

FILED

04/24/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 4, 2023 Session

STEPHANIE BARRETT v. RONALD KILLINGS

Appeal from the Juvenile Court for Rutherford County
No. JS12716 Sheila Calloway, Judge

No. M2022-00946-COA-R3-JV

A mother relocated less than fifty radial miles, but more than fifty driving miles, from the father. The trial court held that the parental relocation statute applied because the mother relocated more than fifty miles away and, even if she had not, she moved close enough to fifty miles that application of the relocation statute was appropriate. We find that the radial distance should be used to determine whether the relocation statute is triggered. By that standard, the mother did not move more than fifty miles away, and the relocation statute does not apply. Therefore, we reverse the trial court's decision.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Reversed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which THOMAS R. FRIERSON, II, and JEFFREY USMAN, JJ., joined.

Andrew Patrick Goldstein and Scarlett Victoria Sloane, Brentwood, Tennessee, for the appellant, Stephanie Barrett.

Morgan Elizabeth Smith, Nashville, Tennessee, for the appellee, Ronald Killings.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

On July 6, 2021, the Rutherford County Juvenile Court entered a final order and a parenting plan that determined custody of the two minor children of Stephanie Barrett ("Mother") and Ronald Killings ("Father"). The order named Mother as the primary residential parent and provided that the parents would alternate weeks with the children.

On December 6, 2021, Father filed a petition for criminal contempt and for further relief, alleging violations of the final order. The petition also expressed concern that Mother

was about to move. On December 10, 2021, Father filed an emergency petition in opposition to relocation and for immediate return of the minor children to Rutherford County. The emergency petition alleged that Mother had informed Father that she and the minor children had relocated from Murfreesboro to Fayetteville, Tennessee. Father alleged that Mother moved more than fifty miles based on a Google map of the driving distance, thereby triggering the parental relocation statute, Tenn. Code Ann. § 36-6-108. Mother asserted that Father had been unresponsive to her attempts to discuss the relocation. Mother also stated that she had not relocated more than fifty miles away and supported her contention with a Google map showing a straight-line or radial distance of 44.45 miles from Father's address to hers. Both sides reiterated their contentions in a hearing held on January 10, 2022. They also presented testimony about the difficulties of transporting the children from their home in Fayetteville to school in Murfreesboro, the reason for Mother's move, communication between the parties, and Rutherford County School zoning.

The trial court entered the order for the January 10, 2022 hearing on March 4, 2022. The court made the following findings of fact:

1. This case was originated in Rutherford County, TN. Due to a recusal order,^[1] this case has been heard by Judge Sheila D. J. Calloway, Juvenile Judge of the Nashville and Davidson County Juvenile Court.
2. The original matter as to custody was heard on May 14, 2021 and the order signed on July 6, 2021. In that order, the parties were granted equal parenting time, with the parties exchanging the children on each Sunday. The parties were also granted joint decision making on all major issues, including educational decisions.
3. Since that order, the children have been attending school consistently in Rutherford County, specifically at Scales Elementary School. Both children were performing well in school with no issues. They were also involved in activities outside of school, including football and private coaching lessons.
4. Although Father still lives in Rutherford County, his current location is zoned for a different school, specifically Rockvale Elementary School. However, Father testified that he has no intention of moving the children from Scales Elementary School.
5. In November of 2021, Mother married William Black. Mr. Black has two children of his own who live in Alabama. According to his custody orders, Mr. Black is required to live a certain limited distance from his children. Based on both Mother and her new husband's custody orders, they attempted to buy a house which would allow them both to stay within a proper radius within their respective court orders.
6. According to Mother's testimony, she looked in several different areas of Tennessee in order to stay within 50 miles of Father's residence while still

¹ The appellate record does not include an order of recusal.

allowing her new husband close proximity to his children in Alabama. They settled on a house in Fayetteville, TN.

