

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

C.L.M., SR.

Appellant

v.

E.M.M.

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1807 WDA 2013

Appeal from the Order entered October 18, 2013
In the Court of Common Pleas of Blair County
Civil Division at No: 2012 GN 3047

BEFORE: PANELLA, MUNDY, AND STABILE, JJ.

MEMORANDUM BY STABILE, J.:

FILED APRIL 14, 2014

Appellant C.L.M., Sr. (Father) appeals the October 18, 2013 order of the Court of Common Pleas of Blair County granting E.M.M.'s (Mother) request to relocate the parties' children to South Korea. Specifically, Father argues the trial court erred and/or abused its discretion in granting the request because it did not conduct a thorough analysis of the relocation factors set forth in Section 5337(h) of the Child Custody Act (Act), 23 Pa.C.S.A. § 5337(h). We agree. Accordingly, we vacate and remand the case to the trial court for the issuance of an opinion addressing the relocation and custody factors under 23 Pa.C.S.A. §§ 5328(a) and 5337(h).

The factual and procedural background can be summarized as follows. The parties were married in South Korea in 2005, where Father, a U.S. Army service member, was stationed. Mother, a South Korean citizen, was living

in South Korea. Their first child was born in South Korea in 2006. The parties moved to the United States in 2007. Mother returned to South Korea with child in 2008 and 2010 for short periods. The second child was born in 2011 in the United States. Mother returned to South Korea in 2012 with both children for five months. Upon her return to the United States, the parties separated. In September 2012, Father filed a custody complaint. Following a custody conference in November 2012, the trial court entered a temporary order granting Mother primary care of the children, with period of visitations for Father. Father's periods of visitation were modified following a custody conciliation conference held in February 2013. In the meantime, Mother filed a request for relocation to South Korea. Following a custody/relocation hearing, the trial court granted Mother's request to relocate children to South Korea. The decision came in the form of an order where the trial court detailed the custody terms.

Upon Father timely appealing from the custody order, the trial court ordered Father to file a statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Father timely filed the statement. Approximately two weeks later, the trial court filed a letter notifying the Blair County Prothonotary it would not be filing a written opinion, but relying on the record for an explanation of the reasons supporting the appealed order.

Father argues the trial court erred and/or abused its discretion in granting the relocation request because it did not conduct a thorough analysis of the relocation factors of Section 5337(h) of the Act. **See**

Appellant's Brief at 10. Because the trial court did not issue a written opinion on this matter, or otherwise make its reasons clear on the record, we are constrained to agree with Appellant.

Section 5337(h) provides as follows:

Relocation factors.--In determining whether to grant a proposed relocation, the court shall consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

- (1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, 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 the relationship between the nonrelocating party and the child through suitable custody 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 either party to promote or thwart the relationship of the child and the other party.
- (6) Whether the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or emotional benefit or educational opportunity.
- (7) Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.

(8) The reasons and motivation of each party for seeking or opposing the relocation.

(9) The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.

(10) Any other factor affecting the best interest of the child.

23 Pa.C.S.A. § 5337(h).

"Section 5337(h) of the Act lists the factors the trial court must consider in deciding whether to grant relief to a parent who seeks to relocate with a child[,], . . . and give 'weighted consideration to those factors which affect the safety of the child.'" **C.M.K. v. K.E.M.**, 45 A.3d 417, 426-27 (Pa. Super. 2012) (citation omitted); **see also E.D. v. M.P.**, 33 A3d 73, 81 (Pa. Super. 2011) ("Section 5337(h) mandates that the trial court *shall* consider all of the factors listed therein, giving weighted consideration to those factors affecting the safety of the child") (emphasis in original) (citation omitted). "The record must be clear on appeal that the trial court considered all the factors." **A.V. v. S.T.**, 2014 WL 895217, at *4 (Pa. Super. March 7, 2014) (citation omitted). Finally, "[t]he court shall delineate the reasons for its decision on the record in open court or in a written opinion or order." 23 Pa.C.S.A. 5323(d).

While the original record includes the order at issue here and the transcript of the custody/relocation hearing, it cannot be ascertained from the order or the transcript whether the trial court considered all of the section 5337(h) factors and how it weighed them. "[I]t is not this Court's

proper function to scour the record in attempts to intuit the reasons supporting the trial court's findings. Effective appellate review requires the trial court to consider each of the factors set forth in section 5337(h), and to state both its reasoning and conclusions on the record for our review." **E.D.**, 33 A.3d at 81. The trial court did not do so here.

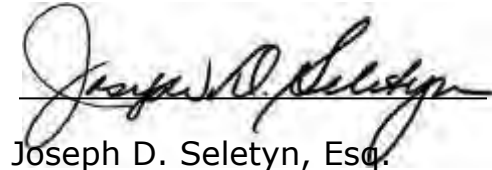
It should be noted, however, when a court decides to grant a relocation request, it must modify the existing custody order or establish a new one. **See** 23 Pa.C.S.A. § 5337(g)(4). We also have held on several occasions a trial court must address both the ten relocation factors under Section 5337(h) and the sixteen factors under Section 5328(a) when making a determination involving relocation and custody. **See, e.g., A.V.**, 2014 WL 895217, at *5 ("Here, the court's opinion in support of its . . . order addressed only the relocation factors. By omitting application of the Section 5328(a) custody factors, although making a new award of custody, the trial court erred"); **A.M.S. v. M.R.C.**, 70 A.3d 830, 835 (Pa. Super. 2013) ("The trial court must consider all ten relocation factors and all sixteen custody factors when making a decision on relocation that also involves a custody decision."). The trial court, here, not only did not address the relocation factors under Section 5337(h), but it also did not address the sixteen custody factors set forth at § 5328(a), whether in writing or on the record.

Accordingly, we vacate the trial court's order and remand this case to the trial court for the issuance of an opinion addressing the Section 5328(a) and 5337(h) factors within thirty days of the return of the certified record.

Within the same deadline, the trial court shall also enter an order disposing of the relocation and custody matters consistent with its opinion.

Order vacated. Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/14/2014