

STATE OF MICHIGAN
COURT OF APPEALS

ROBIN MARY DIETZ,

Plaintiff-Appellant,

v

LAURENCE E. DIETZ,

Defendant-Appellee.

UNPUBLISHED

April 27, 1999

No. 214572

Macomb Circuit Court

LC No. 93-005163 DM

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

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's request for a change of custody of the parties' minor child. We affirm.

A consent judgment of divorce awarding plaintiff physical custody of the child was entered in April 1994. On December 19, 1997, defendant filed a motion for emergency change of custody on the ground that plaintiff, who had a history of alcohol abuse, had recently been arrested for driving under the influence of alcohol while the child was in the car. Defendant's motion was granted and, following an evidentiary hearing, defendant was awarded custody of the child.

A custody award may be modified upon a showing of proper cause or change of circumstances that establishes that the modification is in the child's best interest. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Dehring v Dehring*, 220 Mich App 163, 166; 559 NW2d 59 (1996). A child's best interest is measured by the factors set forth in MCL 722.23; MSA 25.312(3). In a custody dispute, the great weight of the evidence standard applies as to each custody factor and the court's decision should be affirmed unless the evidence clearly preponderates in the opposite direction. *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998). The abuse of discretion standard applies to the trial court's determination as to whom custody is granted. *Id.*

Here, the court found that the parties were equal with respect to factors (a), (b), (c), (e), (f), and (j). Plaintiff argues that the court erred in determining that factor (a) was equivalent between the two parties. Plaintiff maintains that this factor weighed in her favor because there was a strong emotional tie between plaintiff and the child due to the fact that the child has lived with plaintiff since the

divorce. However, the court's finding was not against the great weight of the evidence where both parties expressed love and affection for the child.

Plaintiff also argues that factor (b) weighed in her favor because she was the one who provided the child with her educational experiences and took the child to church. However, the court's finding that neither party had an advantage was not against the great weight of the evidence where the evidence failed to show that a change in custody would have affected the child's development in these areas. The evidence showed that defendant was capable of providing these same things for the child.

Plaintiff also claims that factor (c) weighed in her favor because the evidence showed that she was solely responsible for providing the child with food, clothing, and medical attention. However, the court's finding that the parties were equal in this regard was not against the great weight of the evidence. The evidence showed that defendant paid support throughout the child's tenure with her mother and had properly supplied the child with these necessities since she had come to live with defendant.

Plaintiff also maintains that factor (f) weighed in her favor because there was no evidence that defendant participated in the home, school, or community background of his child. However, the court's finding that this factor did not militate in favor of either party was not against the great weight of the evidence since the evidence did not show that a change in custody would disrupt the child's development. As the court noted, the child was attending preschool while living with defendant and was developing at a normal rate.

The two factors that the court weighed in favor of defendant were factor (d) - the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity, and (g) - the mental and physical health of the parties involved. The court favored defendant on these factors because plaintiff's relapse into alcoholism resulted in two accidents. On one occasion, plaintiff drank so heavily that she fell down a flight of stairs and was knocked unconscious. The child was forced to seek help for plaintiff. Additionally, plaintiff was involved in a collision while she was driving under the influence of alcohol with the child in the car. Because the evidence demonstrated that plaintiff was struggling with her alcohol dependency and had placed the child in jeopardy as a result of her behavior, we cannot conclude that the court's findings in this regard were against the great weight of the evidence.

Because the trial court's findings were not against the great weight of the evidence and because there was clear and convincing evidence that a change of custody was in the best interests of the child, *Winn v Winn*, ___ Mich App ___; ___ NW2d ___ (No. 209048, rel'd 2/26/99), the trial court's determination to change custody was not an abuse of discretion. *Fletcher, supra*.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Martin M. Doctoroff
/s/ Helene N. White