

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 22, 2015 Session

CASSIDY LYNNE ARAGON v. REYNALDO MANUEL ARAGON

**Appeal from the Chancery Court for Montgomery County
No. MCCHCVDI090483 Ross H. Hicks, Chancellor**

No. M2014-02292-COA-R3-CV – Filed November 30, 2015

W. NEAL MCBRAYER, J., dissenting.

Because I find the evidence preponderates against the trial court’s finding that Father lacked a reasonable purpose for relocating, I respectfully dissent. As noted by the majority, we have defined “reasonable purpose” to mean “a significant purpose, substantial when weighed against the gravity of the loss of the non-custodial parent’s ability to participate fully in their children’s lives in a more meaningful way.” *Redmon v. Redmon*, No. W2013-01017-COA-R3-CV, 2014 WL 1694708, at *5 (Tenn. Ct. App. Apr. 29, 2014). In my view, such precedent represents a departure from the natural and ordinary meaning of the words found in Tennessee Code Annotated § 36-6-108, otherwise known as the Parental Relocation Statute. Giving the words “reasonable purpose” their natural and ordinary meaning, from this record, I find that Mother failed to show Father lacked a reasonable purpose for relocating with their child. As such and because no other Tennessee Code Annotated § 36-6-108(d)(1) ground was present that would prevent relocation, I would reverse the trial court and remand with instructions to approve the relocation.

At the time of the hearing in this case,¹ Tennessee Code Annotated § 36-6-108

¹ The hearing in this case occurred in 2012. Since that time, the Parental Relocation Statute has been amended twice: once in 2013 to decrease the distance of a move that would trigger application of the statute from 100 to 50 miles and once in 2014 to change the best interest factors to consider in certain contested parental relocations. *See* 2013 Tenn. Pub. Acts 972 and 2014 Tenn. Pub. Acts. 349. Neither amendment impacts the analysis here. However, by decreasing the distance of the move that would trigger the application of the Parental Relocation Statute, the General Assembly has arguably directed more “judicial intervention in post-divorce family decision making,” contrary to one of the goals of the common law. *See Aaby v. Strange*, 924 S.W.2d 623, 629 (Tenn. 1996).

provided, in relevant part, as follows:

(c) If the parents are actually spending substantially equal intervals of time with the child and the relocating parent seeks to move with the child, the other parent may, within thirty (30) days of receipt of notice, file a petition in opposition to removal of the child. No presumption in favor of or against the request to relocate with the child shall arise. The court shall determine whether or not to permit relocation of the child based upon the best interests of the child.

....

(d)(1) If the parents are not actually spending substantially equal intervals of time with the child and the parent spending the greater amount of time with the child proposes to relocate with the child, the other parent may, within thirty (30) days of receipt of the notice, file a petition in opposition to removal of the child. The other parent may not attempt to relocate with the child unless expressly authorized to do so by the court pursuant to a change of custody or primary custodial responsibility. The parent spending the greater amount of time with the child shall be permitted to relocate with the child unless the court finds:

(A) The relocation does not have a reasonable purpose;

(B) The relocation would pose a threat of specific and serious harm to the child that outweighs the threat of harm to the child of a change of custody; or

(C) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial parent or the parent spending less time with the child.

....

(e) If the court finds one (1) or more of the grounds designated in subsection (d), the court shall determine whether or not to permit relocation of the child based on the best interest of the child.

Tenn. Code Ann. § 36-6-108 (2010). The Parental Relocation Statute differentiates between parents who actually spend substantially equal amounts of time with the child and those that do not. *Id.* § 36-6-108(c) and (d)(1). At the time of the hearing, Father actually spent a

greater amount of time with the child; thus, I concur with the majority that the applicable statutory provision is subsection (d)(1). While Mother opposed the move on all three statutory grounds, the only relevant ground on appeal is whether the proposed move has a reasonable purpose. *Id.* at § 36-6-108(d)(1)(A).

This Court's role in interpreting a statute is to give effect to the legislative intent without restricting or expanding the words of the statute. *Davis ex rel. Davis v. Ibach*, 465 S.W.3d 570, 573 (Tenn. 2015). The court is not empowered to alter statutes or substitute its own policy judgments for those of the legislature. *Britt v. Dyer's Emp't Agency, Inc.*, 396 S.W.3d 519, 523 (Tenn. 2013). "When a statute's text is clear and unambiguous, the courts need not look beyond the statute itself to ascertain its meaning." *Green v. Green*, 293 S.W.3d 493, 507 (Tenn. 2009); *State v. Strode*, 232 S.W.3d 1, 9-10 (Tenn. 2007). "Legislative intent is best determined by looking at the natural and ordinary meaning of the words used by the General Assembly in the statute." *Jones v. Garrett*, 92 S.W.3d 835, 839 (Tenn. 2002). Only when a statute is unclear or ambiguous do we "resort to the rules of statutory construction and other external sources to ascertain the General Assembly's intent and purpose." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010).

This Court has repeatedly acknowledged the Parental Relocation Statute has "a legislatively mandated presumption in favor of [the] relocating custodial parent." *Rogers v. Rogers*, No. W2006-00858-COA-R3-CV, 2007 WL 1946617, *6 (Tenn. Ct. App. July 3, 2007) (quoting *Collins v. Coode*, No. M2002-02557-COA-R3-CV, 2004 WL 904097, at *2 (Tenn. Ct. App. Apr. 27, 2004)). Despite this, in my view, our Court has undercut this presumption by interpreting the word "reasonable" to mean "significant" or "substantial." See *Webster v. Webster*, No. W2005-01288-COA-R3-CV, 2006 WL 3008019, at *14 (Tenn. Ct. App. Oct. 24, 2006) (interpreting "reasonable purpose" as significant)²; *Rudd v.*

² In *Webster v. Webster*, this Court looked to the Supreme Court's decision in *Aaby v. Strange*, 924 S.W.2d 623 (Tenn. 1996), in interpreting the Parental Relocation Statute, which we concluded had "incorporate[d] elements of the standard adopted by the majority in *Aaby* as well as elements advocated by Justice White in the *Aaby* dissent." No. W2005-01288-COA-R3-CV, 2006 WL 3008019, at *13 (Tenn. Ct. App. Oct. 24, 2006). As a result, we interpreted "reasonable purpose" to mean: "a significant purpose, substantial when weighed against the gravity of the loss of the non-custodial parent's ability 'to participate fully in their children's lives in a more meaningful way.'" *Id.* at *14 (quoting the dissent in *Aaby*, 924 S.W.2d at 631).

Although, in interpreting a statute, we may presume the General Assembly knew the "state of the law." *Lee Med., Inc.*, 312 S.W.3d at 527, I do not see that as support for abandoning the natural and ordinary meaning of the term "reasonable purpose." First, the dissent only proposed that "the custodial parent . . . establish some reason for the move that was unrelated to the non-custodial parent's parenting rights." *Aaby*, 924 S.W.2d at 631 (White, J., dissenting). Second, had it intended for the purpose to be "significant" or "substantial," the General Assembly could have said so. Finally, "the gravity of the loss of the non-custodial

Gonzalez, No. M2012-02714-COA-R3-CV, 2014 WL 872816, at *11 (Tenn. Ct. App. Feb. 28, 2014) (requiring the reason for the proposed relocation to be “substantial”).

The most fundamental canon of statutory interpretation is to give words in a statute their ordinary meaning. *Lee Med. Inc.*, 312 S.W.3d at 526-27. While the statute does not define “reasonable purpose,” our courts have interpreted the term “reasonable” in other contexts to mean ordinary, usual, rational, moderate, fair and sensible. *See State v. Maclin*, No. 02C01-9710-CR-00383, 1998 WL 517839, at *3 (Tenn. Crim. App. Aug. 21, 1998) (defining “reasonable person”); *State v. Tucker*, No. W2000-02220-CCA-R3CD, 2002 WL 31624933, at *13 (Tenn. Crim. App. Nov. 20, 2002) (approving definition of “reasonable” as “right thinking, or right judgment not absurd, not ridiculous, not extreme, not excessive[;][p]ossessing good sound judgment, well balanced and sensible”). Black’s Law Dictionary defines “reasonable” as “fair, proper, or moderate under the circumstances; sensible.” Black’s Law Dictionary (10th ed. 2014).