7. After Mother moved to her new residence at the end of November, she enrolled the children in Ralph Askins Elementary School in Fayetteville, TN. During her next week of parenting time, she took the children to their new school. At some point, Mother withdrew the children from Scales Elementary School.

8. Although Mother testified that she attempted to call Father to inform him of her actions, she never sent him any written documentation of her move or plans to relocate the children.

9. According to Mother, she did not inform Father of the changes because he never answered any of his phone calls. Furthermore, she did not feel as if she were required to notify Father in writing because she believed the distance between their houses was less than 50 miles.

10. According to Goggle [sic] Maps submitted by Father as evidence, the distance between Father's residence and Mother's new residence is fifty-two (52) miles and takes approximately one (1) hour and ten (10) minutes.

11. According to Goggle [sic] Maps submitted by Mother as evidence, the distance between Father's residence and Mother's new residence is slightly over forty-four (44) miles. (44.45 miles).

12. Mother acknowledges that the distance between her house and the Fathers house requires the children to be in the car for over an hour to get to and from each location. Due to the distance between the two houses, Mother has offered to meet Father half-way each day before and after school.

13. Although Mother testified that she has no intent on depriving Father from any parenting time, Father had previously filed a Petition for Criminal Contempt of Court and for Further Relief on or about December 6, 2021. In the petition, there are allegations of Mother withholding parenting time from Father.

The court found that the relocation statute, Tenn. Code Ann. § 36-6-108, applied. It relied upon the Father's Google map which indicated the distance between the parents' residences was over fifty miles. Furthermore, the court found

that even if the distance was slightly under the fifty miles as anticipated by statute, the distance is great enough that the Mother should have followed the guidelines in the relocation statute. Furthermore, Mother clearly was aware that there is joint decision making on educational decisions. Therefore, she should have had a clear agreement with Father prior to removing the children from their school and enrolling them into a different school. Absent an agreement, Mother should have filed a motion in court for review as indicated in the previous order prior to unilaterally making the decision on her own. Therefore, this court will use the analysis of the relocation statute

to determine if it is in the best interest of the children to move to Fayetteville with Mother.

The trial court examined the factors in Tenn. Code Ann. § 36-6-108(c)(2) and determined “that this Court does not find that the relocation is in the best interest of the children.” The court ordered, in pertinent part:

2. That if Mother remains in the Murfreesboro area, the previous Parenting Plan will remain in effect.
3. That if Mother remains in her new home in Fayetteville, TN, then the attached Plan^[2] will be made an Order of this Court. The parties will share joint decision-making authority on non-emergency health care and religious upbringing. In the event the parties are unable to agree, they shall attempt mediation prior to filing an action in court. Father will have sole decision-making authority on educational and extracurricular activities.

The parties filed a plethora of motions, but the one that pertains to this appeal is Mother’s motion to alter or amend the judgment. After a hearing on June 14, 2022, the trial court entered an order on July 18, 2022, that directed entry of a final judgment pursuant to Tenn. R. Civ. P. 54.02(1) on the emergency petition in opposition to relocation. The order also amended the March 4, 2022 order “to state that daily travel time for the parents would be up to four (4) hours and the daily travel time for the children would be around two (2) hours.” The order denied the request to use Mother’s map showing radial distance, and reiterated that the court would use Father’s map showing driving distance for purposes of the relocation statute. The court expressly stated that, “even if the radial distance were determined to be dispositive, the Court finds that it would be in the best interest of the children that the relocation statute also be triggered in this matter.”

Mother appealed, raising the following issues:

- I. Whether the Rutherford County Juvenile Court erred in determining that Mother’s relocation 45.5 radial miles from Father’s residence triggered the parental relocation statute codified at T.C.A § 36-6-108, and in finding that it was the intent of the legislature that driving distance, not radial miles, should be used for the purposes of § 36-6-108.
- II. Whether the trial court erred in denying Mother’s relocation by exercising discretion to rely on Father’s Google Map, which utilized driving distance, over Mother’s Google Map, which utilized radial miles.
- III. Whether the trial court erred in denying Mother’s relocation by stating that even if her relocation was not over fifty miles as contemplated by T.C.A.

