STATE OF MICHIGAN

COURT OF APPEALS

MARK LEINONEN,

Plaintiff-Appellant,

v

VALARIE LYNN LEINONEN,

Defendant-Appellee.

UNPUBLISHED
October 5, 1999

No. 209409
Wayne Circuit Court
LC No. 96-648518 DM

Before: Whitbeck, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Plaintiff-appellant, Mark Leinonen, appeals as of right from the order awarding physical custody of the parties' daughter, Elizabeth, to defendant-appellee, Valarie Leinonen. We affirm.

I

Plaintiff argues that the trial court erred in denying his request for an adjournment to obtain court-ordered psychological evaluations. We disagree. The trial court never actually ordered the psychological evaluations. Although the parties stipulated to psychological evaluations in September 1997, plaintiff never obtained a written order requiring those evaluations. It is axiomatic that a court speaks through its written orders, not through its verbal decisions. *Hartman v Roberts-Walby Enterprises, Inc,* 380 Mich 105, 108-109; 155 NW2d 842 (1968); *People v Hill,* 69 Mich App 41, 42-43; 244 NW2d 357 (1976). Therefore, contrary to plaintiff's claim, the trial court did not order psychological evaluations. Furthermore, though plaintiff claims that the psychological evaluations are crucial to this case, he failed to request the evaluations until the case was almost a year old. Moreover, he never attempted to schedule the evaluations after the parties stipulated to them. Under these circumstances, the trial court did not abuse its discretion in failing to adjourn the trial date for psychological evaluations. *People v Pena,* 224 Mich App 650, 660; 569 NW2d 871 (1997), modified in part on other grounds 457 Mich 885 (1998). The request for psychological evaluations appears to be more of a stalling or delaying tactic on plaintiff's part rather than a real necessity in this case.

Plaintiff also contends that the trial court abused its discretion in refusing to adjourn the trial to allow plaintiff to produce additional witnesses. We disagree. Plaintiff had ample time to subpoena and produce any and all of the witnesses he deemed necessary. He had knowledge of the November 3, 1997, trial date since September 30, 1997. Additionally, five days prior to trial, the trial judge personally called both sides to inform them that the divorce trial would commence as scheduled on November 3, 1997. Additionally, prior to the commencement of trial, the trial judge granted a recess so that counsel would have a chance to issue subpoenas for November 3 or November 4. The trial judge also informed the parties that they would have as much time as needed to present their evidence. Clearly, plaintiff had a sufficient opportunity to subpoena his witnesses. Furthermore, according to the lower court docket entries, the trial court granted at least four prior adjournments, and this case was pending for almost a year. The trial court's failure to grant an adjournment under these circumstances was not an abuse of discretion. *Pena, supra* at 660.

II

Next, plaintiff claims that the trial court erred in awarding physical custody of Elizabeth to defendant. We disagree. The evidence indicated that defendant had been caring for Elizabeth since she was born. All of the witnesses agreed, including plaintiff and his parents, that defendant was providing very good care for Elizabeth. No evidence was presented to indicate that she would not continue to do so. After having concluded a thorough review of the record, we conclude that the trial court correctly determined that awarding defendant physical custody of Elizabeth was in her best interests. 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 each factor in question is not contrary to the great weight of the evidence, nor was the trial court's discretionary ruling regarding the ultimate custody decision an abuse of discretion. *Fletcher v Fletcher,* 447 Mich 871, 876-877 (Brickley, J), 900 (Griffin, J); 526 NW2d 889 (1994); *McCain v McCain,* 229 Mich App 123, 131; 580 NW2d 485 (1998).

III

Plaintiff also says that the trial court abused its discretion by awarding defendant $4,500 in appellate attorney fees. We disagree. An award of legal fees in a divorce action is authorized when it is necessary to enable a party to carry on or defend the suit. MCR 3.206(C)(2); *Maake v Maake,* 200 Mich App 184, 189; 503 NW2d 664 (1993). See also MCL 552.13(1); MSA 25.93(1). MCR 3.206(C)(2) provides that "[a] party who requests attorney fees and expenses must allege facts sufficient to show that the party is unable to bear the expense of the action, and that the other party is able to pay."

The evidence showed that defendant had no assets whatsoever, and that she was unemployed so she could stay home and take care of Elizabeth. Defendant was supporting herself and Elizabeth with her parents' assistance and the $160.00 per week that plaintiff paid in child support. Furthermore, defendant owed her parents $9,900 "just in support and expenses" and an additional $13,000 for legal fees. Plaintiff, on the other hand, was employed as a product design engineer with Ford Motor Company, earning roughly $55,000 per year, he owned a home in Livonia which he purchased in 1994

for $115,000, he admitted that there was at least $30,000 in equity in that home at the time of the divorce trial, and that he had a Ford Motor Company stock fund worth $159,516.03, as well as a pension fund through Ford Motor Company. The foregoing evidence demonstrates that defendant needed attorney fees in order to carry on the appellate portion of these proceedings and that plaintiff had the ability to pay defendant's attorney fees. MCR 3.206(C)(2).

Plaintiff alleges that the trial court decided to award attorney fees without receiving evidence of his ability to pay. We disagree. At the evidentiary hearing, plaintiff testified with regard to his employment situation and his assets. Additionally, plaintiff submitted a brief, which the trial court reviewed prior to making its decision in this matter, indicating that his monthly expenses exceeded his income. Furthermore, counsel for plaintiff indicated at the hearing that she could elicit testimony from plaintiff to indicate that he was "deeply indebted to his parents, his income does not meet his expenses" and that plaintiff had "a debt that was not . . . in [the brief] that he advised me about later, he's paying a Comerica bill, he's paying another credit card bill, and he's paying some taxes because they're not escrowed as part of his monthly payment and he warned me that those have not been included in his budget and I'd have him testify to that." The trial court indicated that it would take "judicial notice that that's what your client would testify to. And so therefore we do have notice of the indebtedness of your client." Clearly, then, the court was fully apprised of plaintiff's ability to pay attorney fees.

Additionally, plaintiff claims that defendant did not need plaintiff to pay her attorney fees because her parents had already paid them. While it is true that defendant's parents loaned her $4,500 for her appellate attorney fees, defendant testified that she had to pay her parents back by giving them whatever child support money she had left over after taking care of Elizabeth's needs. Therefore, defendant still owed these attorney fees, albeit to her parents instead of her attorney, and needs assistance in order to pay the attorney fees.

Finally, to the extent that plaintiff challenges the reasonableness of the attorney fees, we note that defendant was charged a flat fee of $4,500 for the appellate portion of the proceedings. It was estimated that the appeal would take approximately 100 hours; therefore, defendant was being charged approximately $45.00 per hour. Plaintiff admitted that he had been charged $4,400 for his appellate attorney fees. Therefore, in light of the fact that plaintiff paid $4,400 for his appellate attorney fees, defendant's attorney fee of $4,500 appears to be reasonable. The trial court did not abuse its discretion in awarding defendant $4,500 attorney fees. *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 647 (1997).

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Joel P. Hoekstra