

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Marriage of)	No. 36317-1-III
)	
SANDRA KAY HUNT,)	
)	
Respondent,)	
)	
and)	UNPUBLISHED OPINION
)	
SAMUEL EARL HUNT,)	
)	
Appellant.)	

LAWRENCE-BERREY, C.J. — Samuel Hunt appeals the trial court’s order allowing Sandra Hunt to relocate with C.H., their son, from Pullman, Washington, to Vancouver, Washington. He argues the evidence does not support several of the trial court’s findings. We decline his invitation to reweigh the evidence. Instead, we review whether there is “substantial evidence” to support the challenged findings. Because there is, we affirm the trial court’s order.

FACTS

Sandra and Samuel were married. They had one child, C.H., born in March 2009.¹ The couple separated when C.H. was 1½ years old. In 2012, Sandra commenced

¹ When parties share the same last name, we often refer to them by their first names. This promotes clarity and avoids the overuse of “Ms.” and “Mr.” Also, we use initials to refer to minors. Gen. Order for the Court of Appeals, *In re Changes to Case Title* (Wash. Ct. App. Aug. 22, 2018).

dissolution proceedings. In March 2013, a decree of divorce and a final parenting plan were entered.

The final parenting plan gave Sandra primary residential placement of C.H. The parenting plan placed C.H. with Samuel every Wednesday night to Thursday morning, and every other Friday after work until Monday morning.

In November 2017, Sandra had Samuel served with a notice of intent to relocate with C.H. In the notice, she designated Lowell, Massachusetts, as the relocation city. Sandra also proposed a new parenting plan. Samuel objected to Sandra's intent to relocate. The matter came to trial in late May 2018.

Summary of trial testimony

Sandra's testimony

Sandra graduated from Washington State University (WSU) with a bachelor's degree in business administration. She works for WSU in Pullman, Washington, as an administrative assistant for the Carson College of Business. She has relatives in the Spokane and Pullman areas.

Beginning in late 2014, when C.H. entered kindergarten, Samuel began exercising less visitation than permitted by the parenting plan. For instance, Samuel chose not to exercise Wednesday-Thursday visitations with C.H. He also reduced his alternate

weekend time with C.H. by returning him to Sandra on Sunday afternoons or evenings. He also shortened his winter break time with C.H. from one week to two or three days. Samuel also chose not to exercise his two-week summer visitations with C.H.

Sandra wished to relocate to further her education and earn a master of business administration degree (MBA) and then a doctor of philosophy (PhD) so she could teach. There is no upward movement left for her at WSU in Pullman, Washington, and she cannot increase her earning capacity. The move and higher education would improve her earning potential and, in turn, her and C.H.'s lives.

Sandra was considering attending the University of Massachusetts (UMass) in Lowell, Massachusetts. She had applied for jobs with the surrounding schools in order to get a tuition waiver but had yet to be offered a job. Completing the MBA and PhD programs at UMass would take at least six years.

As an alternative, Sandra offered to relocate to Vancouver, Washington. There, she could meet her higher education needs, yet keep C.H. closer to Samuel and his side of the family. WSU has a campus in Vancouver that would give her an opportunity to continue her employment—but she had yet to receive an offer for a position. If allowed to relocate with C.H. to Vancouver, she plans to use WSU's employee tuition waiver at a

community college to increase her quantitative skills for the Graduate Management Admission Test (GMAT), and then apply to Portland State University for her MBA.

Sandra has explored many other career options around the Pullman area, but conceded that she did not explore every private-employer career option outside WSU. WSU has an online MBA program—but it is not offered to WSU employees as part of the tuition-waiver. It would cost Sandra \$30,000 over two years to complete that program.

Sandra is unwilling to relocate without C.H. She testified that she and C.H. have an incredible bond—they spend almost every day together. C.H. confides in Sandra, and she supports his emotional, physical, and developmental needs. Sandra and C.H. travel, hike, and do outdoor activities together.

Samuel's and other paternal-side witness's testimonies

Samuel lives in Moscow, Idaho, which is near Pullman, Washington. He operates a butcher shop and helps run the family farm. His mother, father, sister, and various other relations live in the area.