² The plan designated Father the primary residential parent.

§ 36-6-108, that the distance was great enough that Mother should be bound by the statute regardless.

IV. Whether the trial court erred in utilizing a best interest analysis for the minor children in determining whether T.C.A. § 36-6-108 is triggered by Mother's relocation.

V. Whether Mother should be granted her reasonable attorney's fees for this appeal.

Father raises these issues:

1. The Trial Court did not err in determining that Mother's relocation was more than 50 miles from Father's residence and triggered the parental relocation statute codified at T.C.A. §36-6-108, and finding that pursuant to case law the distance can be determined by radial miles or travel distance.

2. The Trial Court did not err in finding that Mother's relocation was done with the intention of interfering with Father's relationship with the children and Father's parenting time, and subsequently utilizing a best interests analysis.

3. Even if the Trial Court did err in using the relocation statute for its analysis, it would represent harmless error as the findings of the Court support a finding of a material change in circumstances.

4. Whether Father should be granted his reasonable attorney's fees for this appeal.

STANDARD OF REVIEW

The interpretation of a statute is a question of law; thus, we engage in de novo review and accord the trial court's interpretation no presumption of correctness. *Regions Bank v. Thomas*, 532 S.W.3d 330, 336 (Tenn. 2017). "We review the trial court's findings of fact following a bench trial de novo upon the record with a presumption of correctness, 'unless the preponderance of the evidence is otherwise.'" *Id.* (quoting TENN. R. APP. P. 13(d)).

ANALYSIS

The pertinent portion of the parental relocation statute states:

After custody or co-parenting has been established by the entry of a permanent parenting plan of final order, if a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail.

Tenn. Code Ann. § 36-6-108(a). The notice triggers the parents’ right to agree or to object and initiate legal proceedings. Tenn. Code Ann. § 36-6-108(b), (c)(1).

The question presented in this case is how the fifty-mile distance is measured. The relocation statute does not indicate how to measure the distance. Father presents a Google map showing the driving distance is over fifty miles. Mother presents a Google map showing the radial, straight-line distance is less than fifty miles.

Both parties cite *Chambers v. Chambers*, No. E2020-00167-COA-R3-CV, 2021 WL 400310 (Tenn. Ct. App. Feb. 4, 2021). *Chambers* involved a post-divorce petition to modify a parenting plan, and the trial court found, in part, that the relocation statute applied. *Chambers*, 2021 WL 400310, at *1-2. The record contained two Google maps, one showing a radial distance of 39.04 miles and one showing a driving distance of 49 miles. *Id.* at *1. The Court of Appeals found the relocation statute inapplicable, stating:

As for how to calculate a distance “more than fifty (50) miles from the other parent within the state,” Tenn. Code Ann. § 36-6-108, we hold that such distance may be established by proof of radial mileage. Such distance may also be established by proof of driving distance that is fifty or fewer miles. Our holding is consistent with both *Massey-Holt v. Holt* wherein we noted “the legislature’s intent in allowing essentially unfettered relocation within a 100-mile³ radius” and with *McAdams v. McAdams* wherein the relocating parent had moved “within the permitted fifty-mile radius” of the other parent’s residence. *See McAdams v. McAdams*, No. E2019-02150-COA-R3-CV, 2020 WL 4723762, at *1 (Tenn. Ct. App. Aug. 13, 2020); *Massey-Holt v. Holt*, 255 S.W.3d 603, 610 (Tenn. Ct. App. 2007).

Id. at *3 (footnote in original but renumbered).

