

STATE OF MICHIGAN
COURT OF APPEALS

SARAH BALDUS,

Plaintiff-Appellee,

v

JUSTIN DUNGEY,

Defendant-Appellant.

UNPUBLISHED

March 13, 2008

No. 281414

Clinton Circuit Court

LC No. 07-019376-DS

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting plaintiff primary custody of the parties' minor child. Because the trial court properly determined, based on the facts presented, that plaintiff had established a custodial environment with the minor child, and that the challenged factual determinations were not against the great weight of the evidence, we affirm.

Defendant argues that the trial court failed to properly and independently inquire into whether an established custodial environment existed between the minor child and either parent. Defendant specifically asserts that the trial court inappropriately relied on a Friend of the Court recommendation when it found that an established custodial environment existed between the minor child and plaintiff. A circuit court is required to provide de novo review of a Friend of the Court recommendation if a party objects to the recommendation, but that review may be based, in whole or in part, on the facts as set forth in the recommendation. *Dumm v Brodbeck*, 276 Mich App 460, 465; 740 NW2d 751 (2007); MCL 552.507(5)(b).

The record reveals that the trial court held a hearing where it heard testimony from defendant, defendant's parents, and plaintiff regarding who took care of the minor child while the parties were together, and who continued to take care of the child after the parties separated. After considering the evidence, the trial court stated on the record that plaintiff had an established custodial environment with the minor child. We give deference to the trial court's special opportunity to judge witness credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "A custodial environment is established if 'over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort.'" *Brown v Loveman*, 260 Mich App 576, 595; 680 NW2d 432 (2004) quoting MCL 722.27(1)(c). After reviewing the record giving appropriate deference to the trial court, we conclude that sufficient record evidence supported the trial court's finding that plaintiff had established a custodial environment with the minor child.

Defendant next argues that the trial court improperly decided several of the best interest factors. MCL 722.23. This Court reviews a trial court's findings of fact regarding the best interest factors "under the great weight of the evidence standard." *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006). In particular, defendant asserts that the trial court improperly decided factors (c), (d), (e), and (k). MCL 722.23. The trial court must consider each of the statutory factors when deciding the best interests of a child. *Sinicropi, supra* at 182. "A court need not give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances." *Id.* at 184. In making its factual findings, the trial court "need not comment on every fact in evidence." *Id.*

Factor (c) involves the parties' "capacity and disposition" to provide the child with material needs. MCL 722.23(c). The trial court weighed this factor slightly in favor of plaintiff. The trial court heard evidence that defendant had a more stable financial situation, but the trial court also heard testimony that plaintiff was involved in more of the caretaking duties. Factor (c) involves both "capacity" and "disposition." While defendant contends that he had a greater capacity to provide for the minor, defendant did not demonstrate that he had a greater disposition. The trial court was free to believe plaintiff's testimony over defendant's testimony. Additionally, the trial court was free to take into account the child support payments that plaintiff was entitled to receive. See *LaFleche v Ybarra*, 242 Mich App 692, 700-701; 619 NW2d 738 (2000). The trial court's decision was not against the great weight of the evidence regarding factor (c).

Factor (d) involves "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(d). The trial court held that continuing the parties' present arrangement was in the best interest of the child under factor (d). While the trial court did not specifically state for which party it was finding the factor, a finding in favor of the status quo impliedly favored plaintiff. The trial court heard testimony from defendant and defendant's grandparents that the minor was a well-adjusted child. It was not against the great weight of the evidence to conclude that the environment should not be changed.

Defendant argues that the trial court improperly scored factor (e) examining "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes." MCL 722.23(e). The trial court did not weigh the factor in favor of either party. "[T]he focus of factor (e) is the child's prospects for a stable family environment." *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996). The trial court should examine any "potential disruptions" to the minor's environment. *Id.* at 465 n 9. There was evidence on the record that defendant maintained the same residence for several years, while plaintiff moved repeatedly. There was also evidence that defendant relied on his parents to care for the minor during defendant's weekday visits. Evidence also showed that plaintiff was married, and that defendant dated, but not seriously. In these circumstances, we conclude that the trial court's decision not to weigh factor (e) in favor of either party was not against the great weight of the evidence. See *Sinicropi, supra* at 155.

Finally, defendant argues that the trial court improperly weighed factor (k) addressing domestic violence issues. MCL 722.23(k). The trial court heard testimony from both parties regarding the other party's alleged assaultive behavior. In light of the evidence indicating each

party was responsible for some incidents of domestic violence, ample evidence in the record supported the trial court's decision to weigh this factor equally.

In sum, we conclude that the trial court properly determined, based on the facts presented, that plaintiff had established a custodial environment with the minor child, and that the challenged factual determinations were not against the great weight of the evidence.

Affirmed.

/s/ Henry William Saad
/s/ William B. Murphy
/s/ Pat M. Donofrio