Samuel objected to Sandra's request to relocate. Since Sandra's relocation request, Samuel has exercised his full visitation time under the parenting plan. He has a great relationship with his son. C.H. has told Samuel he wants to be a butcher. C.H. has also shown an interest in the family farm.

When C.H. visits, he spends time with Samuel's extended family. C.H.'s step-grandfather has taught him how to work on the farm, drive a tractor, and shoot an air-soft gun. C.H.'s uncle teaches him farm skills, adventures outside with him, and they play games with each other. C.H.'s aunt has taught him to cook. C.H. helps his grandparents with the farm animals and fishes with them. C.H.'s relationship with Samuel's wife is good; they cook together, take care of the animals together, and do other family activities together.

Relocation would be detrimental to C.H. C.H. is gravitating toward Samuel's lifestyle—farming, outdoors, animals, and hunting—rather than Sandra's urban lifestyle. His quality of life will diminish without the outdoors and his extended family.

If C.H. stayed in the Palouse area, he would have a consistent lifestyle. It would be detrimental to C.H. to see his family for a block of time once or twice a year rather than consistent periods of time. If C.H. moves away, he will not have the same type of quality relationship with the farm, the animals, or his extended family on the Palouse. C.H. has cultural and educational opportunities—the Palouse has the Lewis and Clark Trail, museums, and historical monuments. C.H. has shown an interest in these things.

Dr. Kracke's testimony

Dr. Kevin Kracke, a licensed teletherapy provider and chief of psychology at the Idaho state hospital in Orofino, performed an evaluation on C.H. It was clear that C.H. was conflicted—he did not want to choose one parent over the other. As part of the evaluation, Dr. Kracke gave C.H. “three wishes.” Report of Proceedings (RP) at 54. C.H. wished for his parents to get back together and for more time with both grandparents. When asked to draw a picture of his “family,” C.H. drew a picture of Samuel, Sandra, Samuel’s parents, Samuel’s wife, and Sandra’s parents. RP at 56-58. Dr. Kracke concluded that C.H. had an equal attachment and loving relationship with both Sandra and Samuel.

The trial court approved Sandra’s alternative relocation to Vancouver, Washington, and entered written findings of fact. We quote the findings to which Samuel assigns error, and underline those portions of the findings he challenges on appeal:

4. Factors for/against move with children

Based on the factors listed below, the Court concludes that the planned move would not cause more harm to the child than good to the child and the mother who wants to move.

- a. **Relationships: Findings.** The court finds the following about the child’s relationships with each parent, any siblings, and other important people in the child’s life.

[C.H.] has a strong bond with both parents; as shown by Dr. Kracke's testimony, he is loyal to both of them.

[C.H.] has significant relationships with his paternal grandparents, step-grandfather and other relative of father. However, the major factor for the court to consider regarding the child's relationships, is his relationship with his parents. [C.H.] is closest to his mother.

....

- c. **Contact:** *Findings:* Disrupting the child's contact with the moving parent would not [sic]² be more harmful to him than disrupting their [sic] contact with the non-moving parent.

Mother is the backbone of the child's world; she provides the majority of his care, meets his physical and emotional necessities and attends to his medical and education needs. She is, and has been since he was 1½ years old, his primary parent. If Mother moved without [C.H.] he would feel abandoned.

Father's residential time with the child if mother relocates will be the same or more than what he is exercising now under the parenting plan in effect at the time of trial.

....

- e. **Reasons for moving:** *Findings:* Were Mother's reasons for moving given in good faith.

Mother is moving in an effort to better herself educationally and eventually to be better off financially. Mother's

² The findings, both in the preamble and in this paragraph, make it clear that the word "not" should be omitted.

betterment will be a betterment for the child. Mother's stated reasons for the move were articulate, reasonable and credible.

....

- g. Children: Findings:** How would allowing or preventing the move affect the child's physical, educational, and emotional development, considering their age, developmental stage, and needs (including any special needs) as follows.

[C.H.] has no special needs. Preventing [C.H.'s] move with mother would adversely affect his emotional development considering his age, developmental stage and needs.

[C.H.] at nine years of age, needs both parents. The court finds it is likely, however, that he will easily accept the relocation. He will still have his relationships in Whitman County.

