Maine Supreme Judicial Court
Sitting as the Law Court

Docket No. Cum-24-71

Laudan Ghayebi,

Appellant,

v.

Omid Ghayebi,

Appellee.

On Appeal from the
Maine District Court, Portland

APPELLANT'S REPLY BRIEF

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I. REPLY ARGUMENT

A. The Court's Superficial Reference In A Footnote To The Best Interest Of Factors Is Insufficient.

The Court has a duty to make findings sufficient to inform the parties of their reasoning underlying its conclusions and to provide for effective appellate review. *Grant v. Hamm*, 20212 ME 79, ¶ 13, 48 A.3d 789. This Court reviews factual findings underlying a divorce judgment for clear error and an award of parental rights and responsibilities for an abuse of discretion. *Bergin v. Bergin*, 2019 ME 133, ¶ 4, 214 A.3d 1071. Because the trial court denied Appellant's Motion For Further Findings of Fact, the trial court made any findings that it did not expressly state. *Whitmore v. Whitmore*, 2023 ME 3, ¶ 7, 288 A.3d 799.

Appellee attempts to distinguish the holding in *Whitmore* by citing footnote 1 in the Divorce Judgment, the best interest factors set forth in 19-A M.R.S.A. § 1653(3). The superficial recitation of factors, even considering the Court's assertion that it "has considered each factor in making its determination" fails to comply with *Whitmore* because there is no indication in the record the court considered those factors and their insufficient factual findings for this court to determine the grounds for the trial court's best interest decision. *Whitmore*, 2023 ME 3, ¶ 8.

Here, like *Whitmore*, the Judgment contains "[n]o indication of how the evidence relevant to any factors supports the Court's parental rights, residence, and parental contact determinations." *Id.,* ¶ 9. The Court failed to make findings with respect to the

extensive testimony regarding economic abuse, domestic violence, Laudan's diagnosis of PTSD, or the impact of the abuse on Child . Indeed, there was nothing in the Court's findings to even suggest that this was a relocation case where Laudan had been working at Columbia University for a year and a half with Child prior to trial. Given Laudan's Motion For Further Findings, this Court cannot assume the trial court made any findings it did not expressly state. *Id.* at ¶ 7.

B. <u>The Court's Lack of Express Findings Regarding Domestic and Economic Abuse Are Clearly Erroneous</u>.

Omid asserts that the Court's failure to reference economic abuse or domestic violence is not clearly erroneous. (Red Br., 15) The only conclusory finding with respect to domestic abuse is the Court's reference that Laudan "did not prove evidence of abuse by a preponderance of the evidence by Plaintiff against Defendant and Child ." (A. 66.) The Court's finding, however, related to the consolidated PFA Complaint and not the evaluation of the evidence as it related to parental rights and responsibilities and the required best interest analysis.

Omid wants to gloss over the detailed and credible testimony of Laudan's mother, Nancy Behrouz, and her therapist, Susan Benjaminsen, who diagnosed Laudan with PTSD as a result of domestic abuse *in the marriage*. Indeed, the Court was statutorily required to consider economic abuse pursuant to 19-A M.R.S.A. § 953(1)(D), but the Court made no findings despite extensive evidence that was independently corroborated by her mother, Nancy Behrouz, and her therapist. Since there are *no*

findings, this Court cannot assume any findings that are not expressly stated in the Court's limited findings of fact. *Whitmore*, 2023 ME 3, ¶ 7, 288 A.3d 799.

Omid further argues "separate investigations, generated by Laudan's abuse allegations, were undertaken by the Falmouth Police Department and DHHS, with no resulting action taken against Omid, and the GAL's Report made no finding of abuse." (Red Br., 17) However, the absence of action by either agency is inadmissible hearsay. Laudan filed a Motion In Limine Pursuant to Rule 803(8)(B) of the Maine Rules of Evidence that clearly state the absence of action is not evidence that the complaints were not warranted or were made in good faith.

Finally, Omid's reference to the GAL making no finding of abuse is false and misleading. The GAL testified that her Order of Appointment did not direct she make any findings with respect to whether abuse had occurred in the marriage and therefore she did not make any findings in this regard. (D3/339)

C. <u>Issues Related to Relocation Were Not Waived</u>.

Omid argues "Laudan's failure to connect the Court's alleged error in assessing her trial evidence regarding her possible relocation to an issue now identified as presented for review means any such claim of error is waived." (Red Br., 9) The argument is without merit.

In January 2022, Laudan and her mother moved to New York because her employer, Columbia University, required her to be physically present three days of each work week. (A. 24) Laudan was authorized to travel with Child and live in New York

with Child . (A. 16) The Court issued an Interim Order dated December 28, 2021 modifying the contact schedule to facilitate Laudan's need to be in New York at her employment three days per week. (A. 20) Laudan had primary residence of Child at this time and throughout the marriage. (A. 24) Further, the trial deposition of Laudan's supervisor, Thomas Chandler, was admitted into evidence corroborating her obligations to Columbia University. (Def. Ex. 93A) The assertion that Laudan waived the issue is without any support in the record. Finally, the GAL Report contains numerous references to Laudan's relocation, (A. 240), as well as Laudan's proposed judgment. Given those facts, waiver is a specious argument.

Laudan asserts the Court failed to make a "current assessment" of Child 's best interest since Laudan and her mother had been his primary caregivers since birth. The Court's finding made no reference to Laudan's employment in New York or how she will be able to exercise her shared parental rights. The Court's silence on these critical best interest issues is an abuse of discretion under the circumstances. This case is no different than *Gooley v. Fradette*, 2024 ME 3, ¶ 17, __ A.3d __ where the court considered the conditions of the parental rights order and how they negatively impacted the child's best interest ("[w]ould you recognize that Fradette intends to relocate to Massachusetts and acknowledge that requiring Fradette to transfer the children from Massachusetts to Portland each Wednesday could negatively impact the children's best interest."). *Gooley* remanded the case for an express reconsideration of the relocation considerations. The same should be true here.

D. <u>The Security Payment to Father a Child in the Amount of $250,000 Was Not Waived, and is Unconscionable</u>.

Omid asserts that the enforceability of the $250,000 payment was not raised by Laudan at trial and is therefore waived. On the contrary, counsel raised this very issue in his opening statement.

> My position is whatever the parties talked about and whatever is recorded in that agreement is so *unconscionable* as to be unenforceable by this Court. I know of no precedent. I'm sure the Court knows of no precedent. (emphasis ours)

(D1/18) "Unconscionable," as defined by Merriam-Webster means "shockingly unfair and unjust," "excessive and unreasonable," "unscrupulous." Courts do not enforce "unconscionable contracts" because they violate public policy. *See* 19-A M.R.S. § 608(B). Clearly, the enforceability of the $250,000 loan/gift was before the Court. The payment of $250,000 security to have a child is clearly offensive to any civilized society and, as argued, is unconscionable and should not be enforced by this Court.

The alleged agreement is further *prima facie* evidence of the economic and emotional abuse that Laudan was subject to throughout the marriage. Keep in mind, Omid's testimony was to disavow his involvement in the agreement and claim it was "her idea" and that "I went along with the idea." (D1/243) Omid's entire cross-examination was evasive and facially untruthful. This Court should have no part in directly or indirectly allowing such an unconscionable agreement to be enforced.

Indeed, the payment of $250,000 underscores the economic abuse that existed throughout the marriage and Omid's control and emotional advantage over Laudan.

The Court's resolution of this issue by declining to address it because there was no signed writing is untenable and an affront to human decency.

Dated: June 17, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2024, I caused one copy of the Appellant's Reply Brief to be served upon the following counsel of record via regular U.S. Mail and one electronic copy via e-mail:

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