalaj v Khan*, 295 Mich App 420, 425; 820 NW2d 223 (2012). This Court reviews the trial court's findings of fact under the great weight of the evidence standard. *Brown v Loveman*, 260 Mich App 576, 600; 680 NW2d 432 (2004). This Court will not substitute its own judgment for that of the trial court "on questions of fact unless the facts clearly preponderate in the opposite direction." *McKimmy*, 291 Mich App at 581.

III. DISCUSSION

When a court order governs a child's custody, the child has a legal residence with each parent. MCL 722.31(1). Generally, a parent cannot change a child's legal residence to a place that is more than 100 miles away. MCL 722.31(1). When a parent moves to change the child's legal residence to a place more than 100 miles away, the trial court must consider the following factors with a primary focus on the child:

> (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).]

The moving parent must establish that the change is warranted by a preponderance of the evidence. *McKimmy*, 291 Mich App at 582.

In this case, the trial court found no evidence pertinent to factors (d) and (e) when it denied Mason's motion to change the children's legal residence, nor does Mason raise any arguments about these factors. Therefore, we limit our discussion to factors (a), (b), and (c).

A. MCL 722.31(4)(a)

Various considerations are relevant to whether the proposed change has the capacity to improve the child's life. For example, a relocating parent's substantial increase in earning potential may improve the quality of a child's life. *Brown*, 260 Mich App at 601. The bond between siblings is also an appropriate consideration. *Id*. at 602. Similarly, a trial court may consider the proximity to extended family, which would be helpful for the provision of child care when necessary. *Rittershaus v Rittershaus*, 273 Mich App 462, 466-467; 730 NW2d 262 (2007).

The trial court ruled that Mason showed how the move would improve her quality of life but not how the move had the capacity to improve the children's quality of life. The trial court acknowledged that the children would live in a nicer home but found no evidence that their quality of life would otherwise improve. The trial court noted the absence of evidence that the children were not thriving in the Reed City schools. The trial court found Mason's testimony that the Knoxville schools were superior to the Reed City schools the children currently attended to be minimally persuasive. The trial court further noted that the children had no family in Tennessee, but other family members, including Shier's daughter, lived nearby in Michigan.

The record in this case supports the trial court's ruling. Mason showed that the prospective move to Tennessee would allow her to decrease her regular expenses while continuing to work at Hensley's business. Mason intended to look for work after relocating, but she did not specify what efforts she made to find work in her field in Knoxville except to check the state job postings. On the other hand, the children would have no family in Tennessee besides their mother, and the youngest child was bonded with her half-sister, Shier's other daughter, who would remain in Michigan.

Regarding the two school systems, Mason testified that her internet research showed that the Knoxville schools were superior to the Reed City schools, but she never contacted or visited the schools in Knoxville. Evidence comparing the quality of different school districts that use "different 'proficiency standards' " has limited value. *Gagnon v Glowacki*, 295 Mich App 557, 567; 815 NW2d 141 (2012). Therefore, the trial court's finding that Masons' internet research was not persuasive was not against the great weight of the evidence.

Mason further argues that the trial court did not acknowledge testimony that her oldest child was struggling in school. Evidence about a school's superiority is not persuasive in the absence of evidence about the child's existing school to facilitate a comparison between the existing school and the new school. *Yachcik v Yachcik*, 319 Mich App 24, 41-42; 900 NW2d 113 (2017). Although Mason is correct that the trial court did not address testimony that the oldest child was struggling in school, Mason did not show how he struggled in the existing school or how his academic performance would improve in the Knoxville school. Moreover, there was no testimony that the younger child was not thriving in school in Michigan.

Mason also argues that the trial court incorrectly held that a determination that the children were thriving in Michigan categorically precluded a change in domicile. The trial court did not make this determination, however, and the fact that the children were thriving in Michigan was not dispositive of the trial court's analysis of factor (a). In short, Mason has not shown that the trial court's findings of fact went against the great weight of the evidence.

B. MCL 722.31(4)(b)

The trial court determined that both defendants complied with parenting time orders and that Mason's motion to change the children's legal residence was not meant to frustrate the parenting time schedules. The trial court acknowledged testimony that Stephens had not exercised parenting time during spring break and winter break but found that Mason prevented him from doing so.

Mason challenges the trial court's conclusion that Stephens exercised his parenting time. Stephens testified that he had not obtained a copy of the parenting time order until commencement of this action. Nevertheless, Stephens was not absent from his son's life, taking care of his son for approximately 87 of the allotted 103 overnights annually. Moreover, both defendants testified that Mason had denied Stephens parenting time. Although Mason denied this testimony, the trial court credited defendants' testimony. This Court defers to the trial court's credibility determination. See *Gagnon*, 295 Mich App at 568. Therefore, the record supports the trial court's findings of fact regarding Stephens's parenting time.

C. MCL 722.31(4)(c)

When analyzing factor (c), "weekly visitation is not possible when parents are separated by state borders." *Brown*, 260 Mich App at 603 (quotation marks and citation omitted). The relevant inquiry is not whether the proposed parenting plan is superior to the existing plan but whether the proposed plan provides "a realistic opportunity to preserve and foster" the child's existing relationship with the nonrelocating parent. *McKimmy*, 291 Mich App at 584 (quotation marks and citation omitted).

The trial court ruled that the proposed move did not give defendants a realistic chance to remain involved in their children's academic and extracurricular activities during the school year. The trial court found that the frequency of the proposed schedule deprived defendants of this opportunity, even though the proposed change resulted in a similar number of overnights.

Mason contends that the trial court abused its discretion because it failed to realize that her proposed parenting plan would not substantially reduce defendant Shier's overnights and would increase the overnights allotted to defendant Stephens. Mason effectively champions her proposed plan as superior, but she does not address the trial court's concern that separating the children from their fathers during the school year interferes with the continuity of each defendant's relationship with his child.

Mason also argues that the evidence did not suggest that her proposed parenting plan precluded defendants from participating in the scholastic or extracurricular activities of their children. Mason further asserts that the record does not indicate that either defendant was very involved with these activities before these proceedings. With regard to defendant Shier, Mason is incorrect. Shier has attended some parent-teacher conferences, knew his daughter's teacher's name, and was involved in his daughter's progress in school. Although Stephens was not similarly involved in his son's activities, conflicting testimony shows that Mason may have actively hindered Stephens from interacting with his son. Accordingly, the evidence supported the trial court's conclusion that Mason's proposed parenting schedule did not provide a realistic opportunity to preserve the current relationships between defendants and their children. In sum, the trial court did not abuse it discretion by denying Mason's motion to change the children's legal residence because she did not establish the factors listed in MCL 722.31(4) by a preponderance of the evidence.

We affirm.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly