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Saltzman v. Saltzman, 218 A.3d 551 (R.I. 2019)

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Family Law. *Saltzman v. Saltzman*, 218 A.3d 551 (R.I. 2019). A Rhode Island Family Court Justice does not abuse their discretion when denying a parent’s request to relocate with their children during divorce proceedings when the justice thoroughly considers relevant factors. The trial justice has ample discretion to review the record and determine alimony amounts, child support, attorneys’ fees and costs, the distribution of the marital estate, visitation schedules, and sanctions against either party, when necessary.

FACTS AND TRAVEL

In September of 2009, the plaintiff, Adam Saltzman, and the defendant, Erin Saltzman, married and later had two children together.¹ The couple first lived in New York City where Adam was a physician and Erin was a buyer for Macy’s department store.² In May 2011, Adam began a fellowship at Massachusetts General Hospital, and the pair relocated to Cambridge, Massachusetts.³ The two again relocated to Barrington, Rhode Island, in 2013 after Adam began working as a cardiologist, earning \$550,000 per year.⁴ Meanwhile, Erin did not work and was the primary caregiver for their two children.⁵

The relationship began to experience tension—in part due to Erin’s frequent trips to visit her family in Ohio.⁶ Eventually, Adam began an extramarital affair during one of Erin’s trips.⁷

1. *Saltzman v. Saltzman*, 218 A.3d 551, 554 (R.I. 2019). For clarity, the parties will be referred to as Adam and Erin because they share the same last name.

2. *Id.*

3. *Id.*

4. *Id.* at 554–55.

5. *Id.* at 555.

6. *Id.*

7. *Id.* According to the trial justice’s decision, Adam was “less than candid with his responses in . . . testimony . . . as to his sexual involvement with

Almost six years later, in July of 2015, Adam filed for divorce, citing irreconcilable differences.⁸ The case began in Providence County Family Court.⁹ After proceedings, the trial justice granted divorce based on irreconcilable differences.¹⁰ Ultimately, the trial justice found that Adam's infidelity led to the relationship's demise, though each party had contributed to the breakdown of the marriage.¹¹

Adam and Erin were granted joint custody of the minor children, but the children would primarily reside with Erin.¹² Adam was granted reasonable visitation rights with his children, which included alternate weekends and overnight visitations on Mondays and Wednesdays.¹³ Erin had requested to relocate to Ohio with the children, but the trial justice denied the request.¹⁴ At the justice's order, Adam was to comply with the following: (1) pay the costs of their shared family home for thirty months before it sold; (2) pay \$50,000 of alimony; and (3) pay \$5,500 per month in child support.¹⁵ After the sale of the shared family home, Erin would receive seventy percent of the net proceeds, and Adam would receive the remaining thirty percent.¹⁶ The marital estate balance would be divided evenly between Adam and Erin.¹⁷ Finally, both parties were ordered to pay their own attorneys' fees.¹⁸

Erin appealed the trial justice's decision to the Supreme Court.¹⁹ On appeal, Erin raised a number of arguments and claimed that the trial justice erred when: (1) he denied her request to relocate to Ohio; (2) he ordered temporary use of the home to her for thirty months before it was sold; (3) he calculated an insufficient amount of child support; (4) he ordered each party pay their own

another woman, which he later modified prior to trial." *Id.* Consequently, the trial justice sanctioned Adam for his lack of candor. *Id.*

8. *Id.* at 554.

9. *See id.*

10. *Id.* at 555.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

attorneys' fees and costs; (4) he ordered an equal split of marital property; (5) he granted an improper visitation schedule; and (6) he imposed an insufficient amount of sanctions on Adam.²⁰ The Supreme Court reviewed the appeal and affirmed the trial justice's decision in part and remanded in part for an entry of final judgment.²¹

ANALYSIS AND HOLDING

The Supreme Court reviewed the trial justice's orders and addressed Erin's claims of error in turn.

A. *Relocation*

To determine the outcome in relocation cases, the Court uses the best interest of the child standard, a determination that is in the sound discretion of the trial justice.²² The Court uses an eight-factor analysis when determining this standard, found in *Dupré v. Dupré*.²³ The *Dupré* factors include:

(1) 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.

....

(2) 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 not limited to, economic and emotional benefits, and educational opportunities.

(3) The probable impact that the relocation will have on the child's physical, educational, and emotional development. Any special needs of the child should also be taken into account in considering this factor.

(4) The feasibility of preserving the relationship between the non-relocating parent and child through suitable

20. *Id.*

21. *Id.* at 554.

