

STATE OF MICHIGAN
COURT OF APPEALS

RONALD DMITRUCHINA,

Plaintiff-Appellee,

v

DAWN DMITRUCHINA,

Defendant-Appellant.

UNPUBLISHED

December 13, 2002

No. 235061

Monroe Circuit Court

LC No. 99-025414-DM

Before: O’Connell, P.J., and White and B.B. MacKenzie*, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce granting joint physical custody of the parties’ two children (ages 9 and almost 8 at the time of trial) to plaintiff and defendant. We affirm.

Defendant’s sole argument on appeal is that the trial court erred in granting joint physical custody of the two children. “A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law.” *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000), quoting *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). This Court reviews findings of fact in a child custody case according to the great weight of the evidence standard, and discretionary rulings are reviewed for an abuse of discretion. *LaFleche, supra*, at 695.

Custody disputes are governed by MCL 722.26a. Joint custody is defined as “the child shall reside alternately for specific periods with each of the parents” or “the parents shall share decision making authority as to the important decisions affecting the welfare of the child,” or both. *Mixon v Mixon*, 237 Mich App 159, 162-163; 602 NW2d 406 (1999), quoting *Wellman v Wellman*, 203 Mich App 277, 279; 512 NW2d 68 (1994). MCL 722.26a provides, in pertinent part:

(1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court

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

shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in section 3.^[1]

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

(2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child.

Determining whether a custody award is in the best interests of a child is dependant upon the circumstances surrounding each case. *Ireland v Smith*, 451 Mich 457, 468; 547 NW2d 686 (1996). In the present case, plaintiff requested that the court consider joint custody. Thus, the trial court was required to state on the record the reason for granting or denying the request. MCL 722.26a(1).

The trial court made findings with respect to all the statutory factors, finding the parties virtually equal, except that plaintiff was slightly favored with respect to factors three and ten. Defendant does not directly challenge the court's findings on any of the statutory factors. Rather, she argues on appeal that the court erred in awarding joint custody where the record demonstrated a record of domestic violence and police intervention, and that the parties are unable to cooperate and generally agree on important decisions regarding their children. We disagree.

The trial court noted that the parties do not like each other. The court regarded the domestic violence as "very mild" and observed that both parties were at fault. The court also found fault with some of the parties' other behaviors with respect to each other, especially their making disparaging remarks in front of the children. However, the trial court also observed that the parties "both are good people who love and care for their children." The children apparently expressed a preference for being with both parents.² And, the court observed that despite the parties' sometimes inappropriate behavior, the children were "delightful" and well-adjusted. The court stated that the children "deserve to have both of their parents, and they need to have both of their parents." The parties lived in the same house throughout the divorce and both took care of the children and met their needs. The court found that both parents shared responsibility in taking care of the children and that as a result the children have strong attachments to both parents. The court found that the parties have "the same goals and interests in mind for their children," and that they seem to "have attempted to make that effective for the good of the

¹ Section 3, MCL 722.23, sets forth the best interest factors.

² The court stated:

The children want to be with both of you. They love both of you. They want to be with both of you. One child does have a slight preference, but given - - the Court gives that little weight due to the age of the child.

children.” The court further determined that it was in the best interest of the children to spend as much time as possible with both parents, and that a joint custodial arrangement was feasible.

Upon reviewing the record, it appears that although the parties fought, they also cooperated. The parties remained living together while their divorce was pending. Both plaintiff and defendant attended the children’s extra-curricular activities, helped the children with their homework, and shared in meeting the day-to-day necessities of the children. While the divorce was pending, plaintiff did the grocery shopping and made dinner for the family, while defendant made the children’s lunches and bought their clothes. Both parties took the children to medical appointments., and both attended parent-teacher conferences.

We conclude that the court’s determinations that joint custody was both feasible and in the best interests of the children are adequately supported by the record. The trial court did not err in ordering joint physical custody of the children.

Affirmed.

/s/ Peter D. O’Connell

/s/ Helene N. White

/s/ Barbara B. MacKenzie