STATE OF MICHIGAN

COURT OF APPEALS

REBECCA SUE JORDAN, f/k/a REBECCA SUE COON,

Plaintiff-Appellee,

v

WILLIAM HAROLD COON,

Defendant-Appellant.

UNPUBLISHED
July 31, 1998

No. 203346
Washtenaw Circuit Court
LC No. 93-000608 DM

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from an order awarding legal and physical custody of the parties' children to plaintiff. We affirm.

Defendant first contends that the trial court failed to make findings of fact sufficient to satisfy MCR 2.517(A)(1) and (2), because the court did not mention allegedly significant facts developed during the custody hearing. We disagree. Defendant concedes that "the law does not require detailed findings on every factual point raised by the parties." His concession is consistent with Michigan case law holding that the trial court need not comment on every matter in evidence or declare acceptance or rejection of every proposition argued. *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994) (Brickley, J). Accordingly, there was no error.

Defendant next argues that the trial court committed clear legal error when, following the custody hearing, it referred certain matters dealing with parenting time, child support and arrearage amounts to the friend of the court for calculation and recommendation. We find no substantiation in the record for defendant's allegations. The trial court made substantive determinations on these issues and then referred them to the friend of the court for "fine-tuning." Pursuant to defendant's objection to the friend of the court recommendations, a hearing was held at which the questions of parenting time and child support were addressed at length by the trial court, and the court liberalized summer visitation time for defendant. No error occurred.

Defendant next contests the trial court's finding that an established custodial environment for the children existed with plaintiff. The existence of an established custodial relationship is a

question of fact that the trial court must resolve pursuant to the statutory criteria set forth in MCL 722.27(1)(c); MSA 25.312(7)(1)(c). *Hayes v Hayes*, 209 Mich App 385, 387-388; 532 NW2d 190 (1995). The court's findings regarding the existence of an established custodial environment should be affirmed unless the evidence clearly preponderates in the opposite direction. *Ireland v Smith*, 214 Mich App 235, 241-242; 542 NW2d 344 (1995), aff'd 451 Mich 457 (1996).

In an earlier trial of this case, the court granted the parties joint legal custody of the children, with primary custody to plaintiff. The children have lived with plaintiff since the parties separated, and plaintiff has provided guidance, discipline, the necessities of life, and parental comfort for them since that time. The trial court's finding regarding an established custodial environment is supported by the great weight of the evidence.

Defendant further maintains that the trial court erred in its determination of the "best interest" factors to be considered pursuant to MCL 722.23; MSA 25.312(3). The court's determination regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. *Ireland, supra* at 242.

Defendant agrees with the trial court's conclusion that the parties are equal regarding factor (a).

Respecting factor (b), the court found the parties equal, but defendant contends that this factor should have been decided in his favor. However, adequate evidence was introduced regarding plaintiff's capacity and disposition to give the children love, affection and guidance to preclude a finding of error.

The court found that factor (c) favored plaintiff. We agree. The evidence confirms that, since well before the divorce, plaintiff has furnished the majority of the children's support, while defendant, although apparently able to engage in remunerative employment, has elected not to do so, and as a result has accumulated substantial and long-standing arrearages in his child support obligations. There was no error.

The court determined that factor (d) slightly favored plaintiff. Defendant strongly disagrees, citing evidence that plaintiff's current husband has an apparent alcohol problem and that plaintiff is a self-admitted cigarette addict. The court was very concerned about the impact of these problems upon the "satisfactory environment" requirement enunciated in factor (d), but nevertheless ruled for plaintiff.

Although we are keenly aware of the deleterious effects of "secondhand smoke" and a drinking problem on the household, we are not prepared to state that as a matter of law custody may not be awarded to a parent like plaintiff who finds herself in those circumstances. Notwithstanding these negative facts, the evidence considered as a whole indicates that the children have lived with plaintiff in a stable, satisfactory environment and that the desirability of maintaining continuity outweighs the possible benefit of transferring custody to defendant, who does not have these problems. The trial court's determination is therefore not contrary to the great weight of the evidence.

