# STATE OF MICHIGAN

# COURT OF APPEALS

ANTOIN MANDEL MOULTRIE,

Plaintiff-Appellee,

v

JADA AYASHA MOULTRIE,

Defendant-Appellant.

UNPUBLISHED
June 20, 2024

No. 367948
Ingham Circuit Court
Family Division
LC No. 20-002331-DM

Before: O'BRIEN, P.J., and M. J. KELLY and FEENEY, JJ.

PER CURIAM.

In this post-divorce custody dispute, defendant, Jada Moultrie, appeals by leave granted[1] the trial court's order invalidating a provision in the parties' consent judgment of divorce under which Jada could take the children—aged 8 and 10—from Michigan to Indiana without first obtaining the court's approval. The trial court correctly did so on the basis of MCR 3.211(C)(1). However, although the trial court correctly recognized the need to consider the best interests of the children before giving its approval to the move, the trial court erred by applying the "100-mile" rule in MCL 722.31(1) and by holding that any part of its best-interests analysis should be conducted under that statute. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

## I. BASIC FACTS

During the parties' marriage, plaintiff, Antoin Moultrie, committed domestic violence against Jada; the violence was serious enough to put her in the hospital and resulted in a criminal conviction. When the parties separated, Jada took the children to Indianapolis, Indiana, where she had family. The children attended school there. Jada and the children returned to Michigan when the divorce was finalized. The parties' consent judgment of divorce, which was drafted by Antoin's lawyer, included a stipulation that "the domicile of the minor children shall be the State

[1] *Moultrie v Moultrie*, unpublished order of the Court of Appeals, entered February 13, 2024 (Docket No. 367948).

of Indiana." It also included what the parties and the trial court refer to as a "domicile provision" under which Jada "may return to the State of Indiana without having to seek consent from the Court" if Antoin committed an act of domestic violence against her.

Following Jada's return with the children to Michigan, Antoin allegedly committed further acts of domestic violence against her.[2] Jada, therefore, returned to Indiana with the children. Antoin picked the children up for his parenting time, drove them to Michigan, and refused to return them to Jada. The parties filed competing motions regarding defendant's rights under the judgment of divorce. Following a hearing, the trial court held that, notwithstanding what was stated in the judgment of divorce, the children had not been domiciled in Indiana. Thus, it struck the domicile provision. In doing so, the court relied upon MCR 3.211(C)(1) and it referenced the 100-mile rule in MCL 722.31(1). The trial court found that the proposed move would change the children's established custodial environment, requiring it to consider the best interests of the children, and it referred the matter for an evidentiary hearing.

## II. CUSTODY DETERMINATIONS

### A. STANDARD OF REVIEW

In custody matters, this Court applies three standards of review. *Stoudemire v Thomas*, 344 Mich App 34, 42; 999 NW2d 43 (2022). The trial court's factual findings, including whether a party has shown proper cause or change of circumstances, are reviewed under the great-weight-of-the-evidence standard. *Id.* "A finding of fact is against the great weight of the evidence if the evidence clearly preponderates in the opposite direction." *Id.* (quotation marks and citation omitted). The trial court's legal rulings are reviewed for clear legal error. *Id.* The trial court's discretionary rulings must be affirmed unless "the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id.* at 43 (quotation marks and citation omitted). Whether the court "disregarded a clear and unambiguous factual stipulation by the parties is a legal question" that "this Court reviews de novo." *Toll Northville Ltd Partnership v Northville Twp*, 298 Mich App 41, 47; 825 NW2d 646 (2012).

### B. ANALYSIS

#### 1. MCR 3.211(C)(1)

We first consider whether the trial court erred by striking the domicile provision from the judgment of divorce under MCR 3.211(C)(1). In relevant part, MCR 3.211(C)(1) provides that the "domicile or residence of the minor may not be moved from Michigan without the approval of" the trial court. This Court has held that even if a parent has sole custody of the child, even if the 100-mile rule does not apply, and even if the trial court has no practical discretion to exercise, the parent must still obtain the trial court's approval before moving a child out of Michigan. *Brecht v Hendry*, 297 Mich App 732, 742; 825 NW2d 110 (2012); *Brausch v Brausch*, 283 Mich App 339, 352-353; 770 NW2d 77 (2009). Further, any purported waiver in a judgment of divorce

[2] This fact is disputed, but the truth of the allegations are not relevant to the outcome of this appeal.

permitting a party to move the child without court approval would contravene MCR 3.211(C) and is unenforceable. *Brausch*, 283 Mich App at 350-351. Thus, the trial court was required to strike the domicile provision. See *Delamielleure v Belote*, 267 Mich App 337, 344; 704 NW2d 746 (2005).

