

STATE OF MICHIGAN
COURT OF APPEALS

JOANNE MARIE KOVACS,

Plaintiff-Appellant,

v

JOHN A. KOVACS,

Defendant-Appellee.

UNPUBLISHED

September 29, 1998

No. 205692

Wayne Circuit Court

LC No. 95-504190 DM

Before: Gribbs, P.J., and Sawyer and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order modifying a divorce judgment to award sole custody of the parties' two minor children to defendant. We affirm.

Plaintiff first argues that the trial court erred in determining that an established custodial environment did not exist in her home. We believe the trial court erred in failing to find that an established custodial environment existed with both parents in the context of the joint custody arrangement, but conclude that the error was harmless.

A trial court's order regarding child custody must be affirmed on appeal unless the trial court made findings of fact against the great weight of the evidence, committed a palpable abuse of discretion, or made a clear legal error on a major issue. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). Under the great weight of the evidence standard, a trial court's findings of fact will be sustained unless the evidence clearly preponderates in the opposite direction. *Fletcher, supra*, 447 Mich 879.

A custodial environment 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." MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Treutle v Treutle*, 197 Mich App 690, 692-693; 495 NW2d 836 (1992). An established custodial environment can exist in more than one home. *Duperon v Duperon*, 175 Mich App 77, 80; 437 NW2d 318 (1989); *Neilson v Neilson*, 163 Mich App 430, 433; 415 NW2d 6 (1987). A change in custody to remove the child from an established custodial environment will not be ordered absent clear and convincing evidence, rather than a mere

preponderance of the evidence, that the change is in the best interest

of the child. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Neilson, supra*, 163 Mich App 433. Here, the trial court found that “the children look to both of their parents for guidance and direction,” but concluded that an established custodial environment existed with neither parent. The trial court then decided that, despite its finding that a custodial environment was not established, the clear and convincing evidence standard was nonetheless met. Based on the trial court’s finding, which we believe was supported by the record, that the children looked to both parents for guidance and direction, we conclude that the trial court clearly erred in determining that an established custodial environment did not exist with both parents in the context of the joint custody arrangement. However, because, as we discuss below, we agree with the trial court that the clear and convincing evidence standard was met, we conclude that the error was harmless.

Plaintiff’s second argument on appeal is that defendant did not meet his burden of establishing by clear and convincing evidence that it was in the best interest of the children to award sole custody to defendant. We disagree.

When determining the best interest of a child, the trial court must consider, evaluate, and determine the factors set forth in MCL 722.23; MSA 25.312(3). *Mann v Mann*, 190 Mich App 526, 536; 476 NW2d 439 (1991). We have reviewed the trial court’s findings with respect to each statutory factor and conclude that the findings are not against the great weight of the evidence. We further conclude that the court did not commit a palpable abuse of discretion or a clear legal error on a major issue when determining that there was clear and convincing evidence that it was in the best interest of the children to award sole custody to defendant. MCL 722.28; MSA 25.312(8); *Fletcher, supra*, 447 Mich 876-877.

Plaintiff’s final argument on appeal is that the trial court improperly relied on plaintiff’s economic status when deciding to award custody to defendant. We disagree.

A trial court should not place undue emphasis on economic circumstances when making a custody determination. *Dempsey v Dempsey*, 96 Mich App 276, 289-290; 292 NW2d 549, modified 409 Mich 495 (1980). However, there is no indication in the record before us that the trial court considered plaintiff’s economic circumstances to her detriment when deciding to award custody to defendant. To the contrary, when evaluating MCL 722.23(c) and (d); MSA 25.312(3)(c) and (d), the court found that plaintiff had an independent source of income, that she lived in a satisfactory home, and that the parties were equal with respect to their abilities to provide the children with their material needs. The court did not, as plaintiff suggests, use plaintiff’s economic status against her.

Affirmed.

/s/ Roman S. Gibbs
/s/ David H. Sawyer
/s/ Martin M. Doctoroff