With regard to factor (e), the trial court ruled for plaintiff "for the reasons highlighted in factors (c) and (d)." Defendant argues that the court's determination is legally and factually untenable because his home is permanent while plaintiff's home is undesirable.

In *Ireland, supra* at 463-468, the Court noted that factor (e) concerns the permanence of the custodial home, not its acceptability. Consequently, it is error for the trial court to base its finding regarding factor (e) on the acceptability of a party's home. *Id*. at 464. Complicating this issue is the trial court's resolution of factor (e) solely by reference to factors (c) and (d), without making independent findings regarding factor (e). Furthermore, the court's discussion of factor (d) reveals its concern that unless plaintiff's present husband aggressively addresses his alcohol problem, "the continued stability of Plaintiff's home environment will most definitely be in jeopardy," a comment that weakens the court's conclusion that factor (e) favors plaintiff. We therefore conclude that factor (e) favors defendant, but decline to reverse this case because the error is harmless in light of the fact that the court properly awarded plaintiff custody based on its resolution of the other best interest factors. See *Fletcher, supra* at 889 (Brickley, J), 900 (Griffin, J).

The trial court found the parties equal regarding factor (f). In *Fletcher, supra* at 886-887, the Court held that factor (f), like all the other statutory factors, relates to a person's fitness *as a parent*. The pivotal question is not which party is morally superior, but instead "concerns the parties' relative fitness to provide for their child, given the moral disposition of each party as demonstrated by individual conduct." *Id*. at 887. As the trial court recognized, each party has faults, and although defendant describes plaintiff's shortcomings in great detail, his own liabilities include his propensity to place the children in the center of this litigation, his inability to accept the fact of plaintiff's remarriage, and his chronic arrearage in child support, indicative of "morally questionable conduct relevant to one's moral fitness as a parent." *Id*. at 887 n 6. The trial court therefore did not err by finding the parties equal regarding factor (f).

The court's finding that the parties are equal regarding factor (g) is supported by the great weight of the evidence. As the court observed in its discussion of factor (f), both parties could benefit by undergoing counseling.

Plaintiff was found to prevail on factor (h) because the court found that "[d]espite his well-meaning concern, Defendant's behavior is contributing to cognitive difficulties in the children which he is not educationally or financially positioned to address. Defendant must work more cooperatively with Plaintiff, respect her commitment to the children's well-being, and allow therapy and schooling to address the challenges facing both Russell and Amanda." This finding is not against the great weight of the evidence.

Regarding factor (i), the trial court stated that it had "considered the evidence introduced regarding the reasonable preferences of the children." This statement is ambiguous because it fails to reveal whether the court interviewed the children, and, if so, what their preference was, or, alternatively, whether the court considered evidence from third parties concerning the children's alleged preferences. If the latter, the court acted improperly. However, reversal is unnecessary because the error, if any,

was harmless in terms of the ultimate award of custody to plaintiff. *Fletcher*, *supra* at 889 (Brickley, J), 900 (Griffin, J).

In connection with factor (j), the trial court's finding that plaintiff was more willing than defendant to encourage close parent-child relationships is not contrary to the great weight of the evidence.

The court correctly determined that factor (k) favors defendant because of plaintiff's greater propensity for violence.

Finally, the trial court adjudicated factor (l) in plaintiff's favor by attributing to defendant the high degree of conflict regarding various issues that the court noted in this case. We find no error.

Consequently, the court did not abuse its discretion by concluding that it was in the children's best interests to remain with plaintiff.

As his last allegation of error, defendant contends that the trial court erred by imputing income to him for the purpose of calculating child support. We disagree.

Defendant furnished little evidence regarding the true state of his finances. He did testify that although he was unemployed, he received rental income of $795 a month, or $9,540 a year. In view of convincing evidence that defendant possessed the health and skills to maintain regular employment, the trial court did not err by imputing to him income of $15,000 annually. *Ghidotti v Barber (On Remand)*, 222 Mich App 373, 377-380; 564 NW2d 141 (1997).

Affirmed.

/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot