

STATE OF MICHIGAN
COURT OF APPEALS

FRANCIS SEXTON,

Plaintiff-Appellant,

v

DANIEL B. SCHULTZ,

Defendant-Appellee.

UNPUBLISHED

May 6, 1997

No. 197963

Monroe Circuit Court

LC No. 92-001599

Before: Michael J. Kelly, P.J., Wahls, and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting a change in custody of the parties' minor child from plaintiff to defendant. We affirm.

Plaintiff first argues that the trial court erred by failing to consider the statutorily mandated burden of proof necessary to change the custody of a minor child. We disagree. In custody cases of this type, the trial court must: (1) make an on-record finding as to whether an established custodial environment existed; (2) based on that finding, set forth the appropriate burden of proof; and (3) apply the appropriate burden of proof to the best interest factors. *Underwood v Underwood*, 163 Mich App 383, 394; 414 NW2d 171 (1987). Here, the court found on the record that an established custodial environment existed, articulated defendant's consequent duty to prove by clear and convincing evidence that a change in custody was in the child's best interests, and applied that burden of proof to the best interest factors set forth in MCL 722.23; MSA 25.312(3). Therefore, this issue is without merit. *Underwood, supra*, p 394.

Plaintiff next argues that the trial court erred by failing to address each of the statutorily enumerated factors necessary to determine the best interests of the child in rendering its custody decision. We disagree. The record indicates that the trial court carefully considered each of the factors contained in the Child Custody Act, MCL 722.23; MSA 25.312(3), and made specific findings of fact with regard to each before ordering that primary custody of the minor child be changed from plaintiff to defendant. Therefore, this issue is without merit. MCR 2.517(a); *Fletcher v Fletcher*, 447 Mich 871, 883-884; 526 NW2d 889 (1994).

Plaintiff argues that the trial court weighed the expert psychological testimony of Dr. Thomas Horner too heavily in rendering its findings regarding the best interests of the child. We disagree. Trial

courts are more experienced and better situated to weigh evidence and assess credibility. *Fletcher, supra*, p 800. In contrast to this Court, the trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Therefore, the relative weight and credibility assigned to Dr. Horner's testimony by the court below are matters within the province of the trial court, sitting as trier of fact. The trial court's reliance on Dr. Horner's testimony was not in error. MCR 2.613(C).

Plaintiff argues that because the trial court found plaintiff and defendant to be equal with regard to all the statutory factors except one, the trial court abused its discretion by awarding custody of the child to defendant. More specifically, plaintiff argues that the trial court erred by failing to consider the length of time plaintiff and the minor child had resided together, the consequent stability of that living relationship, and by focusing instead on plaintiff's allegations of sexual abuse. We disagree.

We first disagree with the factual premise of plaintiff's argument that the trial court found plaintiff and defendant to be equal with regard to all the statutory factors except one. The trial court found that plaintiff, having made false accusations of sexual abuse, showed a lack of judgment which called into question her ability to give proper guidance to the child, MCL 722.23(b); MSA 25.312(3)(b), and which raised a question regarding plaintiff's mental health, MCL 722.23(g); MSA 25.312(3)(g). The court found that defendant's plan to place the child in a daycare environment at Grand Valley State University constituted a superior proposed learning environment to plaintiff's early education plan. MCL 722.23(h); MSA 25.312(3)(h). The court found that plaintiff had attempted to frustrate defendant's visitation periods. MCL 722.23(j); MSA 25.312(3)(j). Finally, the court found that a change in custody would improve the child's socialization path. MCL 722.23(l); MSA 25.312(3)(l). Accordingly, the court found that several statutory factors favored defendant. Moreover, the trial court specifically took into consideration that the child had resided with plaintiff since birth and that both plaintiff's and defendant's living arrangements were satisfactory.

In addition, the court found that plaintiff's false accusations of sexual abuse represented a campaign by plaintiff to undermine defendant's relationship with the child and that this campaign placed the child on the detrimental social path of an abused child. The court noted that the unwarranted physical examinations that the child was compelled to undergo as a consequence of plaintiff's allegations of abuse constituted an invasion of privacy and may have impacted her developing self-image. Therefore, the court found that the environment provided by plaintiff was undesirable and that this factor weighed in favor of defendant. Our review of the record shows that these findings were not against the great weight of the evidence. MCL 722.28; MSA 25.312(8); *Fletcher, supra*, pp 877-878. Similarly, the trial court's finding that a change in custody would be in the best interests of the child was not against the great weight of the evidence. MCL 722.28; MSA 25.312(8); *Fletcher, supra*, pp 877-878. Accordingly, the trial court did not abuse its discretion in awarding custody to defendant. MCL 722.28; MSA 25.312(8); *Fletcher, supra*, p 880.

Affirmed.

/s/ Michael J. Kelly

/s/ Myron H. Wahls

/s/ Hilda R. Gage