STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL RAY JUNTUNEN, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED December 3, 2002
v	No. 239203 Houghton Circuit Court
ANGELA BELLE JUNTUNEN, Defendant/Counter-Plaintiff-Appellant.	LC No. 00-011436-DM

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

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, contending that the trial court erred in granting plaintiff sole physical custody of the parties' four minor children. We affirm.

Defendant first argues that the trial court erred in finding that an established custodial environment existed with plaintiff. We disagree.

An established custodial environment is one of significant duration "'in which the relationship between the custodian and child is marked by qualities of security, stability and permanence.'" *Mogle v Scriver*, 241 Mich App 192, 197; 614 NW2d 696 (2000), quoting *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981). The existence of an established custodial environment is a factual inquiry, and this Court will sustain the trial court's factual findings unless the evidence clearly preponderates in the opposite direction. *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001).

In challenging the trial court's finding of an established custodial environment with plaintiff, defendant asserts that the trial court erred in basing its finding solely on the fact that the children resided with plaintiff after the parties separated. However, while we agree that the mere fact that a child's primary residence remained in one parent's home after the parties separated is insufficient to itself establish a custodial environment, see *Jack v Jack*, 239 Mich App 668, 671; 610 NW2d 231 (2000), our review of the record reveals a more substantial basis for the trial court's finding in this regard.

The record contains testimony that the children began looking only to plaintiff to provide them with guidance, discipline, and the necessities of life long before the parties separated and

defendant moved to a separate residence. During the last several years of the marriage, defendant worked and took college classes. Defendant's schedule was very hectic and often required that she leave the house quite early in the morning and return late at night. During that time, plaintiff prepared supper for the children, did laundry, and purchased groceries; activities plaintiff continued to carry on after the parties separated. Plaintiff also disciplines the children, reads bedtime stories with the younger children, and when the children need something, they leave notes for plaintiff on the kitchen table. This form of communication has gone on for many years, even while defendant was residing in the marital home. There was testimony that while defendant was living in the home, the children's notes to plaintiff were often discarded before plaintiff received them, and so to ensure that plaintiff received the notes the children began placing the notes in a coffee can – a secure location. In light of this testimony, we do not conclude that the trial court erred in holding that an established custodial environment existed with plaintiff. The evidence does not clearly preponderate in the opposite direction. *Foskett*, *supra* at 5.

Defendant next argues that the trial court erred in its consideration of the statutory best interest factors. Again, we disagree.

Custody disputes are to be resolved in the best interests of the children, as measured by the factors set forth in MCL 722.23. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). The great weight of the evidence standard applies to all findings of fact regarding each custody factor, and we will affirm those findings unless the evidence clearly preponderates in the opposite direction. *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000).

Defendant first contends the trial court erred in finding more love, affection, and other emotional ties between plaintiff and the children. See MCL 722.23(a). In determining that plaintiff was more closely bonded with the children than defendant, the court noted the "living arrangements that ha[d] been taking place." Because there is substantial evidence on the record establishing plaintiff's bond with his children – as previously discussed – the trial court did not err in finding that this factor favored plaintiff.

Defendant next argues that the trial court erred in finding plaintiff more capable than defendant in providing food, clothing, and medical care to the children. See MCL 722.23(c). The court held that although both parties could accomplish the task of providing the children with food and clothing, as well as medical and other remedial care, plaintiff had already demonstrated his abilities and, thus, this factor favored plaintiff. The trial court did not err in this regard.

As noted above, evidence offered below indicated that throughout the last several years of the parties' marriage and separation, plaintiff has actively and quite adequately provided the children with meals, laundry, and medical needs. Therefore, the evidence concerning this factor does not clearly preponderate in the opposite direction. *Foskett*, *supra* at 5.

Next, defendant argues that the trial court erred in finding that plaintiff is better able to provide the children with a stable, satisfactory, and permanent custodial environment. See MCL 722.23(d) and (e). The trial court found that plaintiff's home has been "a stable and satisfactory environment" for the children, and that under plaintiff's care the children have had all their basic needs attended. Defendant claims that because there are several people who routinely sit with

and transport the children, the home is unstable and inadequate. Defendant also argues that the trial court clearly erred in failing to address the permanence of the home, instead referring "tangentially to the suitability of the arrangements." However, the record is clear that the children have lived in plaintiff's home since they were born, and they have had a live-in babysitter since September 2000. Plaintiff has prepared meals, bought groceries, done laundry, and otherwise adequately cared for the children in his home since defendant began working and attending college. Accordingly, we do not conclude that the trial court erred in finding that plaintiff is better able to provide the children with a stable, satisfactory, and permanent custodial environment.

Next, defendant contends that the trial court erred in finding the parties equal in moral fitness, and in failing to consider plaintiff's history of domestic violence. See MCL 722.23(f) and (k). We disagree.

Defendant claims that the trial court ignored evidence of plaintiff's immoral conduct, such as shooting a dog and episodes of domestic violence. However, the court did not indicate that plaintiff was a person of superior moral fitness. Rather, the court held that the parties' moral fitness was equal. The court similarly did not ignore the evidence of domestic violence, but rather found that both parties were equally at fault for the limited domestic violence that occurred.

Based on the record, the evidence does not clearly preponderate in the opposite direction of the trial court's findings. *Foskett*, *supra* at 5. Accordingly, the trial court did not err in its determinations regarding the statutory best interest factors.

We affirm.

/s/ Harold Hood
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell