STATE OF MICHIGAN

COURT OF APPEALS

JAMES C. SCHROER,

Plaintiff-Appellee,

v

NANCY J. SCHROER,

Defendant-Appellant.

UNPUBLISHED
December 6, 2005

No. 263422
Oakland Circuit Court
LC No. 03-687539-DM

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce awarding sole legal and physical custody of the parties' minor child to plaintiff. Defendant sought joint legal and physical custody of the child. Defendant also challenges the trial court's spousal support award. We affirm.[1]

I.

Defendant contends that the trial court clearly erred in awarding plaintiff full legal and physical custody of the parties' minor child and limiting defendant's parenting time. When analyzing a child custody issue, this Court reviews a trial court's factual findings to determine whether they are against the great weight of the evidence, a trial court's discretionary rulings, such as custody decisions, for an abuse of discretion, and questions of law for clear legal error. MCL 722.28; *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004), citing *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). A trial court's factual findings are against the great weight of the evidence if they clearly preponderate in the opposite direction. *Thompson, supra* at 363. Moreover, a court commits legal error if it incorrectly chooses, interprets, or applies the law. *Id.* at 358. "An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences perversity of will, a defiance of judgment, or the exercise of passion or bias." *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

[1] During the pendency of this appeal plaintiff moved to dismiss defendant's appeal as moot. This court denied the motion in an order dated 9/26/05.

This Court reviews parenting time orders de novo. *Brown v Loveman*, 260 Mich App 576, 591-592; 680 NW2d 432 (2004). Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; *Harvey v Harvey*, 257 Mich App 278, 283; 668 NW2d 187 (2003).

Defendant first argues that the trial court erred by requiring defendant to satisfy the "clear and convincing evidence" standard. We disagree. In deciding the child custody issue, the trial court held:

> Considering the foregoing factors, the court finds Defendant has not established her burden by clear and convincing evidence that a change in custody is in the best interest of the minor child. Plaintiff shall have sole legal and physical custody of the parties' minor child until further order of the court.

MCL 722.27 provides that a judge should not issue a new order or modify an existing order to change the established custodial environment of a child unless clear and convincing evidence is presented that it is in the best interests of the child. An established custodial environment exists if "over an appreciable time the child looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort," MCL 722.27(1)(c), and is marked by qualities of security, stability, and permanence, *Mogle v Scriver*, 241 Mich App 192, 197; 614 NW2d 696 (2000). Where the trial court finds no established custodial environment, the court may change custody if the moving party proves by a preponderance of the evidence that the change is in the child's best interest. *LaFleche v Ybarra*, 242 Mich App 692, 696; 619 NW2d 738 (2000). Once a custodial environment is established, however, the moving party "must show by clear and convincing evidence that it is in the child's best interest" to change custody. *Jordan, supra* at 25. Whether an established custodial environment exists is a question of fact. *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001).

The trial court here wrote:

> Defendant was the primary caregiver for most of the child's life. However, since the entry of the October 13, 2004 order granting sole custody to Plaintiff, the child has resided exclusively with Plaintiff. Plaintiff has been providing the child with guidance, discipline, the necessities of life, and parental comfort. The court finds an established custodial environment with both parties. To change custody, Defendant would have to prove by clear and convincing evidence that the change in custody would be in the child's best interest.

The trial court did not err in requiring defendant to satisfy the "clear and convincing evidence standard." Defendant erroneously argues that the October 13, 2004, order is insufficient to establish a custodial environment with plaintiff. It is well recognized that "an established custodial environment can exist in more than one home." *Jack v Jack*, 239 Mich App 668, 671; 610 NW2d 231 (2000), citing *Duperon v Duperon*, 175 Mich App 77, 80; 437 NW2d 318 (1989). This Court has previously stated that an underlying custody order is "irrelevant" in the determination of whether a custodial environment exists. *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995). "In determining whether an established custodial environment

exists, it makes no difference whether that environment was created by a court order, without a court order, in violation of a court order, or by a court order that was subsequently reversed." *Id.* The principal concern is not "the reasons behind the custodial environment, but . . . the existence of such an environment." *Treutle v Treutle*, 197 Mich App 690, 693; 495 NW2d 836 (1992).

Defendant does not dispute that plaintiff has cared for the child since the October 13, 2004, order and the record shows that defendant has been in constant contact with the child since the child began residing with plaintiff. The trial court, therefore, did not err in holding that a custodial environment existed with both parties.

Thus, the issue becomes whether the trial court committed an abuse of discretion by holding that defendant failed to present clear and convincing evidence that a change in custody was warranted. In making a child custody determination, a trial court must make specific findings of fact regarding each of the twelve best interest factors enumerated in MCL 722.23 which must be considered when determining the best interests of a child. *Thompson*, *supra* at 363; *McCain v McCain*, 229 Mich App 123, 124; 580 NW2d 485 (1998). Defendant challenges the trial court's factual findings with respect to best interest factors b, c, d, f, g and j, and argues that the trial court legally erred by ruling that these factors favored plaintiff. We disagree.

