STATE OF MICHIGAN

COURT OF APPEALS

HARISHBAHI J. PATEL,

Plaintiff-Appellee,

v

VARSHABAHEN H. PATEL,

Defendant-Appellant.

UNPUBLISHED
March 11, 2008

No. 279869
Muskegon Circuit Court
LC No. 05-029697-DM

Before: Fitzgerald, P.J., and Smolenski and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right the judgment entered in this divorce action, challenging both the trial court's decision to award plaintiff primary physical custody of the parties' children and the property distribution. We affirm.

Defendant first challenges the trial court's findings with respect to several of the best-interest factors, MCL 722.23. This Court applies three standards of review in child custody disputes. *Fletcher v Fletcher*, 447 Mich 871, 877; 526 NW2d 889 (1994). It reviews "the trial court's factual findings under the 'great weight of the evidence' standard, its discretionary rulings for an abuse of discretion, and questions of law for clear legal error." *McCain v McCain*, 229 Mich App 123, 125; 580 NW2d 485 (1998).

With respect to factor (b), MCL 722.23(b), "[t]he 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," the trial court's findings were not against the great weight of the evidence. The trial court concluded that "[b]oth parties love their children and are disposed to provide these qualities." However, the trial court found that this factor favored plaintiff, expressing a concern for defendant's mental health, noting that "the defendant has experienced two emotional/psychological breakdowns, one in 2001 and most recently in 2006." There was testimony that defendant received treatment in Canada, and that she is now stable; however, the trial court ruled that "defendant needs to demonstrate longer-term stability before she would be able to assume full custody of the children." The record reflects that the trial court assessed the capacity and disposition of the parties to give the children love, affection, and guidance under MCL 722.23(b), and reached a conclusion based on the facts. The facts do not clearly preponderate in the direction opposite to that espoused by the trial court. *Rittershaus v Rittershaus*, 273 Mich App 462, 473; 730 NW2d 262 (2007). Thus, the trial court's findings were not against the great weight of the evidence with respect to factor (b).

With regard to factor (b), defendant maintains that she testified regarding her mental health and that the trial court failed to consider a letter from defendant's physician. Defendant provides only self-serving assertions on appeal that "she is now fully recovered from her depression, she is taking her medication, and she is back to normal." Moreover, this Court defers to a trial court's resolution of credibility issues. MCR 2.613(C); *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006). And, the physician's letter that defendant sought to introduce at trial was inadmissible as hearsay. MRE 801(c). Defendant fails to provide any discussion as to the admissibility of that letter. An appellant may not merely announce her position and leave it to this Court to discover and rationalize the basis for his claims. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

With respect to factor (c), "[t]he 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," defendant has not established that the trial court's findings were against the great weight of the evidence. The trial court found that this factor favored plaintiff without providing any specific findings. This was improper. *MacIntyre v MacIntyre*, 267 Mich App 449, 451-452; 705 NW2d 144 (2005). *Foskett v Foskett*, 247 Mich App 1, 9; 634 NW2d 363 (2001) ("A trial court must consider and explicitly state its findings and conclusions with respect to each" best interest factor.) Nevertheless, "a trial court is not required to 'comment upon every matter in evidence or declare acceptance or rejection of every proposition argued.'" *Bowers v Bowers*, 198 Mich App 320, 328; 497 NW2d 602 (1993) (quotation omitted). In *MacIntyre, supra*, this Court ruled that "the record must be sufficient for this Court to determine whether the evidence clearly preponderates against the trial court's findings." Here, before addressing the best interest factors, the trial court listed the parties' assets, divided them, provided plaintiff with one motel to run as a source of income, and awarded defendant spousal support. In addition, in analyzing factor (b), the trial court considered defendant's psychological/emotional problems. Thus, the record enables this Court to properly review the trial court's finding that factor (c) favored plaintiff.

On the record, it was not against the clear weight of the evidence to find that plaintiff more favorably had the capacity and disposition to provide for the children's food, clothing, medical care and other material needs. While defendant may have had the disposition, the evidence did not fully support her capability of providing for the children.

There was ample testimony at trial that defendant did a poor job managing one of the parties' motels, in part due to her mental health issues. The record reflected that defendant ran that motel from August 2005 to May 2006, when plaintiff alleged that defendant abandoned the motel, leaving it in a state of disrepair and without an accounting of its receipts. Defendant now suggests that the trial court should have awarded one of the parties' two motels to her, and that defendant would thereby have been in a position to work at that motel and provide for the children's food, clothing, and medical care. However, during trial, defendant asked for both motels to be sold. "A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003) (quotation omitted).

With respect to factor (g), "[t]he mental and physical health of the parties involved," the trial court expressed a concern for defendant's mental health, noting "two emotional/psychological breakdowns," and that "defendant needs to demonstrate longer-term stability before she would be able to assume full custody of the children." The record reflects that the trial court assessed the mental and physical health of the parties under MCL 722.23(g). The evidence supports the trial court's decision, and the facts do not clearly preponderate in the opposite direction. *Rittershaus, supra*.

With respect to factor (h), "[t]he home, school, and community record of the child[ren]," the trial court found that this factor favored neither party, "because the children did well at home, at school, and in the community with both parties." Once again, defendant has failed to establish that the trial court's findings of fact in this regard were against the great weight of the evidence, relying only on self-serving statements that she attended all of the parent-teacher conferences and opened education accounts for the children. At trial, little evidence was presented regarding the home, school, and community record of the children other than the testimony of the parties. This Court defers to a trial court's resolution of credibility issues. MCR 2.613(C). The only quantifiable evidence presented at trial was that the parties' oldest child was performing well in middle school while living with plaintiff. The facts do not clearly preponderate in the direction opposite to that taken by the trial court. *Rittershaus, supra* at 473.

Finally, with respect to factor (k), "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child[ren]," the record provides no evidence that there was any violence directed against or witnessed by the parties' children. While there was evidence of heated arguments between the parties and some throwing of objects, the record does not support that this factor favored defendant such that a contrary finding is against the great weight of the evidence.

In sum, we conclude that the trial court's findings with respect to factors (b), (c), (g), (h), and (k) were not against the great weight of the evidence. The trial court did not commit a palpable abuse of discretion in awarding primary physical custody to plaintiff, because the ruling was not "so palpably and grossly violative of fact and logic." *Fletcher, supra* at 879-880.

Defendant next argues that the trial court's property distribution was unfair and inequitable. Specifically, defendant argues that the trial court erred by failing to award a reimbursement to her for a capital contribution and for past wages, by not justly dividing the bank accounts between the parties, by not awarding one of the parties' two motels to her, and by failing to award her certain items of personal property.

This Court reviews de novo a division of marital property. *Reeves v Reeves*, 226 Mich App 490, 501; 575 NW2d 1 (1997). A trial court's findings of fact related to the division of marital property are reviewed under the clearly erroneous standard. *Pickering v Pickering*, 268 Mich App 1, 7; 706 NW2d 835 (2005). Those factual findings will not be reversed unless they are clearly erroneous, i.e., if this Court is left with the definite and firm conviction that a mistake has been made. *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). "If this Court upholds the trial court's findings of fact, it must then decide whether the dispositional ruling was fair and equitable in light of those facts." *Id.* We will affirm a dispositional ruling unless left with the firm conviction that the division was inequitable. *Pickering, supra* at 7.

This issue is abandoned because defendant has failed to support her arguments with citation to any authority. *Reed, supra* at 157. Nevertheless, we will briefly address each claim.

First, the trial court's denial of defendant's claims for reimbursement of a $5,000 investment and $9,000 for wages was not clearly erroneous. The trial court found that the investment "was later lost during her [defendant's] management of the motel." And, the trial court found that there was no evidence adduced at trial to substantiate defendant's claim for wages, notably because there was no evidence that she was managing the motel during the period in question. The record supports the trial court's ruling and undermines defendant's claims. Thus, in affirming this ruling, we are not be left with a definite or firm conviction that a mistake has been made. *Reed, supra* at 150.

Second, defendant asserts that she is entitled to division of certain cash accounts held by plaintiff. The trial court, however, found that "the parties knowingly agreed that their marital cash assets were equally divided in June of 2005, with each receiving $35,000." The trial court also noted that "both parties had maintained their own separate accounts with no communication between one another concerning those accounts." On appeal, defendant concedes that "both parties maintained their own separate bank accounts" during the marriage. The accounts were held as separate assets by each party, by agreement. Generally, the parties' separate assets may not be "invaded" unless one of two statutory exceptions is satisfied. *Reed, supra* at 152. Neither of the exceptions applied to the instant action. Defendant has not demonstrated additional need, which would allow the invasion of plaintiff's separate accounts. More importantly, there was no evidence that defendant contributed to the acquisition of the accounts in question. *Id.* Additionally, defendant claims that she is entitled to half of one of plaintiff's accounts pursuant to a court order. However, a trial court in a divorce case may modify interim support orders, and may interpret the orders after they are merged with the final judgment of divorce. *Mitchell v Mitchell*, 198 Mich App 393, 396; 499 NW2d 386 (1993). Such is the case here.

Third, we reject defendant's assertion that the trial court erred by failing to award to her one of the parties' motels. At the bench trial, defendant asked for both motels to be sold. "A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Blazer Foods, Inc, supra* at 252 (quotation omitted).

Finally, defendant contends that the trial court erred by failing to award defendant specific items of personal property.[1] The trial court ordered that "[t]he parties' jewelry and gold and other precious items shall be divided equally." And, if the parties could not agree over an equal distribution, they were to submit to mediation. Ultimately, we conclude that the trial court's ruling with respect to the items of personal property was not clearly erroneous. *Reed, supra* at 150. Defendant fails to cite authority to support that the trial court could not submit the matter to mediation, and we find none to support that position.

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[1] One of the items mentioned by defendant on appeal is a 22-carat gold bracelet. The trial court explicitly ruled that the bracelet be awarded to defendant. There is no issue with respect to that item.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski
/s/ Jane M. Beckering