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Andrade v. Andrade, 252 A.3d 755 (R.I. 2021)

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Family Law. *Andrade v. Andrade*, 252 A.3d 755 (R.I. 2021). A Family Court justice's decision regarding a motion to relocate will be overturned only if the justice abused their discretion when applying the *Dupré* factors to the particular case. A motion to modify child support will only be overturned if substantial change in conditions or circumstances leading to the modification occurred.

FACTS AND TRAVEL

This case arose out of an appeal from two Family Court orders. The plaintiff and defendant were divorced in 2015 and have a minor child together.[1] The parties shared "joint custody of the minor child with physical placement to be with [plaintiff] and [defendant] to have all reasonable rights to visitation."[2] The defendant paid $1,471 a month in child support.[3] While the parties' property settlement agreement (PSA) set a visitation schedule, the parties ultimately changed that schedule "such that each parent was with the child on alternating weeks."[4]

In June of 2018, the plaintiff filed a motion to relocate with the child to New York or New Jersey.[5] The plaintiff stated that New York and New Jersey are the primary locations of the insurance industry, her area of work.[6] According to the plaintiff, relocation would allow her to grow in her career.[7] The plaintiff also cited a job offer, which would have paid her $16,000 more than her current job, which she declined because she could not relocate with the child at the time the offer was made.[8] However, the Court noted that the plaintiff's current job agreed to match the offer and ultimately

1. *See generally* Andrade v. Andrade, 252 A.3d 755 (R.I. 2021).
2. *Id.* at 757.
3. *Id.* at 758.
4. *Id.* at 757 n.1.
5. *Id.* at 758.
6. *Id.*
7. *Id.*
8. *Id.*

raised her salary by $16,000.[9] The plaintiff also submitted a proposed visitation schedule allowing the defendant to "see the child 'as close to half' of the time as possible."[10]

The defendant objected to the relocation and filed a motion to modify child support.[11] The defendant argued that the relocation should be denied because the parties had a "shared parenting plan in place."[12] The defendant noted his additional concerns with the relocation, including that relocation would make taking the child to "health related visits," one of his responsibilities, impossible to accomplish.[13] He also noted that the parties' families both lived in Rhode Island.[14] He claimed that his family had a continuous, actively engaged relationship with the child that would be difficult to maintain if the child relocated.[15] The defendant was also concerned with the child's "continuity with schools," noting that she has attended three elementary schools and was now in middle school.[16] Finally, the defendant emphasized his own relationship with the child, stating that he was actively involved in "all elements of [her] life."[17] He further claimed he was involved with her education and helped to foster her social relationships.[18]

The Family Court appointed a guardian *ad litem* for the child, who wrote a report and testified recommending the court deny the motion to relocate.[19] The guardian *ad litem* applied the facts to the factors outlined in *Dupré v. Dupré*[20] and *Pettinato v. Pettinato,*[21] determining as a result that relocation was not in the child's best interest.[22] The trial court ultimately found that the plaintiff "failed to sustain her burden of proof under either *Dupré* or *Pettinato*" and

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9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* at 759.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* at 758.
20. Dupré v. Dupré, 857 A.2d 242 (R.I. 2004).
21. Pettinato v. Pettinato, 582 A.2d 909 (R.I. 1990).
22. *Andrade*, 252 A.3d at 758–59.

denied the motion to relocate.[23] The trial justice also modified the child support obligation to $765 per month, stating that the old arraignment failed to account for the shared custody placement the parties ultimately participated in.[24] On appeal, the plaintiff argued that the Family Court erred both in its decision to deny the motion to relocate and in its modification of the child support order.[25] The Supreme Court heard the case, treating the motion to modify child support as a common law writ of certiorari in the interest of judicial economy, as orders to modify child support are not appealable.[26]

ANALYSIS AND HOLDING

The Supreme Court began by outlining the standard of review, highlighting that it would "not disturb the findings of fact made by a justice of the Family Court…unless the hearing justice abused [their] discretion."[27] It also noted that the trial justice is in the best position to determine which relocation factors are most relevant to the particular case, and their "discretion in this regard should not be unduly constrained."[28]

The Court rejected the plaintiff's argument that the Family Court justice overlooked or misconceived material evidence.[29] The plaintiff argued that the Family Court overlooked the child's desire to relocate and the plaintiff's desire to move forward in her career by relocating.[30] Both the Family Court and the Supreme Court relied on the *Dupré* factors, noting that "no single *Dupré* factor is dispositive" and the trial justice should weigh the factors in light of the unique circumstances of each case.[31] The Court also noted that the

23. *Id.* at 759.
24. *Id.*
25. *Id.*
26. *Id.* at 763.
27. *Id.* at 760 (quoting DePrete v. DePrete, 44 A.3d 1260, 1270 (R.I. 2012)).
28. *Id.* (quoting *Dupré*, 857 A.2d at 257).
29. *Id.* at 759, 764.
30. *Id.* at 760.
31. *Id.* The *Dupré* factors include:

"The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the non-relocating parent."