Although “[t]he answer to the question of what is reasonable will vary according to the circumstances,” *Pylant v. Spivey*, 174 S.W.3d 143, 156 (Tenn. Ct. App. 2003), I cannot agree that the word “reasonable” means “substantial” or “significant.” “Significant” and “substantial” both connote a weightier reason and, thus, place a lighter burden on the non-custodial parent opposing relocation than a fair reading of the Parental Relocation Statute supports. *See* Black’s Law Dictionary (10th ed. 2014) (defining “significant” as “of special importance; momentous” and “substantial” as “important, essential and material; of real worth and importance.”). *See also Smith v. State*, 547 S.W.2d 925, 927 (Tenn. 1977) (opining there is a significant difference between “reasonable” doubt and “substantial” doubt in the criminal context such that the burden of proof was altered). In my view, defining the word “reasonable” to mean “substantial” or “significant” also leads to results that are difficult to explain.

For example, we have found that a custodial parent who seeks to relocate to live with a new spouse lacks a reasonable purpose to relocate. The remarriage cases generally focus on whether it is more reasonable for the new spouse to relocate. *See Carman v. Carman*, No. M2011-01265-COA-R3-CV, 2012 WL 1048600, at *7 (Tenn. Ct. App. Mar. 26, 2012) (“On balance, Mr. Gallant’s career, church duties, and his responsibility to his mother are not sufficient to render it unreasonable for Mr. Gallant to relocate to Tennessee to live with his new wife.”); *Schremp v. Schremp*, No. W1999-01734-COA-R3-CV, 2000 WL 1839127, at *2 (Tenn. Ct. App. Dec. 7, 2000) (“While it is clear that a husband and wife should live together, it is also obvious that both may have to make sacrifices to ensure that they have that

parent’s ability to participate fully in their children’s lives in a more meaningful way” arguably comes into play in consideration of the best interest factors. *See* Tenn. Code Ann. § 36-6-106(a)(2), (6), (9) & (10) (2014).

opportunity.”).

We have also refused to let a custodial parent move to pursue better job opportunities or to take advantage of the support offered by extended family. When a custodial parent seeks to move for a new job opportunity, we have asked courts to consider a host of economic factors, including the “relative significance of the increase, the cost of living in the proposed location compared to the present location, the opportunity for career advancement and economic betterment of the family unit.” *Slaton v. Ray*, No. M2004-01809-COA-R3-CV, 2005 WL 2756076, at *3 (Tenn. Ct. App. Oct. 24, 2005). We have held moving to be near family members, standing alone, is not sufficient to meet the “substantial” standard. *Rogers*, 2007 WL 1946617, at *11.

Here, Father had a reasonable purpose for his move. The trial court acknowledges as much by finding that Father “posit[ed] a rational basis for his move.” Father sought to move to Tucson, Arizona, to be near his family and to work in his chosen profession. He secured a job as a registered nurse on the neurology floor at Tucson Medical Center. His compensation is \$24 an hour plus a ten percent premium for the night shift. He has extended family members in Tucson who testified they are willing to help care for the child. The child would also have the opportunity to form relationships with relatives of both parents because Mother also has family in the Tucson area.

By the terms of the statute, the court must allow Father to move unless Mother has met her burden of proving his move lacks a reasonable purpose, the relocation would pose a threat of specific and serious harm to the child that outweighs the threat of harm to the child of a change of custody, or the parent’s motive for relocating with the child is vindictive. Because Mother failed to do so, I would reverse.

W. NEAL McBRAYER, JUDGE