NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CU 0439

ROBERT MALCOLM GATHEN

VERSUS

VANESSA K. GATHEN

DATE OF JUDGMENT: SEP 15 2010

ON APPEAL FROM THE SEVENTEENTH JUDICIAL DISTRICT COURT
NUMBER 101975, DIV. D, PARISH OF LAFOURCHE
STATE OF LOUISIANA

HONORABLE ASHLY BRUCE SIMPSON, JUDGE

* * * * * *

Stephen E. Caillouet
Thibodaux, Louisiana

Counsel for Plaintiff-Appellee
Robert Malcolm Gathen

Rebecca N. Robichaux
Raceland, Louisiana

Counsel for Defendant-Appellant
Vanessa K. Gathen

Carter, C.J. Concurs

* * * * * *

BEFORE: CARTER, C.J., PARRO, KUHN, PETTIGREW, AND McDONALD, JJ.

Parro, J., dissents and assigns reasons.

Disposition: REVERSED AND RENDERED.

PETTIGREW, J. DISSENTS for the Reasons assigned by Judge Parro

KUHN, J.

Defendant-appellant, Vanessa K. Gathen, appeals the trial court's judgment denying her intended relocation to Puyallup, Washington with the parties' minor children after her ex-husband, plaintiff-appellee, Robert Malcolm Gathen, filed a formal objection. We reverse and render judgment overruling Robert's objection and thereby permitting Vanessa to relocate.

FACTUAL AND PROCEDURAL BACKGROUND

Robert and Vanessa met in Washington while Robert was serving in the U.S. Navy. They eventually moved to California, where they married and had their first son, Andru, on August 3, 1997. When Andru was still an infant, the family moved to Thibodaux, Louisiana where Robert's family resided. They lived with Robert's mother for about a year, then with Robert's grandfather for a short while before finally settling into their own home. The couple had their second son, Evan, on March 3, 2002.

In August 2005, Robert filed a petition for divorce. On October 11, 2005, based on the agreement of the parties, a consent judgment awarded joint custody of the children with Vanessa designated as the domiciliary parent subject to Robert's reasonable visitation. Although the judgment stated that Robert's reasonable visitation was subject to a joint implementation plan, which was to be filed at a later date, the parties never filed one. Vanessa was awarded monthly support for the children in the amount of $1,320. She also maintained exclusive use of the family home. Robert was ordered to pay the monthly payments on the first and second mortgage notes that were secured by the family home. The judgment also stipulated detailed requirements for notice of any relocation Vanessa might intend to make.

In January 2006, Vanessa, in conformity with the requirements of the October 11, 2005 judgment, notified Robert of her intent to relocate with the children to Puyallup, Washington. In February 2006, Robert filed an objection and in March 2006, after a hearing, the trial court rendered a judgment denying Vanessa the intended relocation with the parties' children.

Vanessa and Robert were divorced by a judgment signed on April 17, 2006. On November 20, 2006, the parties executed a community property partition agreement in which they stipulated that they were equally responsible for the monthly payments of the first and second mortgage notes that were secured by the family home. The parties agreed not to partition the family home until Vanessa could secure another suitable residence. The agreement specified that Vanessa was to actively seek another residence. As a result of that agreement, with Vanessa's consent, Robert began deducting from her monthly child support payments her share of the two mortgage note payments, tendering to her $300 per month for the support of the parties' two children.

In March 2009, Vanessa verbally apprised Robert that she intended to relocate with the children to Puyallup, Washington. On March 25, 2009, she followed up with written notice. Robert filed an objection to the relocation on April 24, 2009. On May 22, 2009, Vanessa filed a rule seeking past-due child support payments, an income assignment, a finding that Robert was in contempt of court, attorney's fees, and costs. Although the two matters were set for different hearing dates, Robert sought a continuance and requested that the matters be heard together. Robert's relocation objection and Vanessa's rule were set for a hearing on June 30,

2009. Because the parties were unable to present their entire cases on both matters on that date, Vanessa's rule was taken up on August 21, 2009.

On November 3, 2009, the trial court issued judgments in both matters: Vanessa's intended relocation with the children was denied; Robert was found in contempt of court for having failed to timely pay child support and ordered to pay $14,900 in arrearages along with interest, court costs, and attorney's fees. Vanessa appealed the judgment denying her intended relocation.

DISCUSSION

It is well-settled that a court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong. ***Dettman v. Rablee***, 01-1228, p. 5 (La. App. 1st Cir. 9/28/01), 809 So.2d 373, 377. A trial court's determination in a relocation matter is entitled to great weight and will not be overturned an appeal absent a clear showing of abuse of discretion. ***Curole v. Curole***, 02-1891, p. 4 (La. 10/15/02), 828 So.2d 1094, 1096; ***Dettman***, 01-1228 at pp. 5-6, 809 So.2d at 377.

Good Faith

The relocating parent has the burden of proof that the proposed relocation is made in good faith and is in the best interest of the child. In determining the child's best interest, the court shall consider the benefits which the child will derive either directly or indirectly from an enhancement in the relocating parent's general quality of life. La. R.S. 9:355.13.

The trial court failed to expressly state whether Vanessa's proposed relocation was made in good faith, stating in its oral reasons for judgment only that she "has testified that her relocation to the State of Washington would

economically benefit her." The trial court must have implicitly concluded that Vanessa was in good faith because the relocation was motivated by a desire to improve the economic circumstances of her household, which would inure to the benefit of the children. An implicit finding that Vanessa's request was made in good faith is buttressed by the trial court's subsequent assessment of the evidence insofar as whether relocation was in the best interest of the children. Because the finding that Vanessa's request was made in good faith is supported by the evidence, it is not manifestly erroneous.[1]

Best Interests of the Children

La. R.S. 9:355.12 sets forth the factors required to be considered in a contested relocation, providing:

> A. In reaching its decision regarding a proposed relocation, the court shall consider the following factors:
>
> (1) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the nonrelocating parent, 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 a good relationship between the nonrelocating parent and the child through suitable visitation

[1] The trial court could not have implicitly determined that Vanessa's request was not made in good faith. Our jurisprudence has established that the improved job prospects of the relocating parent is sufficient to establish good faith. ***See Nelson v. Land***, 01-1073, p. 5 (La. App. 1st Cir. 11/9/01), 818 So.2d 91, 94 (and cases cited therein). The record in this case establishes Vanessa wanted to move to Washington to commence more stable employment at a position which pays more than she is earning in her current job as well as to live closer to her family. She testified that she has historic ties with Washington, having spent most of her years there before she married. Her sister, who lives in Washington, has offered to Vanessa and her children the downstairs portion of her house, which includes two bedrooms, a bathroom, and a living room area as well as a separate entrance, to live in for as long as they need. Thus, the record contains more than sufficient evidence to establish that the relocation to Washington was made in good faith.

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 the parent seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating party.

(6) Whether the relocation of the child will enhance the general quality of life for both the custodial parent seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity.

(7) The reasons of each parent for seeking or opposing the relocation.

(8) The current employment and economic circumstances of each parent and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child.

(9) The extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support, and community property obligations.

(10) The feasibility of a relocation by the objecting parent.

(11) Any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

(12) Any other factors affecting the best interest of the child.

B. The court may not consider whether or not the person seeking relocation of the child will relocate without the child if relocation is denied or whether or not the person opposing relocation will also relocate if relocation is allowed.

In its oral reasons for judgment, the trial court ultimately concluded that the relocation was not in the best interest of the children. In reaching this result, the trial judge stated, "[T]he relocation of the children to the State of Washington would have a significant adverse effect on the children." But in reaching its

conclusion that the relocation was not in the children's best interests, the trial court did not articulate its best-interest determination utilizing each of the statutorily-required factors set forth in La. R.S. 9:355.12, factor by factor.

As we have already noted, the trial court's factual findings may not be set aside absent manifest error and its relocation determination cannot be overturned unless it abused its discretion. But where one or more trial court legal errors interdict the fact-finding process, the manifest-error standard is no longer applicable. ***Evans v. Lungrin***, 97-0541, pp. 6-7 (La. 2/6/98), 708 So.2d 731, 735. If the record is complete, the appellate court should make its own independent *de novo* review of the record and determine a preponderance of the evidence. ***Id.*** A legal error occurs when a trial court applies incorrect principles of law and such errors are prejudicial. Legal errors are prejudicial when they materially affect the outcome and deprive a party of substantial rights. ***Pruitt v. Brinker, Inc.***, 2004-0152, p. 4 (La. App. 1st Cir. 2/11/05), 899 So.2d 46, 49, ***writ denied***, 2005-1261 (La.12/12/05), 917 So.2d 1084. When such a prejudicial error of law skews the trial court's finding of a material issue of fact and causes it to pretermit other issues, the appellate court is required, if it can, to render judgment on the record by applying the correct law and determining the essential material facts *de novo*. ***Evans***, 97-0541 at p. 7, 708 So.2d at 735.[2]

In ***H.S.C. v. C.E.C.***, 05-1490, pp. 3-9 (La. App. 4th Cir. 11/8/06), 944 So.2d 738, 740-43, the court examined the issue of the proper standard of review when

---

[2] ***See Wallace v. Sanders***, 2008-1982, pp. 2-3 (La. App. 1st Cir. 2/13/06) (unpublished) in which another panel of this court conducted a *de novo* review of the evidence where the trial court applied the eight factors of La. R.S. 9:355.12 prior to it amendment by La. Acts 2003, No. 676, § 1, which simply added four new factors.

the trial court undertakes a best-interest assessment but either fails to give express reasons or articulates less than all the statutory factors set forth in La. R.S. 9:355.12 in reaching its conclusion. After a comprehensive review of the jurisprudence, the ***H.S.C.*** court concluded that the weight of jurisprudential authority indicated that where the record does not support a finding that the trial court actually considered each separate La. R.S. 9:355.12 factor, the appellate court may remedy the deficiency via a *de novo* review based on the evidence in the record. 944 So.2d at 743.

A concurring judge of the ***H.S.C.*** court disagreed with the majority insofar as it suggested that the trial court's failure to expressly discuss each of the La. R.S. 9:355.12 factors constituted a "deficiency" that triggered a *de novo* review. 944 So.2d at 751. Finding that the evidence presented relating to each of the statutory factors and the trial court's comments throughout the transcript, coupled with a finding that the evidence as a whole preponderated in favor of the reasonableness of the trial court's decision, the concurring judge believed the record permitted the inference that the trial court did actually consider the statutory factors on the basis of the record. ***H.S.C.***, 944 So.2d at 751. As such, the concurring judge was of the opinion that the trial court did not abuse its discretion in approving the relocation, which was the same result the majority reached in its *de novo* review of the evidence.

We turn now to each statutory factor and examine both the express findings of the trial court and the evidence presented by the parties.

(1) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the nonrelocating parent, siblings, and other significant persons in the child's life.

The trial court addressed the nature, quality, extent of involvement, and duration of the children's relationships with Robert and his family. The trial court expressly noted:

> [Robert] has testified that he has a close – that the children have a close relationship with his mother and his aunts and that testimony has been supported by testimony of his mother and aunt.
>
> [Robert] also submits that the relocation would significantly limit the children's contact with their father and the father's family.
>
> [Robert] also argues or has presented evidence that the children have had a limited relationship with the aunt who lives in the State of Washington. The evidence presented is that this aunt has visited the State of Louisiana two times and that the children and [Vanessa] visit with the aunt in Washington approximately one time each year during the Christmas break.

The trial court did not make any reference to the nature, quality, extent of involvement, and duration of the children's relationships with Vanessa. The evidence on this issue establishes that Vanessa has been the primary caregiver and spent the most time with the children. Robert works offshore every other seven days. He has physical custody of the boys twice a month for a weekend, although whenever he asks to see the children, Vanessa has made them available to him all but one time.

