

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

ANN M. VALENTINE,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-12-320
	:	<u>OPINION</u>
- vs -	:	2/6/2012
	:	
CHARLES E. VALENTINE,	:	
Defendant-Appellee.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR2002-02-0220

Fred S. Miller, Baden & Jones Building, 246 High Street, Hamilton, Ohio 45011, for plaintiff-appellant

Charles E. Valentine, N. 7096 Path of the Wolf, Oneida, Wisconsin 54155, defendant-appellee, pro se

Helen M. Kendrick, 8050 Beckett Center Drive, Suite 202, West Chester, Ohio 45069, Guardian Ad Litem

HUTZEL, J.

{¶1} Plaintiff-appellant, Ann M. Valentine ("Mother"), appeals from the decision of the Butler County Court of Common Pleas denying her motion to reallocate parental rights and responsibilities and allowing defendant-appellee, Charles E. Valentine ("Father"), to

relocate outside of Ohio with the parties' minor children. We disagree, and find that the trial court did not abuse its discretion in denying Mother's motions.

{¶2} The parties to this action were married on September 24, 1996 and have two children: Kathryn, born in 1997, and Alyssa, born in 1999. The parties divorced in January 2003, and the judgment entry and decree of divorce named Mother the sole residential parent.

{¶3} The parties have a long history of legal disputes and have continuously disagreed, fought, and argued with one another over the children. Following one dispute, in November 2004, Father was named the residential parent of the parties' minor children. Mother was granted the standard order of parenting time, with modifications, to occur every other weekend, Monday evenings, alternating holidays, and for an extended period in the summer.

{¶4} Sometime in 2008, Father remarried a former wife, Laurie. They were married previously from 1987 to 1991. Laurie is full-blooded Oneida Indian and lives on the Oneida Indian Reservation in Wisconsin. Due to the nuptials, on December 4, 2008, Father filed a notice of his intent to relocate to Wisconsin and a motion to modify parenting time of the nonresidential parent. In response, Mother filed several motions, including a motion to reallocate parental rights and responsibilities and designate her as the residential parent.

{¶5} On November 8, 2010, following a bench trial, the trial court issued a decision granting Father's motions and denying Mother's motions. The court modified Mother's parenting time to now occur every summer, including the July 4 holiday. The court split the remaining holidays between the parties according to the Butler County Parenting Guidelines.

{¶6} Mother testified at trial that the Valentine children have a brother presumably in Ohio. The record is devoid of further information about this child.

{¶7} Mother now appeals, raising a single assignment of error for review:

{¶8} "THE DOMESTIC RELATIONS COURT ERRED TO THE PREJUDICE OF PLAINTIFF-APPELLANT WHEN IT GRANTED APPELLEE'S MOTION TO RELOCATE TO WISCONSIN WITH THE CHILDREN AND DENIED APPELLANT'S MOTION TO REALLOCATE HER PARENTAL RIGHTS AND RESPONSIBILITIES."

{¶9} Mother first argues that the trial court abused its discretion in finding Father's move did not constitute a change in circumstances because the move would disrupt the children's ongoing relationships in Ohio. Alyssa has special needs including attention deficit disorder and anxiety issues. Mother also asserts that the trial court abused its discretion in finding Father's move did not constitute a change in circumstances because there is a question as to the availability of services in Wisconsin to treat Alyssa's special needs.

{¶10} A trial court's decision regarding custody will not be disturbed on appeal absent an abuse of discretion. *Hetterich v. Hetterich* (Apr. 9, 2001), Butler App. No. CA2000-06-122, at 4. An abuse of discretion is more than an error in judgment or law and connotes that the trial court's decision is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When reviewing a trial court's decision, the reviewing court should be "guided by the presumption that the trial court's findings were indeed correct." *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74.

{¶11} Regarding the trial court's denial of Mother's motion to reallocate her parental rights and responsibilities, R.C. 3109.04(E)(1)(a) applies to such a modification and provides in relevant part:

{¶12} "The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to

serve the best interest of the child."

{¶13} Accordingly, before reallocating parental rights and responsibilities, a court hearing the request must first consider whether a change of circumstances has occurred. *Zinnecker v. Zinnecker* (1999), 133 Ohio App.3d 378, 383. The statute itself does not define "change in circumstances," but it is generally held that a change in circumstances is "an event, occurrence, or situation which has a material and adverse effect upon a child." *Hetterich*, Butler App. No. CA2000-06-122, at 4, quoting *Rohrbaugh v. Rohrbaugh* (2000), 136 Ohio App.3d 599, 604-605. It is well-settled that moving out of state and moving in with a new stepparent in and of itself does not constitute a sufficient change of circumstances to warrant a change of custody. *Hetterich* at 4, citing *Vincenzo v. Vincenzo* (1982), 2 Ohio App.3d 307, 308. See, also, *Salisbury v. Salisbury*, Portage App. Nos. 2005-P-0010, 2005-P-0084, 2006-Ohio-3543, ¶92. However, a proposed move along with a finding that the move will harm the welfare of the children involved or cause a disruption of ongoing relationships with extended family can constitute a change of circumstances. *Hetterich* at 4. See, also, *Duning v. Streck*, Warren App. Nos. CA2001-06-061, CA2001-06-062, 2002-Ohio-3167.

