STATE OF MICHIGAN

COURT OF APPEALS

THOM ROSE, Plaintiff-Appellee,	UNPUBLISHED November 16, 2001
v	No. 232792 Manistee Circuit Court
SONDRA ROSE, Defendant-Appellant.	LC No. 99-009595-DM

Before: Holbrook, Jr., P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant appeals by right from a judgment of divorce that awarded custody of the parties' five-year-old son to plaintiff. Defendant appeals only the custody determination. We affirm.

Defendant first argues that while the trial court did reach conclusions on the statutory best interest factors, MCL 722.23, the court did not make sufficient findings of fact. We disagree. Fact finding by a trial court is governed by MCR 2.517(A), which states in pertinent part:

> (1) In actions tried on the facts without a jury . . . , the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.
>
> (2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts.

As our Supreme Court stated in *Baker v Baker*, 411 Mich 567, 583; 309 NW2d 532 (1981), "Neither the mandate of the Child Custody Act nor [the requirements of MCR 2.517(A)(1)[1]] . . . requires in cases involving child custody decisions that the court comment upon every matter in evidence or declare acceptance or rejection of every proposition argued." A "trial court's failure

[1] At this point in its opinion, the *Baker* Court quoted from CGR 1963, 517.1, which corresponds to MCR 2.517(A)(1).

to address the myriad of facts pertaining to a factor does not suggest that the relevant among them were overlooked." *Fletcher v Fletcher*, 447 Mich 871, 883-884; 526 NW2d 889 (1994).

The record shows that the trial court did make specific findings of fact on each custody factor. Defendant argues that the court failed to make any findings on the parties' credibility. However, defendant fails to cite any authority that indicates that a court must specifically state its findings on matters of witness credibility. The court is only required to "find the facts specifically," which would necessarily include a weighing of witness credibility. See *Aiello v National-Ben Franklin Fire Ins Co of Pittsburgh*, 79 Ad2d 758, 759 (1951)(observing that a trial court's independent conclusions on the weight of the evidence "necessarily includes the credibility of the witnesses"). Further, the record does not suggest that the court overlooked the issue of credibility on each of these factors simply because the court did not specifically comment on this issue. Indeed, the record shows that on several issues where the parties' testimony differed, the court found that neither party had proven that their side of the story was the accurate one. For example, when considering best interest factor (c), MCL 722.23(c), the court observed that "[t]here are numerous allegations of abuse and neglect between the parties although investigations have confirmed none of the charges." Regarding factor (k), MCL 722.23(k), the court noted that defendant had accused plaintiff of domestic violence. "As the matter hasn't been proved either way," the court observed, "this factor is even."

Defendant also argues that on the several issues where the parties' testimony conflicted, the evidence clearly supports a finding that defendant was the more credible witness. Having just concluded that the court did consider the parties' credibility, we defer to that court's superior ability to access it. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000).

Defendant also claims that the trial court failed to consider the bond between the parties' child and defendant's other two children.[2] This argument fails for two reasons. First, simply because the court did not specifically address this proposition in its written opinion does not mean that the court failed to consider the issue. *Fletcher, supra* at 883-884. Second, while we recognize the importance of keeping siblings together, "[u]ltimately, however, it is the best interests of each individual child that will control the custody decision." *Wiechmann v Wiechmann*, 212 Mich App 436, 440; 538 NW2d 57 (1995).

Next, defendant contends that the trial court erred in not considering the deleterious effect of removing the child from her, given that she was, defendant asserts, the primary caregiver. As with the previous argument, the assertion that the failure to specifically state a conclusion on the matter means that it was ignored is fallacious. Further, the court did state that while the child "may have done as well or better" when defendant was the primary caregiver, "it must be noted that there is a real success" regarding the child while he was under plaintiff's care following the entry of the temporary custody order. In this statement, the court acknowledged both defendant's role in caring for the child prior to the parties' separation, and the role plaintiff has played since that time. Accordingly, while defendant may disagree with the court's conclusion, we do believe the record shows that the court did consider the issue.

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[2] Plaintiff did not father these other two children, and they are not a part of this appeal.

Finally, defendant claims that the trial court's factual findings on best interest factors (a), (c), (d), (e), (h), (k), and (l), were against the great weight of the evidence.[3] We disagree. "We review the trial court's findings of fact to determine if they are against the great weight of the evidence . . . ." *Mogle, supra* at 196. "Under that standard, the trial court's findings will be sustained unless the evidence clearly preponderates in the opposite direction." *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000).

After reviewing the record, we conclude that the evidence of these factors does not clearly preponderate in defendant's favor. Regarding factor (a), defendant's assertion that because she was the primary caregiver for the child's first three years she would necessarily have stronger emotional ties with the child is a non sequiter.

We are also unpersuaded that the court erred with regard to factor (c). Contrary to defendant's assertion, the fact that the court only commented on the parties' present employment does not mean that it ignored testimony about past employment. Further, we defer to the court's assessment of witness credibility as it pertains to the conflicting testimony about plaintiff's employment history. Concerning the dental condition of one of defendant's other children, while plaintiff was in the home during part of the time when the decay would have been occurring, it was defendant who had physical custody of the child and was therefore the only one of the two with the authority to attend to the child's medical needs. As for alleged abuse of both defendant and the minor child, the court did note that none of the allegations had been confirmed by subsequent investigations. We also defer to the court's assessment of credibility on this matter, as well as on the issue of whether plaintiff had wanted to sign over guardianship of the parties' child to the paternal grandmother.

We also believe the record supports the court's conclusions regarding factors (d) and (e). The record shows that the parties frequently moved when they were living together with the minor child. Following their separation in August 1999, the minor child and plaintiff went to live with plaintiff's parents at their home in Manistee. In November of 1999, defendant refused to return the child to plaintiff's care, alleging that plaintiff had abused the child. Plaintiff received an ex parte order on November 9, 1999, which granted him sole physical and legal custody of the child, and which ordered that defendant's parenting time be supervised until further order of the court. Until the time of trial, the child resided with plaintiff at the above mentioned home in Manistee. At trial, plaintiff indicated that he wanted to eventually move into a place of his own with the child. Defendant testified that she lives in a two-bedroom trailer with her boyfriend and two other children. She stated that she moved into this home in October 2000. From May 31, 2000, defendant testified she had been living at the home of her boyfriend's mother. Defendant stated that she moved into that home when the trailer she was living in caught fire. Defendant testified that as of December 2000, improvements to the trailer requested by the Emmet County Friend of the Court had been completed.

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[3] Factors (c), (d), (e), (h) and (l) were found by the trial court to weigh in plaintiff's favor. Factors (a) and (k) were found to be even.

This evidence establishes that as of trial, the child had been living in a stable and satisfactory environment with his father for over a year. Given the child's age and the numerous moves he made during his first three years, we cannot say that the trial court erred in finding that plaintiff had an advantage on factor (d).

Further, while we believe it is a close question, we conclude that the evidence did not clearly preponderate against the court's finding that factor (e) weighed in plaintiff's favor. The evidence supports the conclusion that as of trial the prospect of a stable family environment with plaintiff is somewhat more likely than with defendant. See *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996).

The trial court also found that plaintiff prevailed on factor (h), and we cannot find facts that clearly preponderate in the other direction. While the child had not developed a significant home, school, or community record due to his young age, *Wellman v Wellman*, 203 Mich App 277, 284; 512 NW2d 68 (1994), the evidence does establish that the boy did well in the Head Start program he had been attending.

As for factor (k), at least two investigations found little, if any, evidence of abuse. Deferring to the trial court on the issue of witness credibility, we do not find that the evidence preponderates against the court's finding that the parties weighed equally on this factor.

Finally, we find no error with the trial court finding that factor (l) weighed in plaintiff's favor. As noted by the court, the record established that the child was doing well since being placed with plaintiff, that plaintiff's parents provided a support network for plaintiff and the child, and that plaintiff has improved his parenting with appropriate classes.

Having found no error in the trial court's findings on the statutory factors, we affirm the trial court's custody award.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter