

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UNPUBLISHED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.

COOPER, J. (*concurring in part and dissenting in part*).

I must respectfully dissent from the majority opinion of my colleagues. The trial court unfairly denied defendant any real opportunity to parent her child based upon the one-sided opinion of Dr. Lyle Danuloff, the court-appointed psychologist who evaluated the parties. Based on the doctor's evaluation, the court granted plaintiff sole legal and physical custody of the parties' son and awarded plaintiff extremely limited, supervised visitation. Dr. Danuloff labeled defendant as delusional, paranoid, and hypomanic due to her "incredible" accusations that plaintiff had committed adultery and had placed her under surveillance. However, the evidence presented by defendant, both to Dr. Danuloff and the court, belies such a finding.

Plaintiff was a wealthy executive with DaimlerChrysler for several years and routinely traveled as part of his employment. He admitted that defendant once discovered a bra in his suitcase upon his return from a business trip. Plaintiff told defendant that housekeeping had accidentally placed the garment in his luggage.¹ Plaintiff had also previously worked with Celine Dion during an advertising campaign. While defendant's accusation that plaintiff had an affair with the singer may have been unrealistic, her suspicions regarding his infidelity did have foundation in fact. Defendant testified that she discovered unexplained charges for flowers on their credit card bill, a woman once answered the phone in plaintiff's hotel room, and another woman often paged plaintiff. Defendant also explained that, over one summer, plaintiff frequently went to the home of an unmarried nurse who administered allergy shots to plaintiff on an unpaid basis. Dr. Danuloff rejected these allegations on the basis of plaintiff's statements

¹ Dr. Danuloff testified that he could not remember whether he questioned plaintiff about this incident.

alone. Plaintiff had, in fact, secretly taped private conversations with defendant regarding this emotionally charged subject, and then provided the tapes to Dr. Danuloff as proof of her emotional instability. Apparently, defendant's allegation that she was under surveillance also had a foundation in fact. Dr. Danuloff did not duly consider any of the evidence presented by defendant to substantiate her claims. Rather, he accepted plaintiff's manipulative proofs and even administered his own polygraph examination to the plaintiff.² While defendant inappropriately made some of these allegations in the presence of the parties' son, this was just one factor to be determined under the Child Custody Act.³

Dr. Danuloff's evaluation was clearly flawed in that he relied on false information regarding plaintiff's fidelity at the time he made his report recommending that the court award sole custody to plaintiff. Dr. Danuloff was critical of defendant's stated desire to move with the child to Tennessee or North Carolina. He was also critical of plaintiff's attempts to find employment outside of Michigan. Dr. Danuloff testified that he had convinced plaintiff to end this nationwide job search and form a local consulting firm. However, on the day the judgment of divorce was entered, plaintiff filed a motion for change of domicile, which the trial court granted. Thereafter, *plaintiff* accepted new employment and moved with their son to Minneapolis.

Perhaps, if Dr. Danuloff had all of this information before he prepared his report, he might have reached a different conclusion. The trial judge accepted and relied heavily on Dr. Danuloff's report despite the testimony from plaintiff that he believed his wife to be a "good mother" to the child. The defendant is now limited to visiting her son on alternate weekends *when* she can find a family member to travel with her to Minnesota to supervise visitation. This is a draconian result that is not in the best interest of the child. Rather, it deprives the child of an ongoing relationship with his mother.

I query whether defendant is actually emotionally unstable or whether plaintiff made large contributions toward creating this emotionally charged situation. Aside from the fact that defendant was angry regarding her husband's infidelity, it would appear from the record that the only other factor considered by the trial court, in which the plaintiff prevailed, was the plaintiff's outstanding earning capacity. However, a party's wealth and power is not a factor that any court should consider in making a custody determination.

Accordingly, I would find that the trial court abused its discretion in granting sole legal and physical custody to plaintiff and in awarding defendant such limited, supervised visitation. I

² See *People v Barbara*, 400 Mich 352, 364; 255 NW2d 171 (1977) (finding the results of a polygraph examination to be insufficiently reliable and, therefore, inadmissible in both criminal and civil cases). Nowhere in the record do we find any information regarding Dr. Danuloff's qualifications as a polygraph examiner.

³ MCL 722.21 *et seq.*

would, therefore, remand for further consideration of the best interest factors.⁴ I agree with the majority, however, that the trial court's award of spousal support was adequate and proper.

/s/ Jessica R. Cooper

⁴ MCL 722.23.