{¶14} At trial, Father testified he is retired from the U.S. Army and receives a military pension, which has enabled him to serve as the full-time caretaker of Kathryn and Alyssa. As such, Father has coordinated and participated in counseling sessions for Alyssa to address her attention deficit disorder and anxiety issues. Father testified that Alyssa receives counseling from a school psychologist twice a week during the school year and also sees a psychiatrist outside of the school once a month. Father's testimony revealed that the Indian Nation has a comprehensive medical center on the reservation and that Alyssa will "continue getting that care until the professionals tells [sic] me that she no longer needs it." However, Father testified he had not actually made any arrangements for Alyssa's continuing

counseling in Wisconsin. In addition, Father's testimony revealed that both Kathryn and Alyssa have an individual education program (IEP). Nonetheless, while Father testified that the children would attend a public school in Wisconsin, he testified he had not inquired as to what similar support services are provided by the Wisconsin school district.

{¶15} Father testified that in addition to his wife, Laurie, living in Oneida, Wisconsin, which is located approximately ten minutes west of Green Bay, he and Laurie have two children who live in Oneida. Father also has a 31-year-old daughter from another relationship living in Wisconsin who has four children similar in age to Kathryn and Alyssa. Father testified that over the past couple of years the children have become acquainted with their relatives in Wisconsin and have now become "pretty close."

{¶16} Father proposed in his testimony that Kathryn and Alyssa live with him in Wisconsin during the school year and spend the summer months with their mother in Ohio. He offered to provide video conferencing equipment to Mother to use in order to stay in contact with the children and proposed unlimited phone calls, exchange of gifts, and emails.

{¶17} According to Mother's testimony, she is currently attending school to become an aesthetician and nail technician. Her schooling involves classes and clinic hours that consist of up to 57 hours per week. Mother's testimony revealed that her schooling and clinic hours have interfered with her ability to attend events relating to the children, such as IEP meetings, but that once she finishes school she will be able to schedule a day off of work to attend the children's events. Mother also testified that she is currently receiving a disability check of approximately \$260 every two weeks and receives no additional assistance.

{¶18} Mother's testimony focused on the impact the move would have on her relationship with her daughters as their biological mother. She testified that she felt "that they would feel that I abandoned them because I wouldn't be seeing them for a whole entire year except for two and a half months." Mother testified that she would miss out on the day-to-day

interaction with the children, and it would be difficult to find out how they are doing in school. She also testified that the children "couldn't see their brother at Christmas." Mother contended that the children's friendships with other neighborhood children would suffer with the move, but conceded that the children are equipped to make new friends. Mother testified that it would be strenuous to visit the children in Wisconsin because of money, time off work, and lack of reliable transportation. Mother also testified that she previously wanted to move to New Jersey to be with her extended family but she chose not to because her children lived in Ohio.

{¶19} The testimony of the guardian ad litem (GAL) revealed that Mother acts inappropriately with her children such as talking negatively about Father in front of the children. The GAL believed that her "focus with the children has been to a large extent to try to get back at Dad over the past eighteen months" and that Mother is "overwhelmed in her current life and at this point it seems to be about proving Dad wrong rather than reach a resolution about the children." In contrast, while the GAL recognized Father is not perfect, she testified that, at this time in his life, his primary motivation seems to be the children. The GAL testified that she believed the move would benefit the children as they would be "removed from some of this situation of being questioned every week [and] of hearing Mom say derogatory things about Dad." The GAL also testified that Father's participation in counseling sessions has allowed him to better understand Alyssa's disabilities.

{¶20} In light of the foregoing, we cannot say the trial court abused its discretion in finding no change in circumstances had occurred. While Mother's testimony emphasized the impact the move would have on her relationship with the children, under the revised parenting time schedule her time with the children actually increased. See *Hetterich*, Butler App. No. CA2000-06-122 (finding the trial court did not abuse its discretion when it found there was no change in circumstances when the residential parent moved to Wisconsin with

child when other parent's parenting time would remain the same, albeit dispersed differently).

{¶21} Concerning disruption of relationships with extended relatives, there was no testimony from extended relatives regarding the impact the move would have on their relationship with the children. See *id.* (finding no abuse of discretion when the trial court did not find a change of circumstances with the residential parent's move when no extended relatives testified about their relationship with the child or the impact the move would have on such a relationship); see, also, *Zinnecker*, 133 Ohio App.3d 378. Mother even testified that she did not have "any family in Ohio" and that she was in Ohio without "any support" other than her friends. Testimony revealed that Mother's extended family is located in New Jersey. While there was some mention of the children having a brother presumably in Ohio, this was not emphasized, and the type of relationship (or lack of relationship) the girls have with their brother was not discussed. In contrast, while Father has some extended family in New York, Father's testimony focused on the children's already developing relationships with their half-siblings, nieces, nephews, and cousins in Wisconsin. Father testified that relationships have been built through visits to Wisconsin, and the GAL testified that the children "seem to be enjoying their relatives" in Wisconsin.

{¶22} Regarding other harm, while Mother expressed concern that a disruption of the children's IEPs and Alyssa's counseling would cause harm to the children, the trial court found that Mother did not present any proof of the move's negative impact on the children. The GAL testified she believed the school counselor in Ohio would help ensure school records are transferred early so services are in place for the children in Wisconsin at the beginning of the school year. The GAL's testimony also revealed that the counselor is willing to work with both parents and the children up until the time of the move. The trial court found that both the local school system and counselor indicated a willingness to work with Father to help provide a seamless transition to Wisconsin. In addition, the trial court found that the

Indian Nation provides comprehensive medical and educational opportunities.

{¶23} In support of her assertion that the move will harm the children, Mother relies on our decision in *Clontz v. Clontz* (Mar. 9, 1992), Butler App. No. CA91-02-027. In *Clontz*, this court found the trial court did not abuse its discretion in finding a change of circumstances with a residential parent's out-of-state move when the trial court focused on the "detrimental emotional harm the move would have on the children" as opposed to the move itself. *Id.* at 5. The trial court's decision in *Clontz* concentrated on the move's impact on the children's welfare based on the testimony of a psychiatrist who recommended that the children remain in state to "promote their feeling of security and prevent feeling of further loss" when the children were already under stress as a result of their parents' divorce. *Id.* In the case at bar, there was no testimony by a psychiatrist or other professional that the children would experience a further sense of loss or emotional harm with the move to Wisconsin. Conversely, the GAL testified that she believed the move to Wisconsin would actually benefit the children.

{¶24} After a thorough review of the record, given the facts and circumstances of this case, we cannot say the trial court abused its discretion in failing to find the move to Wisconsin would significantly disrupt the children's relationships with their extended family in Ohio or that a move to Wisconsin would cause additional harm to the children. Accordingly, the trial court did not abuse its discretion in failing to find a change in circumstances occurred by Father's proposed move to Wisconsin. The trial court properly denied Mother's motion to reallocate parental rights and responsibilities.

{¶25} We now turn to Father's notice to relocate to Wisconsin. R.C. 3109.051(G)(1), applies and states, in pertinent part:

{¶26} "If the residential parent intends to move to a residence other than the residence specified in the parenting time order or decree of the court, the parent shall file a

notice of intent to relocate with the court that issued the order or decree. * * * Upon receipt of the notice, the court, on its own motion or the motion of the parent who is not the residential parent, may schedule a hearing with notice to both parents to determine whether it is in the best interest of the child to revise the parenting time schedule for the child."

{¶27} Accordingly, absent a prior agreement or prior order of the court, the trial court's only option when an intent to relocate is filed by a residential parent wishing to move out of state with minor children is to hold a hearing to determine if the parties' parenting time schedule should be revised pursuant to R.C. 3109.051(G)(1) in consideration of the distance between the parties. *Acus v. Acus*, Madison App. No. CA2009-08-017, 2010-Ohio-856, ¶ 14; *Spain v. Spain* (June 21, 1995), Logan App. No. 8-94-30, 1995 WL 380067 at *2. Under such circumstances, while the trial court can properly modify the parenting time schedule, the trial court cannot prohibit the residential parent from relocating with the minor children. *Acus* at ¶ 14.

{¶28} In this case, the record is devoid of a prior agreement between the parties restricting the residential parent's ability to relocate, and there was no restriction placed on the residential parent's ability to relocate in any dispositional order.¹ With Father designated as the residential parent, the trial court did not have the authority to prevent his move to Wisconsin with the children but could only properly modify the parenting time schedule as it did in this case. Therefore, we cannot say the trial court erred in allowing Father to relocate to Wisconsin with the children.

{¶29} Accordingly, because the trial court did not abuse its discretion in denying

1. The parties' original judgment entry and decree of divorce required the residential parent to file an intent to relocate with the court and provide written notice to the nonresidential parent and several agencies but did not place restrictions on the residential parent's actual ability to relocate. Similarly, in the entry granting Father residential parent status, the only requirement is that a parent file a notice of relocation with the court and give notice to the nonmoving party as stated in the Butler County Domestic Relations Court Guidelines for Parenting Time.

Mother's motion to reallocate parenteral rights and responsibilities and properly allowed Father to relocate with the children, Mother's sole assignment of error is overruled.

{¶30} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.