STATE OF MICHIGAN

COURT OF APPEALS

JENNIFER L. MILLS,

Plaintiff-Appellee,

v

TIMOTHY R. MILLS,

Defendant-Appellant.

UNPUBLISHED
March 17, 1998

No. 195531
Houghton Circuit Court
LC No. 95-009259 DM

Before: Cavanagh, P.J., and White and Young, Jr., JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court order granting primary physical custody of the parties' minor child, Zachariah, to plaintiff. We affirm.

I

Defendant first contests the trial court's finding that there was an established custodial environment for the child with plaintiff. The determination of the existence of an established custodial relationship is a question of fact that the trial court must resolve on the basis of statutory criteria. *Hayes v Hayes*, 209 Mich App 385, 387-388; 532 NW2d 190 (1995). Findings of fact in child custody disputes are to be reviewed under the great weight of the evidence standard. *Wiechmann v Wiechmann*, 212 Mich App 436, 439; 538 NW2d 57 (1995).

An established custodial relationship environment is one of significant duration, both physical and psychological, in which the relationship between the custodian and child is marked by security, stability, and permanence. *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981). MCL 722.27(1)(c); MSA 25.312(7)(1)(c) provides:

> The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

Defendant argues that the trial court should have determined that there was no single established custodial environment for the child because he had been spending two full weeks every two months exclusively with defendant. Defendant also asserts that the trial court should not have relied upon the temporary custody order in making the determination that an established custodial relationship existed. However, the trial court did not rely on the temporary order, but rather simply concluded that the order confirmed the existing state of affairs. The trial court based its determination on the fact that plaintiff had been the child's primary caregiver since birth. Defendant's two-week visits with the child, instituted only since July of 1995, did not amount to "an appreciable time the child naturally looks to the custodian," especially as the record discloses that defendant did not visit Zachariah, who was eighteen months old at the time of trial, for an eight-month period before plaintiff filed for divorce. The trial court's finding that there was an established custodial environment with plaintiff was not against the great weight of the evidence.

II

Defendant next argues that the trial court erred in finding in favor of plaintiff or finding the parties equivalent with respect to nine of the twelve factors to be considered pursuant to MCL 722.23; MSA 25.312(3) in determining the best interests of the child. The trial court found in favor of plaintiff on factors a and d and in favor of defendant on factor k. The trial court further found that factors h and i were not relevant in this case because of the child's age, and that the parties were equal with regard to the remaining factors.

First, defendant contests the trial court's finding that factor a weighed in favor of plaintiff. However, even accepting defendant's claims regarding his emotional ties with his child, it was not against the great weight of the evidence for the court to find that the child had a closer bond with plaintiff. Zachariah was only eighteen months old at the hearing and, except for the two-week visitations with defendant, had lived with plaintiff his entire life.

With regard to factor b, defendant presented no evidence that plaintiff's former alcohol problem affected her present or future capacity to give love, affection, or guidance. The court's finding that both parties were committed to raising the child in the Lutheran faith was not against the great weight of the evidence.

The trial court's findings under factor c are not against the great weight of the evidence. Although defendant has a higher income, plaintiff can adequately provide for Zachariah's needs.

Defendant next contends the trial court erred in finding that plaintiff prevailed on factor d because the child lived with him for two out of every eight weeks in a home that defendant had lived in for one year and in which he intended to remain. Defendant argues that plaintiff provided a less stable environment because she had changed homes three times in the preceding year and was living in her boyfriend's home. However, the child resided with defendant only two out of every eight weeks, and this visitation only began in July 1995, after months apart. Although plaintiff and her boyfriend were not married at the time of trial, they planned to marry, and apparently have since done so. Moreover, although defendant emphasizes that Zachariah did not have his own room when staying with plaintiff, the

record demonstrates that plaintiff lived with her fiancé in a two-bedroom home, where the child shared a bedroom with his half-brother. Under these facts, we do not find that the trial court's evaluation of factor d flawed.

Likewise, we find no error in the trial court's findings on factor e. The trial court found the parties to be equally stable. Defendant has not persuaded us that the trial court erred.

Defendant next contests the trial court's determination that the parties were equal with regard to factor f. Although defendant concedes that plaintiff's relationship with her fiancé does not, in and of itself, render plaintiff morally unfit, he argues that in combination with plaintiff's mental and physical health, the only proper conclusion is defendant was "better fit, morally, to raise the minor child." However, plaintiff's physical and mental fitness are properly not evaluated under this factor, as the Legislature provided for their consideration under factor g. Moreover, the Michigan Supreme Court has held that "questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function *as a parent*." *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994). Although plaintiff's relationship with her fiancé was not concealed from the child, it began after plaintiff and defendant had been separated for a year, when plaintiff intended to divorce defendant. There is no evidence that plaintiff's relationship with her fiancé had any detrimental effect on Zachariah. Accordingly, the trial court's findings on this factor are not against the great weight of the evidence.

With regard to factor g, the trial court did consider plaintiff's previous alcohol treatment and found, like defendant's depression, that it was not a current problem. Plaintiff's pregnancy at the time of trial did not constitute a physical health problem. The trial court's findings on this factor are supported by the great weight of the evidence.

Lastly, defendant argues that the trial court abused its discretion by not according more weight to factor k in making the custody determination. However, a court may not change the established custodial environment of a child unless there is clear and convincing evidence that a change in custody would be in the best interests of the child. *Bowers v Bowers*, 198 Mich App 320, 324; 497 NW2d 602 (1993). The evidence regarding domestic violence was limited to defendant's testimony that on one occasion plaintiff held up a knife to him when she was upset. Under these facts, that defendant prevailed on factor k did not outweigh plaintiff's prevalence on factors a and d so as to establish by clear and convincing evidence that a change in custody would be in the best interests of the child. Therefore, the trial court did not abuse its discretion in concluding that it was in the child's best interests to remain with plaintiff.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Robert P. Young, Jr.