

STATE OF MICHIGAN
COURT OF APPEALS

SALLY A. BUZALSKI,

Plaintiff-Appellant,

v

STEVEN J. BUZALSKI,

Defendant-Appellee.

UNPUBLISHED

April 20, 2001

No. 229544

Kent Circuit Court

LC No. 97-002201-DM

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

MEMORANDUM.

Following a lengthy trial, the trial court changed physical custody of the parties' minor child, Steven R. Buzalski, from plaintiff to defendant. After granting plaintiff's application for leave to appeal, this Court issued an opinion remanding the matter to the trial court for factual findings regarding the existence of an established custodial environment. *Buzalski v Buzalski*, unpublished opinion per curiam of the Court of Appeals (No. 217409, issued 02/29/00). Plaintiff now appeals as of right from the trial court's post-remand order that reaffirmed its decision to change physical custody of the minor child from plaintiff to defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Whether a custodial environment is established is a question of fact. *Mogle v Scriver*, 241 Mich App 192, 196; 614 NW2d 696 (2000). Findings of fact in a child custody case are reviewed under the great weight of the evidence standard. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871; 526 NW2d 889 (1994). Under that standard, the trial court's findings will be sustained unless the evidence clearly preponderates in the opposite direction. *Id.* at 878. When it is determined that an established custodial environment does not exist, the trial court may order a change in custody under a preponderance of the evidence standard, rather than under the more onerous clear and convincing evidence standard. *Hayes v Hayes*, 209 Mich App 385, 387; 532 NW2d 190 (1995).

Here, the trial court's finding that an established custodial environment did not exist with plaintiff was not contrary to the great weight of the evidence. Each party presented various expert and lay witnesses at trial to support their respective positions. The experts offered conflicting opinion testimony whether an established custodial environment existed with either

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

party alone or with both parties simultaneously. The evidence did not clearly preponderate in either direction, and, therefore, this Court will accord considerable deference to the trial court's superior ability to assess and weigh the credibility of those witnesses. *Barringer v Barringer*, 191 Mich App 639, 642; 479 NW2d 3 (1991); MCR 2.613(C). Furthermore, we reject plaintiff's argument that the trial court's findings on remand were too nonspecific and generic to support the conclusion drawn. To the contrary, the trial court made sufficiently specific findings that were consistent with the statutory factors in MCL 722.27(1)(c); MSA 25.312(7)(1)(c).

Affirmed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Fred L. Borchard