(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.

The trial court made the following statements related to this factor.

> [Vanessa] has ... testified that the child [Andru] can no longer attend day care. And there is a potential that there would be a period of time after school when there would be difficulty in providing adequate supervision [unless she is permitted to relocate]. ...
>
> [Robert] has presented proof that the children have resided predominantly within the State of Louisiana and within the Parish of Lafourche. The child Evan has lived his entire life within the State of

> Louisiana and the child [Andru] has lived more than ten years of his life within the State of Louisiana.
>
> The evidence proves that the children have attended all of their time in school in Lafourche Parish. [Andru] has attended school for six years now and Evan has now attended pre-K and kindergarten. ...
>
> A relocation to the State of Washington would limit the children's contact and, therefore, limit their relationship with their father due to the great distance between the State of Louisiana and the State of Washington. The relocation to the State of Washington would also limit the contact and, therefore, significantly limit the relationship the children have with their paternal grandmother and paternal aunts, again, due to the significant distance between the State of Louisiana and the State of Washington. And the evidence proves that the children have had a limited relationship with the maternal aunt who they would reside with in the State of Washington.

In addition to the statements about the evidence noted by the trial court, the record established that the boys have no special needs and both perform well academically. The trial court concluded, and we agree, that the hearsay evidence Vanessa presented about the slightly superior academic performance of the public school in Washington that the boys would attend compared to private school they presently attend in Thibodaux was unreliable.

Additionally, the evidence suggests that a change in the school and community of the children will emotionally impact them: they will miss the routines they have established and the relationships they have with their paternal extended family and friends. But the record is devoid of any evidence showing that the impact would be irreparable. And as Vanessa noted, relocating to Washington would give them the opportunity to learn about their mother's culture and family, which is half of who they are. The relocation provides a definitive plan for Andru's care after school since his maternal aunt will pick him up and watch both his brother and him until Vanessa returns from work. While Robert's

family testified that a solution could be found to Andru's daycare problem once he turned twelve, the lack of a concrete plan was worrisome to his working mother.

(3) The feasibility of preserving a good relationship between the nonrelocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.

As indicated above, the trial court expressly mentioned that "the great distance" between Louisiana and Washington would affect the children's relationships with their father and their paternal grandmother and aunts. The record additionally shows, through Vanessa's testimony, that because the children would attend public school in Washington, there would be no need for Robert to pay private school tuition of approximately $6,000 annually. She believed that money could be applied to airfare for Robert to visit the children in Washington. According to Vanessa, he would have the opportunity to stay with her family members, which would limit his lodging costs. She also noted that she was amenable to extended summer visits by the boys to Thibodaux and alternating weekly periods during various school holiday breaks. Because the move would immediately increase her income and decrease her monthly expenses, Vanessa would have money available to assist with airfare. And once the community-owned home in which she presently resides is sold, she will have the benefit of the entire amount of child support, thereby allowing more money to help contribute to the costs of visitation between the boys and their father. It is undisputed that with one exception due to prior plans, Vanessa has agreed to every visitation request Robert has made. Robert has routinely limited his monthly physical custody of the boys to four of the fourteen days he is in Thibodaux and off work.

(4) The child's preference, taking into consideration the age and maturity of the child.

The trial court stated:

> Although the child has indicated a preference to live in the State of Washington, the Court will not give any significant weight to the determination of an eleven year old child as to what is in his best interest.

The parties agree that Evan, who was six at the time of the hearing, was too young to have a real appreciation of the situation. Vanessa testified that Andru, who was eleven at the time of the hearing, told Robert that he wanted to move to Washington, has been receptive to the idea of relocating, and even texted his cousin to say they were on their way when Robert initially indicated in January 2009 that he would not contest Vanessa's request to relocate. Robert's mother also testified that Andru indicated to her that he could be happy in Washington but that he was also happy in Louisiana.

(5) Whether there is an established pattern of conduct of the parent seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating party.

