

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CU 0071

KEVIN MORALES

VERSUS

CHERIE BERGERON

Judgment Rendered: May 3, 2012

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On Appeal from the
17th Judicial District Court,
In and for the Parish of Lafourche,
State of Louisiana
Trial Court No. 112488

Honorable Ashly Bruce Simpson, Judge Presiding

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BEFORE: CARTER, C.J., PARRO, AND HIGGINBOTHAM, JJ.

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HIGGINBOTHAM, J.

In this child custody case, a mother appeals a trial court judgment that denied her request for relocation, designated her as domiciliary parent, and denied her motion to modify child support. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Cherie Bergeron and Kevin Morales are the parents of A.M., who was born on May 22, 2006. The parties never resided together after A.M.'s birth. In a consent judgment signed on September 4, 2009, they were granted joint custody of A.M., with Morales enjoying custody every other weekend and every Tuesday evening. On May 13, 2010, Bergeron filed a "Rule for Sole Custody and Request for Relocation and Rule for Contempt," requesting that she be awarded sole custody of A.M. and granted authority to relocate with her to Corpus Christi, Texas. In the rule she alleged that A.M. was suffering from night terrors, Morales was not properly assisting her with personal hygiene matters, the parties' lines of communication had deteriorated, and Morales failed to administer prescription medication. In response, Morales filed a "Rule to Modify Judgment and Object to Relocation." On September 3, 2010, the matter came before the trial court. On that day, the parties consented to joint shared custody of A.M. on a fourteen day alternating basis. The shared custody arrangement was for A.M. to spend fourteen days in Raceland, Louisiana, with Morales and fourteen days in Corpus Christi, Texas, with Bergeron. Neither parent was designated as the domiciliary parent. Their agreement was reduced to a judgment signed by the court on March 21, 2011. The judgment also stated:

[T]he Rule to Modify Judgment and Object to Relocation filed by plaintiff, Kevin Morales is hereby continued without date and each party is reserved the right to modify the issues of custody, visitation ... without proving a change in circumstances and shall reset the hearing for a judicial determination of the relocation issue when the child reaches the mandatory school age.

On April 11, 2011, Bergeron again filed a "Rule to Show Cause," requesting that she be granted sole custody of A.M., or alternatively, that she be designated as

domiciliary parent and that she be allowed to relocate with A.M. to Corpus Christi. In her rule, Bergeron alleged that since the rendition of the September 3, 2010 judgment the minor child has developed numerous health issues, her hygiene had been neglected, she had been experiencing night terrors, she had been regressing in her speech, and Morales had often refused Bergeron phone contact with A.M. Further, she alleged that she is currently earning significantly more money in Texas and has a stable home environment.

After a two day trial, the court rendered judgment signed on August 18, 2011, denying Bergeron's request to relocate, designating her as domiciliary parent, and denying her request to modify child support. It is from this judgment that Bergeron appeals, contending that the trial court abused its discretion in denying her motion to relocate. Specifically, Bergeron argues that the trial court rendered a legally inconsistent judgment when it named her as the domiciliary parent, but denied her relocation request.

LAW AND ANALYSIS

The relocating parent has the burden of proving that the proposed relocation is made in good faith and is in the best interest of the child. La. R.S. 9:355.13. The court shall consider the benefits the child will derive either directly or indirectly from an enhancement in the relocating parent's general quality of life. **Id.** Louisiana Revised Statute 9:355.12 provides a non-exclusive list of factors the court shall consider in reaching its decision regarding the proposed relocation. The factors include:

- (1) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the nonrelocating parent, siblings, and other significant persons in the child's life.
- (2) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

(3) The feasibility of preserving a good relationship between the nonrelocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.

(4) The child's preference, taking into consideration the age and maturity of the child.

(5) Whether there is an established pattern of conduct of the parent seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating party.

(6) Whether the relocation of the child will enhance the general quality of life for both the custodial parent seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity.

(7) The reasons of each parent for seeking or opposing the relocation.

(8) The current employment and economic circumstances of each parent and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child.

(9) The extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support, and community property obligations.

(10) The feasibility of a relocation by the objecting parent.

(11) Any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

(12) Any other factors affecting the best interest of the child.

A trial court's determination in a relocation matter is entitled to great weight and will not be overturned on appeal, absent a clear showing of abuse of discretion.

Gathen v. Gathen, 10-2312 (La. 5/10/11), 66 So.3d 1, 7-8. Upon review, the entire record should reflect that the trial court properly considered all of the factors mandated by La. R.S. 9:355.12 and reasonably concluded, based on a totality of the circumstances, that relocation would or would not be in the children's best interest.

Id at 8. Although La. R.S. 9:355:12 mandates that all listed factors be considered it does not require the court to give preferential consideration to any certain factor or factors. **Id**.

The trial court provided detailed written reasons, considered each of the relevant factors of La. R.S. 9:355:12, and determined which parent each factor favored. Bergeron testified that she has lived in Corpus Christi since September 2010 having custodial periods with A.M. on a fourteen day rotation. Bergeron proved that she was terminated due to a reduction in teaching staff in Terrebonne Parish and is earning a significantly higher salary in Corpus Christi. However, the trial court determined that Bergeron concentrated her effort to find employment in Corpus Christi rather than in Louisiana in order to maintain her relationship with her fiancé Trevor Varian.

According to Bergeron, A.M. has developed multiple infections while in her father's care, and he does not adequately care for her needs. The trial court found that Morales had not properly cared for the medical needs of A.M. There was evidence presented that A.M. has been ill multiple times while in her father's care, and that he once prematurely ended her antibiotics. However, the evidence also showed that Morales took A.M. to the doctor when she was sick, and that as of the day of trial, A.M. had not suffered any recent infections. Morales testified that he thought giving A.M. shorter baths was improving her issues with rashes and infections. Morales also admitted he made a mistake ending A.M.'s antibiotics early, and testified he only did so because he thought she no longer showed any symptoms.

The trial court emphasized that the majority of A.M.'s family resides near her father's residence, and A.M. has a close relationship with them. This includes A.M.'s paternal and maternal grandparents and her half-sister. A.M. has no family in Corpus Christi other than her mother. The trial court found that the proposed relocation would have a detrimental effect on A.M.'s relationship with her father and her extended family.

After careful consideration of all the factors set forth in La. R.S. 9:355:12, the trial court concluded that Bergeron proved the proposed relocation was in good faith,

but failed to carry her burden of proving that the proposed relocation was in the best interest of A.M. The trial court properly considered all the factors mandated by the statute and reasonably concluded, based on the totality of the circumstances, that the proposed relocation was not in the best interest of A.M. After review of the record, we find no abuse of discretion on the part of the trial court.

Further, we do not find the judgment legally inconsistent because it denied Bergeron's request for relocation and designated her domiciliary parent. In its written reasons, the trial court concluded that the father and mother cannot consult together to mutually agree regarding the child's general health and welfare, and that the parents cannot adopt a mutually harmonious policy concerning the upbringing of the child. Therefore, the trial court determined that because Bergeron has been the primary caregiver of the child from birth to September 2010 and has provided A.M. with a stable and adequate environment and proper medical care, it is in A.M.'s best interest that Bergeron be designated domiciliary parent. The trial court reasoned that it was in the best interest of A.M. that a domiciliary parent be named because the parties could not make decisions together regarding their child, not because of the father's inability to provide for the general welfare, health and development of the child. Therefore, we find no abuse of discretion in the trial court's decision.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. All costs of this appeal are assessed to Cherie Bergeron.

AFFIRMED.