

STATE OF MICHIGAN
COURT OF APPEALS

KIM ELIZABETH COLVIN,

Plaintiff-Appellant,

v

GUY NOEL COLVIN,

Defendant-Appellee.

UNPUBLISHED

August 27, 1999

No. 216839

Wayne Circuit Court

Family Division

LC No. 97-739266 DM

Before: Hoekstra, P.J., and O'Connell and R. J. Danhof*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order that modified the parties' judgment of divorce by awarding physical custody of the parties' children to defendant. We affirm.

After thoroughly reviewing the record, we conclude that the trial court did not err in awarding defendant physical custody of the children. The trial court considered the best interest factors set forth in MCL 722.23; MSA 25.312(3), and our review of the record reveals that the trial court's findings of fact with respect to the disputed factors were not contrary to the great weight of the evidence. *Fletcher v Fletcher*, 447 Mich 871, 876-877 (Brickley, J), 900 (Griffin, J); 526 NW2d 889 (1994). Further, in light of the abuse suffered by the children while in plaintiff's custody and in light of the fact that the best interest factors substantially favored defendant, we conclude that the trial court's discretionary ruling regarding the ultimate custody decision was not an abuse of discretion. *Fletcher, supra*; *Winn v Winn*, 234 Mich App 255, 262; 593 NW2d 662 (1999).

We reject plaintiff's claim that there is nothing in the record to indicate that she abused the children, or knew that they were being abused. Plaintiff admitted that she allowed her mother to whip the children with a switch. Moreover, the trial judge indicated that the children had visible scars and marks on their bodies from the abuse and plaintiff testified that she still bathed her two younger sons. Thus, the record supports a finding that plaintiff was aware that her children were abused.

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

Lastly, plaintiff's claim that the trial judge failed to consider the testimony of school social worker Sandra Morris is not supported by the record. The trial judge specifically indicated that he considered her testimony.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

/s/ Robert J. Danhof