Jada argues that the court rule does not apply because the parties stipulated that the children were domiciled in Indiana. As we discuss below, the trial court clearly erred by finding that the children did not reside in Indiana when plaintiff filed for divorce. However, MCR 3.211(C)(1) addresses moving a child's "domicile or residence," and having a domicile in Indiana does not preclude having multiple residences elsewhere. See *Grange Ins Co of Mich v Lawrence*, 494 Mich 494; 835 NW2d 363 (2013). There is no dispute that the children lived in East Lansing for approximately two years before the move at issue, so Jada's proposed move to Indiana constitutes a change in the children's residence. The parties' stipulation that the children had a domicile in Indiana does not preclude the operation of MCR 3.211(C)(1). Thus, the trial court properly struck the domicile provision under MCR 3.211(C)(1).

2. 100-MILE RULE

We next consider whether the trial court clearly erred by finding that the 100-mile rule applied under the circumstances. In general, MCL 722.31(1) prohibits moving the legal residence of a child "more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued." That prohibition is subject to several exceptions, including, in relevant part, "if, at the time of the commencement of the action in which the custody order is issued, the child's 2 residences were more than 100 miles apart." MCL 722.31(3). In this case, because the children had a legal residence in Indianapolis when plaintiff filed for divorce, and because that residence was more than 100 miles from Antoin's residence, MCL 722.31(1) does not apply.

As noted above, the trial court clearly erred by finding that the children did not reside in Indiana when Jada filed for divorce. Domicile and residence are generally considered factual questions. *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 331-334; 918 NW2d 191 (2018). To the extent that the provision in the parties' consent judgment of divorce stating that "the domicile of the minor children shall be the State of Indiana" was a *factual* stipulation, the trial court erred by disregarding it. See *Wolf v Mahar*, 308 Mich App 120, 126-127; 862 NW2d 668 (2014). If the children were domiciled in Indiana, they necessarily resided there.[3] See *Grange Ins Co*, 494 Mich at 495. Additionally, the evidence also supports that stipulation. The children were attending an elementary school in Indiana by August 2020, and it is difficult to imagine how they

[3] The trial court and the judgment of divorce use the word "domicile," but they may have used the term as if it were a synonym for "residence." Doing so is technically incorrect but not uncommon. See *Grange Ins Co*, 494 Mich at 492-500; see also *Leader v Leader*, 73 Mich App 276, 280; 251 NW2d 288 (1977). The courts generally seek to understand and apply what parties substantively meant, irrespective of the technicalities of the words they chose. See *In re Traub's Estate*, 354 Mich 263, 278-279; 92 NW2d 480 (1958).

could have done so without legally residing in Indiana. Antoin filed his complaint for divorce in October 2020. Jada was awarded the marital home in East Lansing and the uniform child support order listed Jada's address as being at the marital home. However, that does not prove that Jada or the children were actually living at the marital home. Rather, she moved back to East Lansing when the terms of the divorce were settled. To the extent the trial court found that the children did not legally reside in Indiana when the divorce proceedings were commenced, the evidence clearly preponderates in the opposite direction.

If the 100-mile rule applied, the trial court would be required to consider the *D'Onofrio* factors[4] set forth in MCL 722.31(4) before it could permit Jada to move the children. See *Spires v Bergman*, 276 Mich App 432, 436-437; 741 NW2d 523 (2007). In contrast, if the 100-mile rule does not apply, "a parent must still seek the trial court's permission under MCR 3.211(C)(1) before moving a child subject to a custody order out of this state," but the trial court should not consider the *D'Onofrio* factors. *Brecht*, 297 Mich App at 742. Here, because the 100-mile rule does not apply, the trial court should not consider the *D'Onofrio* factors when determining whether it is permissible to move the children out of the state under MCR 3.211(C)(1). In doing so, because Jada and Antoin share custody, the trial court must consider whether the move would constitute a change in an established custodial environment. *Sulaica v Rometty*, 308 Mich App 568, 581, 586; 866 NW2d 838 (2014). If it would constitute a change in an established custodial environment, MCL 722.27(1)(c) requires the court to analyze the best interests of the children under MCL 722.23. *Id*. In this case, the trial court recognized its obligations under MCL 722.27(1)(c) and MCL 722.23, and Jada does not challenge the trial court's finding that the proposed move would alter the established custodial environment.

Based upon the foregoing, we hold that the trial court erred to the extent it held that it must consider the *D'Onofrio* factors, but it did not err to the extent it held that it must consider the best interests of the children under MCL 722.23 before permitting Jada to move the children from Michigan to Indiana.

We reverse the trial court's order to the extent it holds that the children were not domiciled or did not reside in Indiana at the time Antoin filed for divorce, and to the extent it holds that the 100-mile rule applies, and we remand for further proceedings consistent with this opinion. In all other respects, we affirm. We do not retain jurisdiction. Neither party may tax costs because neither has prevailed in full. MCR 7.219(A).

/s/ Colleen A. O'Brien
/s/ Michael J. Kelly
/s/ Kathleen A. Feeney

[4] The factors laid out in MCL 722.31(4) are a codification of the "*D'Onofrio* factors" derived from *D'Onofrio v D'Onofrio*, 144 NJ Super 200; 365 A2d 27 (1976). *Kubicki v Sharpe*, 306 Mich App 525, 537 n 7; 858 NW2d 57 (2014).