- h. Quality of Life: Findings:**

The quality of life on the Palouse is excellent. Moving to an urban location, and away from a rural one, will add to, and expand [C.H.'s] life experiences. There is diversity of people, ideas and experiences in urban areas. There are a broad variety of opportunities in an urban area for both mother and [C.H.].

- i. Other arrangements: Findings:** What other arrangements are available to foster and continue the non-moving parent's relationship and contact with the child?

The father will have as much or more time under a new parenting plan than he is exercising currently under the plan. There is Facetime© and Skype© to keep [C.H.] and his father connected.

- j. **Alternatives:** *Findings:* What alternatives are there to the planned move, and is it possible or desirable for the non-moving parent to move too.

Mother has no opportunity for career advancement and therefor [sic] no increased earning capacity if she remains on the Palouse.

Given Father's specialized skill set as a butcher, and the fact that he owns two local butcher shops and a ranch, it is not possible for him to move too.

....

5. **Changes to parenting/custody order**

Change — There are valid reason [sic] to change the parenting plan because the court is allowing the child to move and the change is in the child's best interest, considering the move. The new parenting plan will not change the parent with whom the child is scheduled to reside a majority of the time.

The Court will sign the Final Parenting Plan (Relocation) which will take effect when the mother and child move to the Vancouver, Washington, area in December, 2018. Until then the Final Parenting Plan entered on March 15, 2013, shall remain in full force and effect.

Clerk's Papers (CP) at 111-14 (emphasis added).

The trial court entered a new parenting plan, effective once Sandra and C.H. relocate. It gives Samuel more visitation time during winter and summer breaks, gives Samuel several holiday visits, and gives Samuel the right to have weekend visits every week in Portland, Oregon, subject to proper notice.

Samuel timely appealed the trial court's ruling.

ANALYSIS

The "Child Relocation Act"

Under the Child Relocation Act, RCW 26.09.405-.560, when parents share residential time, the parent with primary placement must provide notice of any intention to relocate. RCW 26.09.430. If the nonrelocating party objects, the matter receives an accelerated hearing. RCW 26.09.560.

By statute, there is a rebuttable presumption that a custodial parent's request to relocate will be allowed. RCW 26.09.520. The statute both incorporates and gives substantial weight to the traditional presumption that a fit parent will act in the best interests of his or her child. *In re Marriage of Horner*, 151 Wn.2d 884, 895, 93 P.3d 124 (2004) (quoting *In re Custody of Osborne*, 119 Wn. App. 133, 144-45, 79 P.3d 465 (2003)).

"A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon [11 statutory factors]." RCW 26.09.520. The 11 factors are not weighted, and none are more important than the others. RCW 26.09.520; *Marriage of Horner*, 151 Wn.2d at 894.

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Standard of review

Samuel contends the trial court erred because the evidence did not support its findings on the statutory elements of RCW 26.09.520. Citing *In re Marriage of Pennamen*, 135 Wn. App. 790, 146 P.3d 466 (2006), Samuel invites us to reweigh the evidence. *Pennamen* does not stand for this proposition. Rather, the *Pennamen* court wrote:

The decision about whether the detrimental effects of relocation outweigh the benefits to the child and the relocating parent is inherently subjective. An appellate court may not substitute its findings for those of the trial court where there is sufficient evidence in the record to support the trial court's determination.

Id. at 802-03 (footnote omitted).

We review a trial court's findings on a particular statutory factor for substantial evidence. *In re Marriage of Kim*, 179 Wn. App. 232, 244, 317 P.3d 555 (2014).

“‘Substantial evidence’ exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Id.* (internal quotation marks omitted) (quoting *In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011)).

Application of law to evidence

We begin by recognizing three principles. First, there is a statutory presumption that a custodial parent's request to relocate will be allowed. Second, the party objecting to relocation may rebut this presumption by demonstrating, based on 11 statutory factors, that the detrimental effect of relocation on the child and the relocating spouse outweighs the benefit of relocation. Third, an appellate court affirms a trial court's finding of fact if evidence in the record is sufficient to persuade a fair-minded, rational person of the truth of that finding.

Factor 1: Relationship

The trial court found that C.H. has a strong bond with both parents and significant relationships with his paternal grandparents, step-grandfather, and other relatives of the father. The court noted, however, that C.H.'s relationship with his parents was the most important relationship for it to consider³ and found that C.H. is closest to his mother.

