

STATE OF MICHIGAN
COURT OF APPEALS

SUZANN HOPE BEDORE,

Plaintiff-Appellant,

v

LUKE PAUL BEDORE,

Defendant-Appellee.

UNPUBLISHED

June 9, 2000

No. 221098

Houghton Circuit Court

LC No. 97-010118-DM

Before: Hood, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from that portion of the parties' judgment of divorce denying her sole physical custody of the parties' two daughters, Ashton (born 12/29/95) and Vanessa (born 1/23/97). The trial court found that an established custodial environment existed in plaintiff's care, but that, the parties were equal under the best interests of the child factors set forth at MCL 722.23; MSA 25.312(3). Accordingly, the parties were granted joint legal and joint physical custody of the children. We affirm.

On appeal, plaintiff argues that it was an abuse of discretion for the trial court to have precluded her from producing evidence about her mental and/or physical condition. The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *Fletcher v Fletcher (After Remand)*, 229 Mich App 19, 24; 581 NW2d 11 (1998). We find no abuse of discretion on the facts of this case. More than a year before trial, defendant filed a motion to compel plaintiff to provide him with releases regarding plaintiff and her medical and psychiatric history. When plaintiff refused defendant access to her medical records, the trial court ruled that, pursuant to MCR 2.314(B)(2), plaintiff could not present any evidence at trial regarding her mental or physical condition. In a pretrial motion twelve days before the scheduled start of trial, however, plaintiff, now represented by different counsel, offered defendant signed medical releases and again requested to be allowed to present evidence at trial regarding her mental or physical condition. The trial court affirmed its earlier holding.

MCR 2.314(B)(2) provides:

Unless the court orders otherwise, if a party asserts that the medical information is subject to a privilege and the assertion has the effect of preventing discovery of medical information otherwise discoverable under MCR 2.302(B), the party may not thereafter present or introduce any physical, documentary, or testimonial evidence relating to the party's medical history or mental or physical condition.

The trial court's ruling is consistent with this Court rule. Further, the trial court's decision did not unfairly hamper the court's ability to reflect on the mental and physical health of the parties pursuant to the best interest of the child factors contained in MCL 722.23; MSA 25.312(3). Clearly, the court considered plaintiff's mental and physical condition through the testimony of the court-appointed evaluator who had access to plaintiff's privileged medical information.

Plaintiff also says that the trial court contravened the public policy of integrating the handicapped into family life when, in its evaluation of the factors under MCL 722.23; MSA 25.312(3), it weighed factor (g), the mental and physical health of the parties involved, in favor of defendant. We do not decide whether plaintiff is, in fact, handicapped, but we evaluate plaintiff's claim while keeping in mind the need to integrate the handicapped into family life. *Bednarski v Bednarski*, 141 Mich App 15, 27; 366 NW2d 69 (1985). We find that the trial court's holding did not violate that public policy. Plaintiff's alleged physical ailment was not the sole factor in the court's determination. Plaintiff's emotional problems were also considered. The evidence did not clearly preponderate in favor of plaintiff so factor (g) was properly not weighed in her favor. *Ireland v Smith*, 214 Mich App 235, 242; 542 NW2d 344 (1995), *aff'd* 451 Mich 457 (1996).

Additionally, plaintiff avers that the trial court abused its discretion in failing to allow her to present rebuttal evidence relative to her mental and physical condition. Again, the trial court correctly disallowed plaintiff from presenting any medical evidence on her behalf. MCR 2.314(B)(2). Furthermore, decisions regarding the presentation of evidence are discretionary, MRE 611, and a court may disallow redirect examination that exceeds the scope of direct examination. *People v Stevens*, 230 Mich App 502, 507; 584 NW2d 369 (1998). The rebuttal testimony sought to be introduced by plaintiff exceeded the scope of direct examination; it was not an abuse of discretion to exclude it on that ground.

Plaintiff also argues that it was against the great weight of the evidence to conclude that defendant was more willing to encourage a parent-child relationship between the other parent and the child, as contemplated under best interests of the child factor (j). A trial court's findings as to each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. *Ireland, supra*, 214 Mich App 242. Discretionary rulings are reviewed under a "palpable abuse of discretion" standard. MCL 722.8; MSA 25.312(8).

We conclude that the evidence supports the trial court's finding that plaintiff unfairly, and without legal justification, denied defendant his visitation rights. We recognize that plaintiff was entitled to withhold visitation for a short interval after the allegations of criminal sexual conduct arose in September 1998. However, it is inconsistent with the evidence adduced at trial to claim that each of the many times

plaintiff was uncooperative about visitation, she was only doing so under compelling circumstances or at the direction of an attorney, social worker, or other professional. For example, she would not allow defendant an unsupervised visit with the children on July 20, 1997 because the prior weekend he fed Vanessa a bottle instead of solid food. In fact, plaintiff acknowledged that she was told by the friend of the court that unless the children had a doctor's excuse, withholding visitation because of alleged illness was not permissible. Plaintiff repeatedly violated this policy and she did not corroborate many of the children's alleged illnesses with proper documentation from a doctor. Accordingly, the trial court correctly found that factor (j) favored defendant.

Affirmed.

/s/ Harold Hood

/s/ Henry William Saad

/s/ Peter D. O'Connell