While Father argues *Chambers* embraces driving distance as an appropriate measure to demonstrate a relocation exceeds fifty miles, the opinion instead reflects the geometric principle that the shortest distance between any two points is a straight line. The reference to driving distance in *Chambers* corresponds with the insight that if the driving distance is less than fifty miles, then the radial distance will be less than fifty miles. Accordingly, not only do the *Chambers*, *McAdams*, and *Massey-Holt* opinions support the use of the radial method of determining distance,⁴ but the general rule is that, “[i]n the absence of any

³ “In 2013, the General Assembly amended subsection (a) of the parental relocation statute to require notice to the alternate parent when the relocating parent planned to move more than 50 miles away rather than 100 miles.” *Chambers*, 2021 WL 400310, at *3 n.1 (citing 2013 TENN. PUB. ACTS, c. 352, § 1).

⁴ Tennessee follows the straight-line or radial distance rule in at least one other area. Regarding the sale of intoxicating liquor, “Tennessee follows the rule that distances shall be measured in a straight line, rather

specific statutory provision governing the manner of measurement of distances, distance is to be measured along the shortest straight line, on a horizontal plane, and not along the course of a highway, or along the usual traveled way.” 79 AM. JUR. 2D *Weights and Measures*, § 46 (2023) (footnotes omitted).⁵ Express language or context may alter the rule, *Id.*, but the parental location statute offers neither.

In our opinion, the proper measurement of miles in Tenn. Code Ann. § 36-6-108(a) is radial miles, otherwise known as the straight-line method. Thus, the trial court erred in using Father’s map, which utilized the miles-driven method. Because Mother moved less than fifty radial-miles, the relocation statute, Tenn. Code Ann. § 36-6-108(a), does not apply to this case.

The trial court further held that, “even if the distance was slightly under the fifty miles as anticipated by statute, the distance is great enough that the Mother should have followed the guidelines in the relocation statute,” and “[t]herefore, this court will use the analysis of the relocation statute to determine if it is in the best interest of the children to move to Fayetteville with Mother.” In evaluating factor (c)(2)(E), the trial court expressed concern “that Mother is attempting to limit time with Father with the current move.” Logically, if the relocation statute does not apply, and we have so held, the factors within the statute cannot be used to evaluate the best interest of the children based upon a non-existence violation thereof. The trial court’s “concern” is a nullity, as are all the findings under Tenn. Code Ann. § 36-6-108(c)(2).

Once the trial court found that relocation was not in the best interest of the children, using the inapplicable relocation statute and its factors, the trial court went on, as directed by the inapplicable relocation statute, to address a modified parenting plan in case the Mother remained in Fayetteville. The inapplicable relocation statute directed the trial court to evaluate the custody factors found in Tenn. Code Ann. § 36-6-106(a). In evaluating Tenn. Code Ann. § 36-6-106 (a)(2), the trial court expressed concerns “regarding Mother’s willingness to facilitate a close and continuing relationship between the children and the Father,” citing instances when Mother failed to follow the parental relocation statute, which is inapplicable. Once again, the trial court evaluated these factors because it felt the relocation statute applied. It does not and, therefore, all of the trial court’s findings under Tenn. Code Ann. § 36-6-106(a) are a nullity.

than some other manner such as usually traveled routes or street lines.” *Tenn. Sports Complex, Inc. v. Lenoir City Beer Bd.*, 106 S.W.3d 33,35 (Tenn. Ct. App. 2003) (citing *Jones. v. Sullivan Cnty. Beer Bd.*, 292 S.W.2d 185, 187 (Tenn. 1956); *City of Murfreesboro v. Davis*, 569 S.W.2d 805, 807 (Tenn. 1978)).

⁵ The general rule comes from English law: “when in an act of parliament, distance is mentioned, generally without any other guide, the straight-line rule is to be adopted.” *Macon & Smith Cntys. v. Trousdale Cnty.*, 61 Tenn. 1, 10 (1872) (quoting *Monflet v. Cole*, (1871) L.R. 8 Excheq. 32 (Eng.), (Cleasby, J., dissenting)) (construing an act creating Trousdale County).