Despite the number of witnesses called by Samuel, we cannot ignore the un rebutted evidence that Sandra has primarily cared for C.H. throughout his life. She

³ Samuel does not argue the trial court erred in attaching more weight to this one factor than any other. By noting this, we do not imply the trial court erred in doing so.

testified about their very close relationship. Given our deferential standard of review, the evidence is sufficient to sustain the trial court's finding that C.H. is closest to his mother.

Factor 3: Disruption of parental contacts

Similarly, there is sufficient evidence to support the trial court's finding that it would be more detrimental to C.H. if his contact with his mother was disrupted by not permitting him to relocate with her. This is especially true, here, where the new parenting plan allows Samuel as much or more visitation with C.H.

Factor 5: Reasons for moving

Substantial evidence supports the trial court's finding that Sandra's reason to move was given in good faith.

Factor 6: Age and emotional development

The trial court found that preventing C.H. from relocating with his mother would adversely affect his emotional development and, although he needs both parents, he would still have his relationships in the Palouse area.

Samuel argues C.H.'s connection to the farm and his relatives is particularly strong and should take precedence over relocating with Sandra. But appellate courts do not reweigh evidence. Here, the trial court found, and substantial evidence supports its finding, that C.H.'s relationship with Sandra is sufficiently important that it must be

protected. This finding is consistent with the view that the new parenting plan allows Samuel as much or more visitation time with C.H.

Factor 7: Quality of life

The trial court found the quality of life on the Palouse is excellent. It also found that moving to an urban area will add to and expand C.H.'s life experiences and that there are a broad variety of opportunities in an urban area for C.H.

Samuel argues the opportunities of rural life are enriching, whereas urban life would be isolating for C.H., and urban areas are rife with moral traps, crime, drugs, gangs, and moral debauchery. He fails to cite testimony in the record to support his argument. We will not presume the area where Sandra intends to relocate with C.H. in Vancouver, Washington, is as rife with crime, drugs, gangs, and moral debauchery as Samuel suggests.

In addition, Samuel's argument requires us to reweigh the evidence. We will not do this. Substantial evidence—meaning sufficient evidence to persuade a fair-minded, rational person—supports the trial court's finding that moving to an urban area will expand C.H.'s life experiences.

Factor 8: Other arrangements

The trial court found that Samuel will have as much or more time under the new parenting plan that he is exercising currently under the plan, and that Facetime and Skype would keep Samuel and C.H. connected.

Samuel does not dispute that his time with C.H. will be as much or more under the new parenting plan. Rather, he argues that social media is not a substitute for in-person contact.

We agree. But the trial court did not substitute social media for in-person contact. The trial court simply noted that social media can supplement in-person time. Samuel is afforded the same, if not more, residential in-person time under the new parenting plan.

Factor 9: Alternatives

The trial court found that Sandra did not have an opportunity to advance her career unless she moved and that moving, for Samuel, was not reasonable.

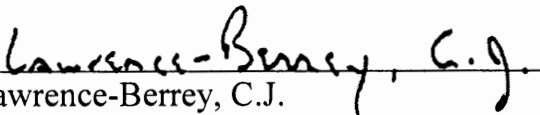
Samuel argues Sandra did not have to move—that she could have completed her master’s degree on-line. Although she could have done this, it would have cost her \$30,000 to do so. Whether this cost is a *reasonable* alternative is inherently factual. A fair-minded, rational person could find that it was not.

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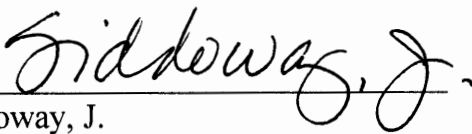
Concluding remarks

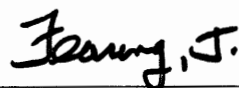
There is a rebuttable presumption that a custodial parent's request to relocate will be allowed. To rebut this presumption, Samuel is required to establish, based on the 11 statutory factors, that the detrimental effect of relocation on C.H. and Sandra outweighs the benefit of relocation. The deferential standard of appellate review results in our upholding the trial court's findings on the challenged central factor and the challenged statutory factors. We, therefore, affirm.

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


Lawrence-Berrey, C.J.

WE CONCUR:


Siddoway, J.


Fearing, J.