22. *Id.* at 556 (quoting *Ainsworth v. Ainsworth*, 186 A.3d 1074, 1081 (R.I. 2018); *Dupré v. Dupré*, 857 A.2d 242, 256 (R.I. 2004)).

23. *Id.* (citing *Dupré*, 857 A.2d at 256).

visitation arrangements, considering the logistics and financial circumstances of the parties.

....

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

(6) Each parent's reasons for seeking or opposing the relocation.

....

(7) 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 will be an important consideration.

(8) To the extent that they may be relevant to a relocation inquiry, the *Pettinato* factors also will be significant.²⁴

No single one of these factors is dispositive to determining the child's best interest.²⁵ Ultimately, the trial justice's findings of fact will not be reversed unless it is determined upon review that the trial justice abused his discretion.²⁶

Further, "[t]he trial justice must also consider the eight factors found in *Pettinato v. Pettinato*."²⁷ The *Pettinato* factors include:

(1) The wishes of the child's parent or parents regarding the child's custody.

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

(3) 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.

24. *Id.* at 556–57 (quoting *Dupré*, 857 A.2d at 257–59).

25. *Id.* at 557 (quoting *Ainsworth*, 186 A.3d at 1082).

26. *Id.* at 556 (quoting *Dupré*, 857 A.2d at 256).

27. *Id.* (citing *Ainsworth*, 186 A.3d at 1082).

- (4) The child's adjustment to the child's home, school, and community.
- (5) The mental and physical health of all individuals involved.
- (6) The stability of the child's home environment.
- (7) The moral fitness of the child's parents.
- (8) The willingness and ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent.²⁸

The Rhode Island Supreme Court held that the trial justice had diligently reviewed and considered both the *Dupré* and *Pettinato* factors.²⁹ The trial justice did not find that Erin's Ohio employment opportunities outweighed her employment opportunities in Rhode Island.³⁰ Next, the trial justice found that the children were "flourishing" in their environment in Rhode Island, and the justice was not convinced that their emotional well-being would be enhanced in Ohio.³¹ Further, the trial justice concluded that both Erin and Adam had meaningful relationships with their children and that both were determined to maintain those relationships following the divorce.³² Erin argued that Adam's substantial income would make visitations to Ohio feasible and, therefore, parental involvement would continue.³³ Although Adam's income would allow him to afford travel costs, the trial justice found that transportation and lodging difficulties, in addition to his employment obligations, would make it a challenging dynamic.³⁴ The trial justice also found that the children had a "more than sufficient" support system in Rhode Island with Adam's family residing a reasonable distance away in Massachusetts, and that while the support in Ohio would be "extensive," remaining in Rhode Island would be a fine outcome.³⁵ Because the trial justice thoroughly considered the

28. *Id.* at 557 (quoting *Pettinato v. Pettinato*, 582 A.2d 909, 913–14 (R.I. 1990)).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 558.

34. *Id.*

35. *Id.*

Dupré and *Pettinato* factors, the Court found no fault in his decision to deny Erin's motion to relocate to Ohio with the children.³⁶ Therefore, the Court affirmed the trial justice's denial of the motion to relocate.³⁷

B. *Alimony and Temporary Use of the Marital Home*

On appeal, Erin also argued that the thirty-month span of alimony award totaling \$50,000 was an abuse of the trial justice's discretion given Adam's significant income and her extended period of unemployment.³⁸ According to Rhode Island General Laws section 15-5-16, an alimony award is authorized by the trial justice to "provide support for a spouse for a reasonable length of time to enable the recipient to become financially independent and self-sufficient."³⁹ The trial justice found that Erin was capable of holding a job, as she had been employed in the past, and thirty months would be sufficient for her to secure new employment.⁴⁰

Erin added that the payment method determined by the trial justice was an abuse of his discretion.⁴¹ In her appeal, she argued that it was improper for her to be required to use portions of the alimony award to maintain the former marital home, which Erin was authorized to use until it sold.⁴² The Supreme Court disagreed and held that a trial justice has flexibility to set alimony arrangements per section 15-5-16 and that this arrangement did not constitute an abuse of the trial justice's discretion.⁴³ Thus, the Court affirmed the trial justice's alimony award.⁴⁴

C. *Child Support*

Erin also argued that the trial justice erred in his award of child support because he did not award the proper minimum child support amount.⁴⁵ However, the Supreme Court found this

36. *Id.*

37. *Id.*

38. *Id.* at 559.

39. *Id.* at 558–59 (quoting 15 R.I. GEN. LAWS § 15-5-16 (1956)).

