

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

PERRY GUS A. INOS, JR.,
Petitioner-Appellee,

v.

PEBBLES B. INOS,
Respondent-Appellant.

Supreme Court No. 2014-SCC-0012-FAM

Superior Court No. 11-0354-FCD

OPINION

Cite as: 2015 MP 5

Decided October 1, 2015

Stephen J. Nutting, Saipan, MP, for Respondent-Appellant.

Daniel T. Guidotti, Saipan, MP, for Petitioner-Appellee.

BEFORE: ROBERT J. TORRES, Justice Pro Tem; HERBERT D. SOLL, Justice Pro Tem; TIMOTHY H. BELLAS, Justice Pro Tem.

BELLAS, J.P.T.:

¶ 1 Respondent-Appellant Pebbles B. Inos (“Pebbles”) appeals the trial court’s order denying in part and granting in part her motion to allow her minor child, G.I.¹, to travel with her to the Philippines. Pebbles asserts the trial court abused its discretion by prohibiting her from taking G.I. to the Philippines. For the reasons discussed below, we AFFIRM the trial court’s judgment.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Pebbles and Petitioner-Appellee Perry Gus A. Inos, Jr., (“Perry”) divorced on May 9, 2013, and share joint legal and physical custody of their child, G.I.

¶ 3 In March 2014, Pebbles moved the trial court for permission to travel with G.I. to the Philippines and for compulsion of Perry’s cooperation in obtaining a passport for G.I. Pebbles argued that her motion should be granted because she intends to return with her daughter to the Commonwealth of the Northern Mariana Islands (“CNMI”). At the hearing on this motion, Pebbles’s attorney asserted that Pebbles is completing nursing school and seeking employment in the CNMI, her nursing school education does not benefit her chances of employment in the Philippines, her mother lives in the CNMI, she has obtained a green card and is seeking U.S. citizenship, and she has lived in the CNMI since she was seventeen. These assertions were not made under oath or supported by verified documentation, such as a declaration, an affidavit, or a verified brief. Instead, they were simply advanced by Pebbles’s attorney at the hearing on this motion.

¶ 4 In opposing Pebbles’s motion, Perry asserted that if G.I. traveled to the Philippines, he would have no legal recourse if she were to remain there because the Philippines is not a member of the Hague Convention on the Civil Aspects of International Child Abduction (“the Hague Convention”).²

¹ We have abbreviated the minor child’s name in order to maintain confidentiality.

² In *Lozano v. Montoya Alvarez*, the United States Supreme Court briefly discussed the purpose of the Hague Convention:

To address “the problem of international child abductions during domestic disputes,” *Abbott v. Abbott*, 560 U.S. 1, 8, 130 S. Ct. 1983, 176 L. Ed. 2d 789 (2010), in 1980 the Hague Conference on Private International Law adopted the Convention on the Civil Aspects of International Child Abduction (Hague Convention or Convention), T.I.A.S. No. 11670, S. Treaty Doc. No. 99-11 (Treaty Doc.). The Convention states two primary objectives: “to secure the prompt return of children wrongfully removed to or retained in any Contracting State,” and “to ensure that rights of custody and of access under the law

Furthermore, he argued that Pebbles intended to remain in the Philippines with G.I., stating that she had previously expressed her desire to permanently depart the CNMI after completing her nursing degree. Last, he contended that it was against G.I.'s best interests to travel to the Philippines because the region is politically unstable, and G.I. is a target for kidnapping. These statements were made at oral argument and verified under oath in Perry's declaration.

¶ 5 The trial court partially denied and partially granted Pebbles's motion. Specifically, it prohibited Pebbles from taking G.I. to the Philippines and ordered Perry to cooperate in obtaining a passport for her.

¶ 6 Pebbles appeals the court's order.

II. JURISDICTION

¶ 7 We have jurisdiction over final judgments and orders issued by the Commonwealth Superior Court. NMI CONST. art. IV, § 3. The Superior Court entered its final order on April 29, 2014, and Pebbles timely appealed. Accordingly, we have jurisdiction over this appeal.

III. STANDARD OF REVIEW

¶ 8 We review child visitation custody orders for abuse of discretion. *Santos v. Santos*, 2000 MP 9 ¶ 2. A trial court abuses its discretion when it bases its decision on an erroneous conclusion of law or when the record is deplete of evidence in support of the decision. *Commonwealth v. Laniyo*, 2012 MP 1 ¶ 17 (citing *Midsea Indus. v. HK Eng'g, Ltd.*, 1998 Guam 14 ¶ 14). Last, the appellant bears the burden of showing that the trial court abused its discretion. *See Pille v. Sanders*, 2000 MP 10 ¶ 2 (stating that an appellant bears the burden of showing an abuse of discretion).

IV. DISCUSSION

¶ 9 Pebbles argues that the trial court abused its discretion by prohibiting her from taking her child to the Philippines. Pebbles further asserts the court abused its discretion when it failed to consider the unsubstantiated additional factors her attorney presented at the hearing. She argues that the court was required to consider those factors because they were not in dispute and courts can "rely on undisputed representations of counsel as officers of the Court." Opening Br. 7. She concludes that if those representations were taken into account, the court would have granted her motion.

