

STATE OF MICHIGAN
COURT OF APPEALS

KATRINA M. TUBBS,

Plaintiff-Appellant,

v

TIMOTHY J. TUBBS,

Defendant-Appellant.

UNPUBLISHED

November 25, 1997

No. 202737

Oceana Circuit Court

LC No. 96-003661-DM

Before: Smolenski, P.J., and MacKenzie and Neff, JJ.

PER CURIAM.

Plaintiff appeals by right from a judgment of divorce by which primary legal and physical custody of the parties' children was awarded to defendant and plaintiff was denied spousal support. We reverse in part, affirm in part, and remand for further proceedings.

Plaintiff first argues that the trial court erred in failing to rule on the issue of an established custodial environment as required by MCL 722.27(1)(c); MSA 25.312(7)(1)(c). She maintains that such an omission undermines the court's ruling because a higher burden of proof applies when an established custodial environment exists. We agree. The failure to rule on an established custodial environment requires reversal. *Wealton v Wealton*, 120 Mich App 406, 410-411; 327 NW2d 493 (1982). Such a determination must be made by the trial court before it may proceed to evaluate the best interest factors codified in MCL 722.23; MSA 25.312(3). *Overall v Overall*, 203 Mich App 450, 455; 512 NW2d 851 (1994). Accordingly, the trial court's omission requires that its order awarding custody be reversed and this matter be remanded for a determination of whether an established custodial environment exists. *Blaskowski v Blaskowski*, 115 Mich App 1, 4, 8; 320 NW2d 268 (1982); *Lewis v Lewis*, 73 Mich App 563, 567; 252 NW2d 237 (1977).

Plaintiff also argues that the trial court erred in failing to make findings of fact with regard to the best interest factors listed in MCL 722.23; MSA 25.312(3) and to state those findings on the record or in its opinion with specificity. Again, we agree. Here, the trial court merely stated that the "parties were equal in all respects" with the exception of factors (d) and (e). The court's failure to expressly address the statutory factors frustrates appellate review. Therefore, this matter must be remanded for the court

to explicitly state its findings and conclusions with respect to the best interests of the children. MCL 722.23; MSA 25.312(3); *Daniels v Daniels*, 165 Mich App 726, 729-730; 418 NW2d 924 (1988).

Plaintiff next argues that the trial court erred in failing to make findings of fact with regard to an award of spousal support and later argues that the failure to award support was error. We disagree. As we noted in *Parish v Parish*, 138 Mich App 546, 554; 361 NW2d 366 (1984), a court should consider several factors in deciding whether to award alimony; however, like other decisions involving the marital estate, it is not necessary to make findings on every factor because some factors simply will not be applicable to the case. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992). After considering plaintiff's claims in light of the trial court's findings, we conclude that the trial court did not err because its factual findings were sufficient for review, and that support was not required to create an equality between the parties.

Finally, plaintiff argues that the trial court demonstrated a bias against joint custody arrangements, and that such a bias requires that this matter be reassigned to another judge on remand. Reassignment is necessary only where the trial court has demonstrated not only bias, but also an inability to balance the interests of the court with the interests of the affected party. *Ireland v Smith*, 214 Mich App 235, 249-250; 542 NW2d 344 (1995). Those instances with which plaintiff finds fault do not evince that the trial court harbors some bias against joint custody arrangements. Rather, the instances complained of reflect the court's frustrations with the parties over their inability to reach an amicable and reasonable resolution of their custody dispute. We find nothing in the circumstances surrounding this case to suggest that the court cannot carry out its duties on remand with impartiality.

Accordingly, this matter is reversed as to custody and remanded for a determination of whether an established custodial environment exists and for a redetermination of the best interest factors in light of those findings. In all other respects, the trial court's decision is affirmed. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Barbara B. MacKenzie
/s/ Janet T. Neff