IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re RYLEE ROGERS, Child, DIANA LYNN ROGERS, Petitioner, and CHRISTOPHER KAYE ROGERS, Respondent.	No. 41140-7-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — Diana Rogers (now known as Diana Driskill and hereinafter referred to as Driskill), formerly married to Christopher Rogers, appeals the trial court's order preventing her from relocating with their daughter to Kentucky. Finding no abuse of discretion, we affirm.

Facts

Driskill and Rogers divorced in 2005 after six years of marriage. Driskill was granted primary residential custody of Rylee, their five-year-old daughter. In 2008, Driskill married Rickie Driskill, her fifth husband, after he moved to Washington from his home in Kentucky.

On May 25, 2009, Driskill gave notice of her intent to relocate with nine-year-old Rylee to Kentucky and her husband's former home. Driskill asserted that her husband was having difficulty finding employment in Washington, that his aging parents in Kentucky needed their assistance, and that she had employment opportunities in Kentucky. At the time, Driskill was employed as a warranty manager for a car dealer and had been so employed since 2003. Driskill subsequently quit her job and leased her home in anticipation of the move to Kentucky.

Rogers objected to the proposed relocation, arguing that Driskill was pursuing a "geographical fix" for financial problems, that Rylee would suffer emotional trauma from a move to rural Kentucky, and the move's long-term prospects were poor. Clerk's Papers (CP) at 15. A commissioner entered a temporary order restraining Rylee's relocation based on the likelihood that, on final hearing, the court would not approve it. The trial court denied Driskill's motion for revision and the matter came to trial.

After Rogers, Driskill, and three witnesses testified, the trial court weighed the statutory relocation factors on the record. One of the eleven factors was inapplicable, six were neutral, and four weighed against relocation. The trial court denied the requested relocation and entered written findings of fact and conclusions of law supporting that denial. After the court denied Driskill's motion for reconsideration, she filed this appeal.

Discussion

Application of Relocation Factors

Driskill argues first that the trial court abused its discretion by failing to apply the presumption in favor of relocation to the statutory factors it characterized as neutral.

A trial court has discretion to grant or deny a relocation after considering the RCW

26.09.520 relocation factors and the interests of the child and her parents. *In re Marriage of Horner*, 151 Wn.2d 884, 894, 93 P.3d 124 (2004); *In re Marriage of Fahey*, 164 Wn. App. 42, 56, 262 P.3d 128 (2011), *review denied*, 173 Wn.2d 1019 (2012). RCW 26.09.520 creates a rebuttable presumption in favor of allowing relocation. *In re Marriage of Pennamen*, 135 Wn. App. 790, 801, 146 P.3d 466 (2006). To rebut this presumption, the objecting party must demonstrate "that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person" based on the 11 factors specified. RCW 26.09.520. These factors, which are not weighted or based on any particular order, consider

> (1) [t]he relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
>
> (2) Prior agreements of the parties;
>
> (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
>
> (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191 [which limits residential time if the parent has engaged in willful abandonment, abuse, domestic violence or assault];
>
> (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
>
> (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
>
> (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
>
> (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
>
> (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
>
> (10) The financial impact and logistics of the relocation or its prevention; and
>
> (11) For a temporary order, the amount of time before a final decision can be made at trial.

RCW 26.09.520; *Horner*, 151 Wn.2d at 887-88.

The trial court must consider all of these child relocation factors, thus ensuring that it evaluates the interests of the child and the relocating person within the context of competing interests and circumstances. *Horner*, 151 Wn.2d at 895. The court should enter written findings on each factor but may focus on the factors most relevant in a given case. *Horner*, 151 Wn.2d at 895; *Pennamen*, 135 Wn. App. at 804.

Here, the trial court entered written findings after considering each factor listed above. The court found that factors 1, 6, 8, and 9 weighed against relocation. Rylee had strong bonds with both parents and extended family in Washington, but no family in Kentucky other than that of her stepfather. RCW 26.09.520(1). The proposed relocation would negatively affect Rylee's emotional development because the extended families of both Driskill and Rogers were in Washington or nearby, and Rylee would be isolated from them in Kentucky. RCW 26.09.520(6). The arrangements Driskill had proposed for allowing Rogers access to Rylee—i.e., web-cam, internet, telephone and mail contact, as well as visits—would not mitigate the loss of personal contact between the two. The court further noted that it did not appear that Driskill and her husband could afford to fly Rylee back to Washington very often. RCW 26.09.520(8). Finally, in considering the alternatives to relocation, the court found that Driskill had not shown she could not obtain employment in Washington, and she owns a house in Pierce County. Rylee's stepfather was not the sole source of care for his parents in Kentucky; several members of his family live nearby. The court also found that it was not realistic for Rogers to relocate to Kentucky. He has established his professional reputation as a union glazier in western

Washington, and there was no showing that he could transfer his union membership to Kentucky or obtain a job there. RCW 26.09.520(9).