"The reasonable likelihood that the relocation will enhance the general quality of life for both the child and the parent seeking the relocation, including, but

ultimate deciding factor in relocation cases is the "best interests of the child or children."[32]

The Supreme Court found that the trial justice properly weighed these factors in light of this case.[33] The trial justice first considered the purpose for relocation, finding that the plaintiff's economic argument was substantially undermined by the plaintiff's newly increased salary.[34] The trial justice also considered the child's desire to move.[35] He found that the support systems the child had in Rhode Island, along with the fact "[the child] was performing well in Rhode Island," outweighed the child's desire to

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not limited to, economic and emotional benefits, and educational opportunities."

"The probable impact that the relocation will have on the child's physical, educational, and emotional development."

"The feasibility of preserving the relationship between the non-relocating parent and child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties."

"The existence of extended family or other support systems available to the child in both locations."

"Each parent's reasons for seeking or opposing the relocation."

"In cases of international relocation, the question of whether the country to which the child is to be relocated is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction[.]"

"To the extent that they may be relevant to a relocation inquiry, the Pettinato factors also will be significant."

Id. (quoting *Dupré,* 857 A.2d at 257–59).

The *Pettinato* factors referenced by *Dupré* include:

"The wishes of the child's parent or parents regarding the child's custody."

"The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference."

"The interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interest."

"The child's adjustment to the child's home, school, and community."

"The mental and physical health of all individuals involved."

"The stability of the child's home environment."

"The moral fitness of the child's parents."

"The willingness and ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent."

Id. at 761 (quoting *Pettinato*, 582 A.2d at 913–14).

32. *Id.* at 760 (quoting *DePrete*, 44 A.3d at 1271).

33. *Id.* at 761.

34. *Id.*

35. *Id.*

move with the plaintiff.[36] The Supreme Court found that the trial justice did not abuse his discretion by finding that these other factors outweighed the plaintiff's career goals and the child's desire to relocate.[37]

The Supreme Court also briefly addressed the plaintiff's assertion that the trial justice improperly excluded evidence of domestic violence.[38] The trial justice excluded testimony regarding allegations of alcohol misuse and an instance of physical assault.[39] The Court found that the plaintiff failed to show how this testimony is relevant to her relocation.[40] The plaintiff was not attempting to relocate to escape the defendant's alleged abuse, as she proposed a visitation schedule which allowed the defendant to have the child "as close to half [the time] as [he] could get[.]"[41] Additionally, the plaintiff failed to preserve this issue for review on appeal.[42] Therefore, the Supreme Court did not review the issue on appeal.

Finally, the Supreme Court addressed the trial justice's order to modify the defendant's child support payments. A child support order cannot be modified unless the moving party shows that after the court entered the order, substantial changes in circumstances or conditions occurred.[43] The Court found that the trial justice based his decision on his belief that the order was "completely unfair to the defendant."[44] The Court rejected the trial justice's finding, holding that the defendant agreed to the order and the order must not be modified unless there is a change in circumstances.[45] Because the Supreme Court did not find a significant change in circumstances occurred, it vacated the order modifying child support.[46]

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36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.* at 761–62.
40. *Id.* at 762.
41. *Id.*
42. *Id.*
43. *Id.* at 763–64.
44. *Id.* at 764.
45. *Id.*
46. *Id.*

COMMENTARY

The Rhode Island Supreme Court reaffirmed the importance of deciding motions to relocate wholistically and in light of the totality of the circumstances to ensure the decision reflects the best interest of the child. The plaintiff in this case presented two factors – her daughter's desire to relocate and the positive effect relocation would have on her career growth – which, on the surface, appear to strongly favor relocation.[47] However, the Supreme Court properly found that the child's support systems in Rhode Island, the child's success in Rhode Island, and preserving stability in the child's life all outweighed the potential economic benefits and the child's stated wishes.[48] Denying relocation under the circumstances presented in this case was in the child's best interest because it preserved the support systems and stability necessary for the child to continue to flourish in Rhode Island.

The Court also denied the motion to modify child support, affirming the well-established principal of the right to contract. The opinion does not present any evidence of a substantial change in circumstances. The trial justice's opinion, if applied across the board in all cases, would allow a party to escape a child support arrangement they agreed to at any time after the order is entered. This decision would place a heavy burden on the other parent, eliminating the stability created by an enforceable child support arrangement. A change of circumstances which justifies the modification is fair to both parties and allows the other parent to make financial decisions knowing that the court will enforce the necessary economic support promised to the child. As a result, the Supreme Court properly affirmed the "change of circumstances" standard, which upholds the parties' agreements while granting the necessary flexibility to account for new circumstances warranting a modification.

CONCLUSION

The Rhode Island Supreme Court held that a trial justice's decision regarding a motion to relocate will be affirmed unless the trial justice abused their discretion. A motion to relocate will be

47. *Id.* at 760.
48. *See generally id.*

decided based on the relevant *Dupré* factors as applied to the unique facts of each case. Finally, the Supreme Court held that child support agreements will not be modified, even if they are unfair at the time they are created, unless a substantial change of circumstances justifies the modification.

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