Factor b requires the trial court to assess "the capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any." MCL 722.23(b). Here, the trial court held that this factor favored plaintiff because of the court's concerns regarding defendant's need for psychological counseling and refusal to pursue such care. The court's concerns are supported by the testimony of the court-appointed child custody evaluator, Dr. Danuloff, who opined that defendant suffered from a delusional disorder, hypomania, and paranoid ideation that could cause psychological harm to the child. Although defendant presented evidence that directly disputed Dr. Danuloff's opinion, this Court defers to the fact finder's determinations regarding witness credibility, and we will not disturb this finding based on the evidence presented. *Mogle*, *supra* at 201.

Factor c, MCL 722.23(c), requires the trial court to assess "the capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs." Here, the evidence showed that plaintiff is an experienced business executive who has earned substantial amounts of income over the past fifteen years. Defendant primarily cared for the child during the marriage and has not worked outside the home since 1989. Although defendant argues that the fact that she stayed home to care for the child should not weigh against her, defendant fails to cite any law supporting this proposition. A party may not leave it to this Court to search for authority in support of its position by giving "issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v Berkely*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Factor d, MCL 722.23(d), refers to "the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." Here, the trial court held this factor favored plaintiff because of questions with respect to whether defendant could provide a stable environment in light or her psychiatric issues, which, as stated, was supported by the record. With respect to factor f, MCL 722.23(f), involving the moral fitness of the parties,

the trial court's holding focused on defendant's accusations that were made as a result of her delusional behavior. We find no correlation between defendant's mental state and her moral fitness.

Regarding factor g, mental and physical health of the parties, MCL 722.23(g), defendant contends that the trial court gave undue weight to her alleged psychiatric condition. As stated, Dr. Danuloff testified at length regarding his opinion that defendant needed psychiatric care, and although defendant presented evidence opposing Dr. Danuloff's opinion, this Court will defer to the trial court's credibility determination in this respect. *Mogle, supra* at 201. Regarding factor j, facilitation of relationship with other parent, MCL 722.23(j), there was significant evidence presented that defendant constantly made derogatory remarks about plaintiff in front of the child, and that plaintiff did not engage in such behavior. Dr. Danuloff testified that he was concerned defendant's behavior would harm plaintiff's relationship with the child. Thus, the trial court's decision to favor plaintiff in factors b, c, d, g and j, as discussed *supra*, is supported by the evidence presented at trial. The trial court did not abuse its discretion in awarding plaintiff sole legal and physical custody of the child.

Defendant next challenges the trial court's order regarding supervised parenting time. MCL 722.24(1) places an affirmative obligation on the trial court to determine parenting time in accordance with the best interests of the children and the child custody act. See *Harvey v Harvey*, 470 Mich 186, 189; 680 NW2d 835 (2004). In this regard, the trial court conducted a thorough "best interests" analysis and did not abuse its discretion in determining parenting time.

II.

Defendant argues that the trial court erred by awarding her temporary spousal support. We disagree.

This Court reviews for clear error a trial court's factual findings related to an award of alimony. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Clear error exists when, after considering all the evidence, a reviewing court possesses the definite and firm conviction that the trial court made a mistake. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). "If the findings of fact are upheld, the appellate court must decide whether the dispositive ruling was fair and equitable in light of those facts." *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). This Court should affirm the trial court's discretionary dispositive ruling unless "the appellate court is left with the firm conviction that the division was inequitable." *Id*. at 152.

"The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Moore, supra* at 654. Spousal support should constitute a just and reasonable amount in light of the following circumstances: (1) the parties' past relations and conduct, (2) the length of the marriage, (3) the parties' abilities to work, (4) the source and amount of property awarded to the parties, (5) the ages of the parties, (6) the parties' abilities to pay alimony, (7) the parties' present situations, (8) the needs of the parties, (9) the health of the parties, (10) the parties' prior standard of living, (11) the parties' contributions to the joint estate, and (12) general principles of equity, and (13) a party's fault in causing the divorce. MCL 552.23(1); *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996).

Here, the trial court enumerated these controlling factors in awarding spousal support. The court found that "plaintiff has a much greater ability to work and earn a substantial income, as demonstrated in the past," which is clearly supported by the record. Defendant was paid $5,000 per month from the parties investment accounts while this case was pending, and received millions of dollars worth of assets as a result of the trial court's property division order. The trial court awarded spousal support in light of the circumstances at the time of trial. Thus, the trial court's award properly balanced the incomes and needs of the parties in a way that would not impoverish either party. *Moore, supra* at 654. Regardless, the judgment of divorce provides that "spousal support will be reviewed upon Plaintiff's re-employment or the expiration of the six (6) months following the entry of the Judgment of Divorce, which occurs first." Indeed, the parties entered into a stipulated order after plaintiff accepted a new executive position that required plaintiff to pay $10,000 per month for six years, for a total of $720,000. This Court is not left with the firm conviction that the amount or the duration of the spousal support award was inequitable. *Sparks, supra* at 152.

Affirmed.

/s/ Alton T. Davis
/s/ E. Thomas Fitzgerald