40. *Id.* at 559.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 559–60.

argument baseless because the trial justice's award actually exceeded the Rhode Island Family Court Administrative Order guidelines by thirty-one percent.⁴⁶ As a result, the Court affirmed the trial justice's child support award.⁴⁷

D. *Attorneys' Fees and Costs*

Erin, however, did prevail on one argument. She claimed that the trial justice erred when he declined to award attorneys' fees and costs because the trial justice never made findings as to her ability to pay her legal fees.⁴⁸ The Court agreed with Erin and cited the fact that there was no evidence in the record that would demonstrate Erin's ability to afford her legal fees.⁴⁹ The Court vacated the trial justice's decision denying Erin's request for attorneys' fees and remanded the issue to the Family Court.⁵⁰

E. *Distribution of the Marital Estate*

Erin also argued that the trial justice erred in distributing the marital estate and apportioning seventy percent of property to Erin and thirty percent to Adam.⁵¹ However, the trial justice is given broad discretion in distributing marital assets, and, unless the Supreme Court finds that the trial justice abused his discretion, the distribution will not be overturned.⁵² Adam's infidelity did not outweigh all of the other factors that the trial justice had to assess when determining the distribution of property, as Erin had argued, although it was part of the consideration.⁵³ Consequently, the Court affirmed the trial justice's decision with respect to the equitable distribution of the marital estate.⁵⁴

46. *Id.* at 560.

47. *Id.*

48. *Id.*

49. *Id.* at 560–61. The standard for determining whether the party seeking attorneys' fees should be compensated is laid out in *McCulloch v. McCulloch*. *Id.* at 560 (citing *McCulloch v. McCulloch*, 69 A.3d 810, 826 (R.I. 2013)).

50. *Id.* at 561.

51. *Id.* The standard for dividing marital property is established in *Tondreault v. Tondreault* and 15 R.I. GEN. LAWS § 15-5-16.1(a). *Id.* (citing *Tondreault v. Tondreault*, 966 A.2d 654, 659 (R.I. 2009)).

52. *Id.*

53. *Id.*

54. *Id.*

F. *Visitation Schedule*

The Supreme Court was also unwilling to disturb the trial justice's findings with regards to the visitation schedules, which Erin argued was not in the best interest of the children.⁵⁵ The Court held that the trial justice properly considered the *Pettinato* factors when determining the best interest of the child and that the consideration for the visitation schedule was in accordance with that process.⁵⁶ Therefore, the Court affirmed the trial justice's decision in setting the visitation schedule.⁵⁷

G. *Sanctions*

Finally, Erin argued that the trial justice did not sufficiently sanction Adam for his "lack of candor."⁵⁸ The Supreme Court disagreed and found that the \$3,000 sanction was determined after a proper review of the evidence and was an appropriate amount for a false statement under oath under these circumstances.⁵⁹ Thus, the Court affirmed the trial justice's decision regarding the sanction imposed.⁶⁰

COMMENTARY

The Rhode Island Supreme Court repeatedly stated that the trial justice was in the best position to make determinations during divorce proceedings and that the majority of the issues on appeal would be decided on an abuse of discretion standard. The Court "accord[s] great deference to the sound discretion of the trial justice in assessing and weighing [the *Pettinato* and *Dupré*] factors because 'it is the trial justice who is in the best position to determine what factors may be relevant on a case-by-case basis.'"⁶¹ On appeal, the Supreme Court only vacated one of seven determinations made by the trial justice.⁶² The Court expressed trust in the trial justice to consider arguments from each party, review the evidence

55. *Id.*

56. *Id.* at 562.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 558.

62. *See id.* at 560.

thoroughly, and determine the best outcome using judicial standards from existing case law.

The Court made clear its confidence in the trial justice's review while also making clear its willingness to overturn any outcome if there was any evidence the trial justice abused his discretion. While the Court recognizes the trial court's primary role in family law cases, reviewing a trial justice's procedures and methods is a critical function of the appellate process. The Supreme Court found it necessary to vacate the trial justice's denial of Erin's request for attorneys' fees to ensure fairness.⁶³

CONCLUSION

The Rhode Island Supreme Court held that a Family Court justice did not abuse his discretion when he denied a parent's request to relocate with the couple's children, set the alimony and child support amounts, distributed the marital estate, set the visitation schedule, and imposed sanctions on the other parent for lack of candor. However, the Court did vacate and remand the trial justice's decision to deny the parent's request for attorneys' fees and costs because there was no evidence that she could pay those fees.

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63. *Id.* at 561.