

STATE OF MICHIGAN
COURT OF APPEALS

KELLY REILLY FRANK,

Plaintiff-Appellee,

v

JOHN R. FRANK,

Defendant-Appellant.

UNPUBLISHED

September 4, 1998

No. 207971

Oakland Circuit Court

LC No. 95-504595 DM

Before: Corrigan, C.J., and MacKenzie and R. P. Griffin*, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm in part and remand for further proceedings with regard to parenting time.

Defendant first argues that the trial court failed to make a finding regarding the existence of an established custodial environment, failed to make factual findings on the best interest factors, and failed to make findings regarding parenting time, and that these failures require reversal. Plaintiff frames defendant's argument as a challenge to the great weight of the evidence, which plaintiff contends must fail because defendant did not bring a motion for a new trial before the trial court. We note that it was not necessary for defendant to move for a new trial in order to challenge the trial court's failure to make findings of fact on custody or parenting time issues. No exception need be taken to a finding or decision in an action tried without a jury. MCR 2.517(A)(7). However, because defendant consented to the award to plaintiff of physical custody of the two children of the marriage and he does not challenge the award on appeal, we hold that a remand for further proceedings on the issue of physical custody is not required. See *Koron v Melendy*, 207 Mich App 188, 192; 523 NW2d 870 (1994) (where parties agree on custody and present the trial court with the agreement, the trial court need not expressly articulate findings on each best interest factor).

Because defendant's parenting time was disputed and the trial court made no findings on the best interest factors, we remand to the trial court for further proceedings and findings of fact with regard to parenting time. The controlling factor in determining parenting time (formerly

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

called visitation) is the best interests of the children. *Deal v Deal*, 197 Mich App 739, 742; 496 NW2d 403 (1993). Although this Court has reached different conclusions on the degree of specificity required for a trial court's order concerning parenting time, see, e.g., *Snyder v Snyder*, 170 Mich App 801, 806; 429 NW2d 234 (1988) and *Hoffman v Hoffman*, 119 Mich App 79, 83; 326 NW2d 136 (1982), that issue is not dispositive of this appeal because the trial court made no findings on the statutory best interest factors. In the interest of reaching a prompt and final adjudication of this matter consistent with MCL 722.28; MSA 25.312(8), we direct the trial court on remand to make findings of fact on each best interest factor set forth in MCL 722.23; MSA 25.312(3). The trial court shall also address defendant's argument regarding the existence of an established custodial environment. However, because it appears that circumstances may have changed (e.g., one child may now be old enough to attend school), the trial court shall consider updated information, including any changes in circumstances since the original custody order, and make a redetermination on parenting time consistent with MCL 722.27a; MSA 25.312(7a). See *Fletcher v Fletcher*, 447 Mich 871, 889; 526 NW2d 889 (1994).

The other two issues raised by defendant warrant no relief. Fault remains one of the relevant factors a trial court is permitted to consider in a property settlement. *Sparks v Sparks*, 440 Mich 141, 158-160; 485 NW2d 893 (1992). We are not persuaded that the trial court in the present case overemphasized fault when dividing the property, or that its dispositional ruling was otherwise inequitable or an abuse of the trial court's discretion. *Id.* at 159; *Draggoo v Draggoo*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997). Furthermore, the trial court did not abuse its discretion by refusing to award attorney fees to defendant. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997).

Affirmed in part and remanded for further proceedings. We do not retain jurisdiction. No costs are awarded under MCR 7.219, neither party having prevailed in full.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Robert P. Griffin