¶ 10 Although attorneys are officers of the court and have a duty of candor towards the court, MODEL RULES OF PROF'L CONDUCT R. 3.3 (1983), they are not witnesses, and their statements and arguments are not evidence. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 17. The factors Pebbles's attorney raised at the hearing were not made under oath; furthermore, because this Court

of one Contracting State are effectively respected in the other Contracting States." Art. 1, *id.*, at 7.

Lozano v. Montoya Alvarez, 572 U.S. 1, 134 S. Ct. 1224, 1228 (2014).

has stated that it need not unsettle the rule that “arguments and statements made by lawyers are not evidence[.]” it is clear that the trial court did not abuse its discretion when it based its decision on information in the record. *Id.* Moreover, Pebbles’s argument is necessarily unavailing because she has failed to cite legal authority supporting the proposition of law she asserts—that a court errs if it fails to consider undisputed unsubstantiated factors opined by a party’s attorney.³

¶ 11 Turning to the merits of the decision itself, the trial court considered the purpose of the visit, the fact that Pebbles and her mother are domiciled on Saipan, the potential that G.I. may not return to the CNMI, and Perry’s lack of legal recourse if G.I. remained in the Philippines. The court stated that the Philippines would not need to honor a custody or other order from a U.S. court and acknowledged Perry’s argument that the Philippines is not a member of the Hague Convention. The court noted that Pebbles did not express or identify any urgent necessity or circumstances that would require G.I. to travel to the Philippines but rather just a personal desire to have G.I. meet Pebbles’s family in the Philippines. The trial court weighed Pebbles’s personal desire to have G.I. meet her family in the Philippines against Perry’s fear of permanently losing custody of his daughter:

The persuasive factor is that the Respondent voluntarily and with ease could decide to stay in the Philippines with the child, or, alternatively, the family members there could create a situation to keep the child there. . . . When these factors are weighed against the Respondent wanting her 3-year-old child to have more family exposure with her relatives in a foreign country, the Court finds that Petitioner’s right not to have his child voluntarily or involuntarily removed from his custody on a permanent basis, must prevail.

³ Pebbles’s reply brief cites to four propositions of law that support the argument that an evidentiary hearing is not necessary if there are no disputed factual issues:

Whether to hold an evidentiary hearing is generally discretionary with the district court. In family matters, however, it is presumed that noncontempt motions will be decided without an evidentiary hearing unless otherwise ordered by the court or for good cause shown. Absent genuinely disputed factual issues, however, the trial court has broad discretion to dispose of issues raised in a motion without conducting an evidentiary hearing. Common sense suggests that an evidentiary hearing only be required where there are disputed issues of fact to be resolved.

Appellant’s Reply Br. at 6–7 (internal citations and quotations omitted). However, a determination of whether the factors were undisputed does not resolve this appeal; rather, whether the court errs when it fails to consider unsubstantiated factors is the dispositive issue.

Perry Gus A. Inos, Jr. v. Pebbles Basilgo Inos, No. 11-0354 (NMI Super. Ct. Aug. 29, 2014) (Order Denying in Part and Granting in Part Respondent’s Motion at 2) [hereinafter Order].

¶ 12 Considering the admissible evidence before the court and the facts of this case, we cannot say that the court abused its discretion in prohibiting Pebbles or anyone else from taking G.I. to the Philippines. Although we hold that the court did not abuse its discretion in not allowing G.I. to travel to the Philippines, we do not adopt a “per se” ban on any contested request to travel to non-Hague Convention countries. The need for a case-by-case evaluation of the best interests of the child ultimately counsel against adopting a per se ban on all contested requests to travel to an international location. Instead, courts should consider all evidence from both parents, as well as further evidence upon the court’s own motion, in order to determine the child’s best interests. There are strong policy concerns that weigh against limiting a parent’s mobility unless absolutely necessary, and when the Hague Convention does not apply, the party requesting the travel should be permitted to present alternatives to ensure enforceability of and compliance with the court’s order.⁴

IV. CONCLUSION

¶ 13 The trial court did not abuse its discretion because the factors presented by Pebbles’s attorney were not evidence, and the trial court’s decision is supported by the record. Accordingly, we AFFIRM the trial court’s order.

SO ORDERED this 1st day of October, 2015.

/s/
ROBERT J. TORRES
Justice Pro Tem

/s/
HERBERT D. SOLL
Justice Pro Tem

⁴ There are several measures, depending on the law of the destination country, which a parent requesting travel should be permitted to present to ensure enforceability of the court’s order; including, but not limited to, registration of the order in the destination country, posting of a bond, or consent of the requesting parent to the continuing jurisdiction of the court. *See, e.g., Condon v. Cooper (In re Marriage of Condon)*, 73 Cal. Rptr. 2d 33, 43 (Cal. Ct. App. 1998) (remanding to the trial court “to obtain a concession of jurisdiction” and “create sanctions calculated to enforce that concession” including the posting of a bond.).

/s/
TIMOTHY H. BELLAS
Justice Pro Tem