STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM LIU, Plaintiff-Appellant,	UNPUBLISHED March 25, 2008
v	No. 280301 Sanilac Circuit Court Family Division
ZHEN FANG LIANG, Defendant-Appellee.	LC No. 06-031374-DM

Before: Meter, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the parties' judgment of divorce. The issues on appeal relate to the court's grant of physical custody of the parties' minor child to defendant. We affirm.

The parties married in January 2003, and their only child was born in September 2004. At the time, both parties worked as vegetable farmers in Michigan. In December 2004, at the end of the farming season, the parties moved to San Francisco, where they lived with members of plaintiff's extended family. Plaintiff's mother served as one of the child's caregivers. Plaintiff left San Francisco a couple of months later, leaving his mother and defendant to care for the child. By May 2005, both plaintiff and defendant were back at the Michigan farm, while their then eight-month-old child remained in San Francisco with plaintiff's mother.

The parties returned to San Francisco in January 2006. Plaintiff left for Florida shortly after their return. By spring, the parties' marriage was faltering. Defendant moved to her own apartment in San Francisco and did not return to Michigan for the farming season. She eventually entered college and obtained employment. Plaintiff's mother and sister brought the child to Michigan in May 2006. In October 2006, plaintiff filed for divorce. The trial court entered a temporary custody order in December 2006 granting physical custody of the child to plaintiff. The order stated that the temporary custody arrangement would not be considered as establishing a custodial environment.

The Friend of the Court (FOC) held hearings on the custody issue and recommended that plaintiff be granted primary physical custody of the child. Defendant filed objections, and the trial court held a de novo hearing. The trial court found that there was no established custodial

environment with either parent and that the child's best interests would be served by awarding physical custody to defendant.

On appeal, plaintiff first argues that the trial court erred by finding that the child did not have an established custodial environment. According to plaintiff, the court ignored the fact that plaintiff's mother had been the child's primary caregiver for the most of the child's life. On this issue, we review the record to determine whether the trial court's finding was against the great weight of the evidence. MCL 722.28. We review the court's ultimate custody award for an abuse of discretion. *MacIntyre v MacIntyre*, 267 Mich App 449, 451; 705 NW2d 144 (2005).

Although the testimony in the record is somewhat difficult to follow due to the translations from Mandarin and Cantonese to English, we conclude that the trial court's finding was not against the great weight of the evidence.

As the court correctly determined, the first inquiry in a custody dispute is whether an established custodial environment exists for the child. *Jack v Jack*, 239 Mich App 668, 670; 610 NW2d 231 (2000). If there is an established custodial environment, the court cannot change that environment absent clear and convincing evidence that the change is in the child's best interests. MCL 722.27(1)(c). If there is no established custodial environment, the court may enter a custody order if the preponderance of the evidence shows that the requested custody is in the child's best interests. *Foskett v Foskett*, 247 Mich App 1, 6-7; 634 NW2d 363 (2001).

To determine whether an established custodial environment exists, the court must examine statutorily defined factors. The applicable statute states that 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. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. [MCL 722.27(1)(c).]

Here, the child was just past two years of age at the time of the temporary custody order and had lived intermittently with different groups of adults including the parties, plaintiff's mother, and plaintiff's sister, in different locations. The record does not establish that in the varying circumstances in which the child was placed, she looked to any particular adult for guidance, discipline, life necessities, or parental comfort. Plaintiff maintains that his mother was the primary caregiver for the bulk of the child's life, and that as such he and his mother had provided an established custodial environment. However, the record contains no evidence that the child looked to plaintiff's mother more than to other adults for the statutorily relevant factors, and there was no evidence that plaintiff's mother intended her role to be permanent. Given the child's young age and the varying home environments in which she lived, we reject plaintiff's contention that this case is analogous to *LaFleche v Ybarra*, 242 Mich App 692, 619 NW2d 738 (2000). Accordingly, the trial court did not err in finding that the child had no established custodial environment.

Absent a custodial environment, the court was left to fashion a custody arrangement based on the child's best interests by a preponderance of the evidence. To do so, the court

properly considered the twelve factors listed in MCL 722.23. Although the court found the parents roughly equal on most factors, the court noted that it had some concern on factor (j), in that plaintiff had not demonstrated efforts to facilitate a relationship between the child and defendant. The court also stated that with regard to factor (*l*), defendant appeared to have a more nurturing relationship with the child than plaintiff, and that defendant was less likely than plaintiff to abandon the child. In addition, the court found that factor (e), the permanence of the family unit, slightly favored defendant.

Plaintiff argues that the court erred in its finding on factor (e). We disagree. As we stated in *Fletcher v Fletcher*, 200 Mich App 505, 517; 504 NW2d 684 (1993), rev'd in part on other grounds 447 Mich 871 (1994), "[t]his factor exclusively concerns whether the family unit will remain intact." The evidence here was that plaintiff had a pattern of traveling from place to place and delegating the child's care to the female members of his family. In contrast, defendant had settled in San Francisco and intended to be the child's primary caregiver on a day-to-day basis. That defendant is currently a university student does not negate the trial court's conclusion that she will provide a more permanent family unit than plaintiff. Our Supreme Court acknowledged in *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996), that a student can provide a permanent family unit for a child, even if the other parent is living in a family unit with the child's grandparents.

Plaintiff has identified no viable grounds for disturbing the trial court's custody determination.

Affirmed.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Kurtis T. Wilder