The trial court's oral reasons for judgment make no reference to any of the evidence about this factor. As we have already noted, Vanessa has a nearly flawless pattern of permitting visitation whenever Robert has requested. Robert's testimony confirmed the particularly accommodating nature that Vanessa has demonstrated in facilitating his visitation.

(6) Whether the relocation of the child will enhance the general quality of life for both the custodial parent seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity.

Based on the oral reasons we have noted above, the trial court indicated that Vanessa would financially benefit from the move. It also determined that there was no reliable evidence on whether the relocating state offered an educational

benefit to the children. And clearly, the trial court emphasized the emotional impact a move would have on the children's relationships with their father, paternal grandmother, and paternal aunts.

The evidence also established that without a doubt, the relocation will enhance the general quality of life for Vanessa. She has been offered a job doing similar duties to those she presently performs for Nicholls State University as an Administrative Assistant III, for which she makes $10.17/hour. She testified that due to recent budget cuts she would not receive a merit increase and that the university was instituting a six-and-one-half day furlough, which would reduce her annual income. A lifelong friend, Diane Kawada, offered Vanessa a job with Normandy Park Orthodontic Lab for $15/hour (an increase of 47.5% in her income), which would require her to perform the same general duties that she is doing at the university and to also work with study models for various orthodontic offices in the area. In addition, Vanessa has been offered the downstairs area of her sister's house to live in with the children and will not have a rental obligation. Vanessa's sister is available to pick the boys up after school and tend to their care, thereby relieving Vanessa of a weekly daycare expense and the worry about after-school care for Andru.

Vanessa testified that under the present arrangements, she receives $300/month net child support from Robert. She grosses approximately $407/week, with a net bi-weekly paycheck of a little more than $600. From that, she has been paying $170/week in daycare expense, or over half her net salary to maintain her job. In light of her limited income, she explained that there was not much money to do many things with the children. She believes her increased

income, between the new job and the reduction of expenses, will permit her to do more things with the boys.

Lastly, Vanessa testified that she has no family other than her boys and limited support in Louisiana. She has lived with her sister, who is ten years older than her, in the past. She also has a cousin who lives in Seattle that she visits every time she is in Washington. Vanessa explained that her mother makes trips two or three times a year to Washington, noting that the travel time is significantly less than the seven-hour trip to Louisiana. According to Vanessa, her mother resides in Hawaii presently to care for Vanessa's 101-year-old grandmother but plans to relocate to Washington in the future. Her mother has offered to supply Vanessa with a down payment of $20,000 for a new home, once Vanessa is financially able to purchase a home. The idea is that once she relocates from Hawaii, and on her visits to Washington, Vanessa's mother can stay with Vanessa and the children. Vanessa acknowledges that her mother speaks mostly Korean but says the boys have a loving relationship with her nevertheless. She added that although her mother speaks to her only in Korean, Vanessa responds to her only in English, indicating that the maternal grandmother understands more English than she chooses to speak.

(7) The reasons of each parent for seeking or opposing the relocation.

As the trial court noted, Vanessa's reasons for relocating are the increased financial opportunity and the reduction in her expenses along with the resolution of Andru's after-school issue. She also wants to be closer to her family and to have more of a support system available to her.

The trial court also articulated Robert's reasons for objecting to the relocation, i.e., that his children have lived their lives in Thibodaux. They have established ties to Louisiana, including a strong connection with his family, their friends, and involvement in the community through school and sports. Robert believes the great distance between Louisiana and Washington will diminish the children's relationships with him and his family members.

(8) The current employment and economic circumstances of each parent and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child.

The trial court pointed out that proposed relocation would improve Vanessa's employment and economic circumstances. The evidence also established that Robert works offshore every other seven days and that the parties' two mortgage note obligations for the family home require that Vanessa forgo a significant portion of the child support payment. After deducting $731/month for daycare expenses from her net pay of approximately $1,200/month and $300/monthly child support, Vanessa is required to pay outstanding financial obligations incurred during the community property regime, food, utilities, and other living expenses for three with approximately $860/month.