Factor 11 did not apply because a temporary order was not at issue. RCW 26.09.520(11). The court found the remaining statutory factors neutral in their impact on the proposed relocation. There was a tacit understanding but no firm agreement between the parties that Driskill would not relocate with Rylee. RCW 26.09.520(2). The court found that disrupting contact between Rylee and Driskill, the primary residential parent, would be more detrimental to Rylee than disrupting contact with Rogers, but it again noted that alternatives to relocation existed in that Rickie Driskill's family could take care of his parents. RCW 26.09.520(3). No limitations under RCW 26.09.191 existed for either parent. RCW 26.09.520(4). Driskill had a good reason for seeking the proposed relocation, and Rogers had a good reason for opposing it. RCW 26.09.520(5). The resources and opportunities available to Rylee in Washington and Kentucky were roughly equal. RCW 26.09.520(7). Finally, although not allowing the proposed relocation would have a negative financial impact on Driskill's family, much of that impact was of her own making. Before obtaining the court's resolution of the proposed relocation, Driskill resigned from a "very good job" and leased out her house for two years. CP at 297. As a result, the financial impact factor was also neutral regarding the proposed relocation. RCW 26.09.520(10).

After finding that six factors were neutral and that four weighed against relocation, the court concluded that the detrimental effect of the proposed relocation on Rylee outweighed its

beneficial effect. As a consequence, Rogers had rebutted the statutory presumption in favor of her proposed relocation. *Pennamen*, 135 Wn. App. at 801.

Driskill argues on appeal that the court should have interpreted the six neutral factors as favoring the presumption in favor of relocation. She contends that with the presumption applying to those six factors, the court would have had no choice but to permit the proposed relocation.

Rogers responds that Driskill has not assigned error to any of the court's findings, thereby rendering them verities on appeal. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Rogers also correctly asserts that there is no authority requiring courts to consider factors found to be neutral on the relocation question to actually weigh in favor of relocation. By characterizing several factors as neutral, the court found by definition that they did not weigh either for or against relocation. We will not reassess the factors on appeal and come to a different resolution. *See Pennamen*, 135 Wn. App. at 803 (declining to reweigh statutory factors and come out differently).

Furthermore, the trial court rejected Driskill's argument that the six neutral factors outweighed the remaining factors when it denied her motion for reconsideration. The court observed that "even if the findings on the 'neutral' factors are interpreted as supporting the presumption in favor of relocation, the findings on the four factors that weighed against relocation carried enough weight to overcome the presumption in favor of relocation." CP at 313. The trial court considered all of the statutory factors and found that four rebutted the statutory presumption and weighed against relocation. The court did not abuse its discretion in making that determination and denying the proposed relocation.

Harm Caused by Relocation

Driskill also argues that the trial court erred by denying the proposed relocation because any harm the move to Kentucky would cause Rylee would be only the normal harm caused by any move. As support for this standard, she cites *In re Marriage of Littlefield*, 133 Wn.2d 39, 940 P.2d 1362 (1997). *Littlefield* interpreted RCW 26.09.191(3), which allows trial courts to restrict a parent's actions under a parenting plan. 133 Wn.2d at 54. To restrict the primary residential parent's relocation, the Supreme Court held in *Littlefield* that a trial court would have to find the harm caused by the proposed relocation to be "more than the normal distress suffered by a child because of travel, infrequent contact of a parent, or other hardships which predictably result from a dissolution of marriage." 133 Wn.2d at 55.

The legislature subsequently enacted the child relocation act, codified at RCW 26.09.405 to .560, and expressly overruled *Littlefield* as the judicial standard for relocations. Laws of 2000, ch. 21, § 1; 20 Scott J. Horenstein, Washington Practice: Family and Community Property Law, § 33.26 at 103 (Supp. 2011). Consequently, the decision has little precedential value, particularly where the relocation standards articulated in RCW 26.09.520 are at issue. *Pennamen*, 135 Wn. App. at 803. We decline to apply it here.

In addition to citing *Littlefield*, Driskill maintains that the trial court failed to look at the financial reality of her situation and at the evidence showing that denying Rylee's relocation would be far more detrimental than allowing it. Here again, she asks us to weigh the evidence,

which we cannot do. *Fahey*, 164 Wn. App. at 62. The trial court considered the same testimony that Driskill cites and reached a different conclusion. We find no abuse of discretion and affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

VAN DEREN, J.

WORSWICK, A.C.J.