

MISSOURI COURT OF APPEALS EASTERN DIVISION
OPINION SUMMARY

GORDON D. AUBUCHON,)	No. ED101126
)	
Respondent,)	
)	Appeal from the Circuit Court
v.)	of St. Charles County
)	
KIMBERLEY H. HALE,)	Hon. Richard K. Zerr
)	
Appellant.)	FILED: December 2, 2014

Kimberly Hale (Mother) and Gordon Aubuchon (Father) appeal the trial court’s judgment in post-dissolution proceedings involving child custody and support, relocation, and attorney fees. In 2009 after the original dissolution decree, Mother accused Father of molesting their daughter M.A., and Father was prohibited contact with the children as a condition of his bond. Father was eventually acquitted by a jury and exonerated by Children’s Division, but in the interim, with the encouragement of Mother, the children became estranged from Father. In earlier modification proceedings, the trial court ordered measures to normalize relations with Father and continue joint custody. That judgment was reversed on appeal based on evidence that the parents could no longer communicate or cooperate.

At the time of remand in 2013, the children were 14 years old and had had very little contact with Father in four years. After hearing additional evidence, the trial court granted sole custody to Mother and no visitation to Father, but it denied Mother’s motion to relocate the children to Texas. With respect to monetary awards, the court found both parties under-employed and relied on their respective financial statements to calculate child support, and it rejected Mother’s claimed credit for extraordinary expenses. Finally, the court ordered Father to pay approximately one-fifth of Mother’s attorney fees from the first appeal, in which she was the prevailing party, but it denied her request for fees from the remand trial.

AFFIRMED.

DIVISION ONE HOLDS:

(1) On relocation, the record supports the trial court’s finding that Mother sought to relocate the children to Texas in order to eliminate Father from their lives and thus in bad faith and contrary to §452.377.9. The record also supports the trial court’s finding that relocation was not in the children’s best interests in that, after years of turbulence and different schools, the children were finally well-adjusted in their home, school, and community in St. Charles County.

(2) On the award of sole custody to Mother and no visitation for Father, although the record contains conflicting evidence about daughter M.A.’s desire to maintain contact with Father, ultimately the resolution of conflicting evidence rests with the trial court, and the record supports its determination that forcing contact between the children and Father could do them more harm than good.

(3) On the calculation of child support, the trial court did not abuse its discretion in accepting Father's stated income and declining to impute additional income or in rejecting Mother's claimed credit for extraordinary expenses and instead assigning those expenses to her in a separate order, as it deemed just under the circumstances.

(4) On attorney fees, the court did not abuse its discretion in ordering Father to pay a portion of Mother's appellate legal fees. Father has superior financial means and Mother was the prevailing party in the appeal. The trial court properly denied Mother's request for fees in the remand trial, as §452.377.13 prohibits a court from assessing fees against a party who objects in good faith to the relocation of a child's principal residence.

Opinion by: Clifford H. Ahrens, Judge
Norton, J., concur.

Lawrence E. Mooney, P.J., and Glenn A.

Attorney for Appellant: Francis Pennington

Attorney for Respondent: Erin R. Griebel

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