(9) The extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support, and community property obligations.

The trial court made no express reference to this factor. But on November 3, 2009, the same day it issued the judgment denying her intended relocation, the trial court awarded Vanessa $14,900 in child support arrearages. Robert did not appeal that judgment.

(10) The feasibility of a relocation by the objecting parent.

The trial court did not expressly comment on the feasibility of Robert relocating to Washington, and the record is devoid of any evidence regarding the matter.

(11) Any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

The trial court made no express finding on this factor. The record contains evidence that Robert initially told the boys he would not fight the relocation. According to Vanessa, sometime in May, three days before she was served with Robert's objection to the relocation, the parties went out to dinner. The next day, Robert told Vanessa that after dinner he had become intoxicated at a friend's house and could not recall how he had arrived home with the boys. According to Vanessa, Andru confirmed that his father had driven home drunk with his brother and him in the vehicle. Vanessa admitted she has never observed Robert driving under the influence of alcohol with his children in the vehicle. Robert did not present any testimony denying the incident.

(12) Any other factors affecting the best interest of the child.

The record contains no evidence of any other factor affecting the best interest of the children.

Whether we conduct a *de novo* analysis of the above twelve factors and weigh the factors as a whole, or we examine the record for an abuse of discretion, the trial court's determination denying Vanessa's request for relocation is reversed. Under a *de novo* review, we find that factors 2, 3, 5, 6, 8, and 11 weigh in favor of Vanessa and the remaining factors favor neither party. Examining the

record for an abuse of discretion, mindful of the express statements about the evidence relative to the statutory factors, we cannot say that the evidence as a whole preponderated in favor of the reasonableness of the trial court's decision. Therefore, the trial court abused its discretion in denying the requested relocation. Accordingly, the trial court's judgment is reversed and judgment is rendered permitting Vanessa to relocate.

DECREE

For these reasons, the trial court's judgment is reversed. Judgment is rendered in favor of defendant-appellant, Vanessa K. Gathen, permitting her relocation request and overruling Robert's objection. Appeal costs are assessed against plaintiff-appellee, Robert Malcolm Gathen.

REVERSED AND RENDERED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CU 0439

ROBERT MALCOLM GATHEN

VERSUS

VANESSA K. GATHEN

BEFORE: CARTER, C.J., PARRO, KUHN, PETTIGREW, AND McDONALD, JJ.

PARRO, J., dissenting.

I must respectfully dissent on the grounds that there was no showing that the trial court abused its discretion in this case.

A trial court's determination in a relocation matter is entitled to great weight and will not be overturned on appeal absent a clear showing of abuse of discretion. Curole v. Curole, 02-1891 (La. 10/15/02), 828 So.2d 1094, 1096. Upon review, the entire record should reflect that the trial court properly considered all of the factors mandated by LSA-R.S. 9:355.12 and reasonably concluded, based on a totality of the circumstances, that relocation would or would not be in the children's best interest. See Curole, 828 So.2d at 1094-95.

Regarding those factors, the majority opinion sets out the evidence relevant to each of the factors enumerated in the statute; a simple reading of that opinion shows that the trial court did properly consider those factors in reaching its decision. We note also that the issue of the mother's relocating with the children to Washington was before this same trial court in 2006, and it would seem reasonable to conclude that the trial court took into consideration the evidence presented at the earlier trial, as well as its oral reasons given in connection with that trial, in addition to the evidence presented at the instant trial. Thus, reviewing the record in its entirety, there is nothing to show

that the trial court's decision would have a negative impact on the children or on their relationship with their parents and extended family. On the contrary, the majority's decision to allow the relocation will, quite obviously, eliminate the father's bi-weekly visits with his children and remove them from regular contact with him and his extended family. Additionally, the children will be forced to change schools and will be taken from their friends and the community in which they have lived their entire lives. Based on the totality of the circumstances, the trial court's conclusion that relocation would not be in the best interests of the children was reasonable and was not a clear abuse of discretion.

Accordingly, I respectfully dissent.