

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 CU 0605**

**JULIO ANGEL SUAREZ**

**VERSUS**

**LOURDES SUAREZ**

**Judgment Rendered: September 20, 2006**

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On Appeal from the Family Court  
In and For the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 151,143

Honorable Jennifer Luse, Judge Presiding

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Lourdes Suarez

\* \* \* \* \*

**BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.**

*Handwritten initials and signatures:*  
M  
RHP  
Suarez

**McCLENDON, J.**

In this child custody case, the defendant-appellant, Lourdes Suarez, appealed a judgment changing the domiciliary parent designation to the plaintiff-appellee, Julio Angel Suarez. Finding no clear error in the trial court's credibility determinations, and no error of law as applied to the facts found, we affirm.

After a thorough review of the record, we agree with the analysis and reasons for judgment articulated by the trial court. Initially, we find no error in the trial court's holding that a consensual change in the domicile of the children to Louisiana for more than a year, which was documented by written agreements, met the jurisdictional requirements of LSA-R.S. 13:1702A(1). Our review further revealed no "manifest error" in the trial court's determination that the father had not improperly removed or retained the children, and we agree that the record reasonably supports that finding. **Rosell v. ESCO**, 549 So.2d 840, 844 (La.1989).

In addition, we cannot say that the record before us provides no reasonable basis for finding that Mr. Suarez pled sufficient facts to establish a material change of circumstances. The petition alleged the change in the domicile of the children and their attendance at school in Louisiana. We also note that, although Mrs. Suarez did move for an involuntary dismissal, she failed to lodge a contemporaneous objection to the plaintiff's enlargement of the pleadings during the plaintiff's presentation of his case. By the time of the motion for dismissal, the plaintiff had already presented his evidence and rested his case. Therefore, we find no abuse of discretion by the trial court in failing to find an improper enlargement of the pleadings. See LSA-C.C.P. art. 1154; **Hopkins v. American Cyanamid Company**, 95-1088, pp. 12-13 (La. 1/16/96), 666 So.2d 615, 623-24.

As to the actual issue of whether a change in circumstances was proven, we find no clear error. Based on the trial court's findings of fact, Mr. Suarez met his burden to prove a "material change of circumstances." Mr. Suarez proved that the health of one of the children had deteriorated, due to stress factors occurring in the mother's home, and that the children had moved to Louisiana and had been attending schools here for over a year. See Evans v. Lungrin, 97-0541, 97-0577, p. 13 (La. 2/6/98), 708 So.2d 731, 738. Both changes occurred after the initial stipulated custody judgment.

Finally,<sup>1</sup> in making its best interest of the children determination, the trial court thoroughly considered the factors listed in LSA-C.C. art. 134. See LSA-C.C. art. 131. Based on the particular facts of this case, we find no abuse of the trial court's "vast discretion" in its finding that a change in the domiciliary parent was necessary. **Stephens v. Stephens**, 2002-0402, p. 4 (La.App. 1 Cir. 6/21/02), 822 So.2d 770, 774.

For these reasons, we affirm the judgment in accordance with Uniform Court of Appeal Rule 2-16.2.A(4-8). The costs of the appeal are assessed to appellant, Mrs. Lourdes Suarez.

AFFIRMED.

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<sup>1</sup> Mrs. Suarez also assigned error to the trial court's admission of new material on redirect by Mr. Suarez. However, even assuming an error, we find no error sufficient to prejudice the appellant's case or interdict the finder of fact's determinations. The evidence allowed was not the primary basis for the trial court's decision and was not necessary to support the change in domiciliary parent. See LSA-C.E. art. 103; Brumfield v. Guilmino, 93-0366 (La.App. 1 Cir. 3/11/94), 633 So.2d 903, 911, writ denied, 94-0806 (La. 5/6/94), 637 So.2d 1056.