

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KAM Y. CHUI,

Plaintiff-Appellant,

v

KWAI J. LAM,

Defendant-Appellee.

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UNPUBLISHED  
September 4, 2008

No. 284015  
Allegan Circuit Court  
LC No. 06-039029-DM

Before: Markey, P.J., and Whitbeck and Gleicher, JJ.

PER CURIAM.

Plaintiff Kam Chui appeals as of right the judgment entered in this divorce action against his wife, defendant Kwai Lam. On appeal, Chui argues that the trial court erred when it determined that the mediation agreement Chui signed was binding and erred when it denied him an evidentiary hearing on the issues of custody and parenting time. Because we conclude that the mediation agreement was binding and the trial court properly satisfied itself concerning the child's best interests, we affirm.

**I. Basic Facts And Procedural History**

Chui is a naturalized citizen of the United States and resides in Plainwell, Michigan. He has lived in the United States for approximately 20 years. Chui and Lam married on June 19, 2000, in Hong Kong. The parties' daughter, Sarah, was born on September 21, 2001, in Hong Kong. Chui spent approximately one month in Hong Kong following the child's birth, before returning to the United States without Lam and the child.

Chui subsequently sponsored the entry of Lam and the child into the United States, and they joined him in Michigan in 2003. Chui's family apparently owned restaurants in Plainwell and Mattawan and Lam worked at the family-owned restaurant in Mattawan. Lam claimed that Chui forced her to work long hours at the restaurant for little or no pay.

Amid allegations that Chui abused her, Lam left Chui in January 2006. She initially sought refuge with a friend, but later entered a shelter in Michigan. Lam thereafter took the child to California to be near Lam's family.

After Chui moved for return of the child, the trial court ordered Lam and the child to return to the State of Michigan. The trial court subsequently granted temporary sole legal and

physical custody of the child to Lam based on evidence that Chui abused the child, and that he was unable to provide her with a healthy and loving home environment.

After the parties were unable to reach an agreement following a June 7, 2006, conciliation conference, the trial court adopted the conciliator's recommendation regarding custody and parenting time. The conciliator noted that the parties were unwilling or unable to communicate effectively to reach mutual decisions regarding the child's health, education, or welfare. The trial court awarded sole legal and physical custody of the child to Lam with limited and supervised parenting time to Chui. The trial court provided its rationale for the award by incorporating the conciliator's findings regarding the best interests factors into the custody and parenting time order.

On April 3, 2007, the parties and their counsel attended mediation. The parties, their attorneys, and the mediator spent approximately six hours reaching a mediation agreement regarding property, custody, child support, spousal support, jurisdiction, and relocation. Apparently, additional time was spent ensuring that the parties understood the terms of the mediation agreement. The mediator drafted a handwritten agreement that each party signed. The mediation agreement provided:

1. No alimony/spousal support is owed by either party and it is forever barred.
2. Parties to have joint legal custody and wife to have physical custody of their minor child.

Wife may move to California with their child. Wife may not go on California state or federal aid and if she does, the child's domicile is to be returned immediately to Michigan.

Michigan court to retain jurisdiction on all child issues.

Child support will have husband paying \$300 per month and said support is fixed for 36 months and not modifiable for that period.

Support is based on husband's income of \$60,000 and wife at \$12,500 per year. Wife will have minimum \$12,500 imputed.

Husband is to pay 100 percent of daughter's travel expense for his parenting time. This cost has been factored in determining child support which is below guidelines.

Husband to receive parenting time of full two weeks of Christmas vacation Saturday through Sunday (16 days); and spring vacation Saturday through Sunday (9 days); and summer vacation, wife [will have custody] first 7 days and last 7 days with husband [receiving custody] all time in between.

Husband to have rights to contact daughter by telephone and wife rights of same when other has parenting time.

Husband to receive child as tax exemption until wife has full time job, then wife gets tax exemption.

3. Property.

Each party to receive the personal property in their respective possession.

Husband to receive all real estate with his name on it and business assets and liabilities.

Husband to give wife her boxes of personal stuff and wife to give husband his gold necklace from his aunt.

Each pay debts in their own name. He gets 100 percent of his retirement.

4. Each to pay their own attorney fees and one-half mediator fees.

Chui's counsel prepared the judgment of divorce, which incorporated the terms of the mediation agreement. However, Chui contacted his counsel on the day after the mediation to reject the mediation agreement. Chui now indicated that he wanted custody of the child and he asserted that the mediation agreement was not in the best interests of the child.

On May 6, 2007, Chui tried to renegotiate the terms of the mediation agreement with Lam without counsel present. Lam subsequently moved the trial court to enforce the April 3, 2007, mediation agreement.

The trial court concluded that the mediation agreement was enforceable and stated that it would enter a judgment in accordance with its terms. In reaching its conclusion, the trial court noted that there was no transcript of the April 3, 2007, mediation; however, in the absence of fraud or mutual mistake, or any showing that the agreement is not in the best interests of the child, the trial court opined that the parties are bound by their agreement. The trial court further noted that the friend of the court conciliator had prepared a report following the spring 2006 conciliation conference, "addressing each and every factor under the Child Custody Act of 1970, providing her rationale for each conclusion, under each factor." The trial court determined that:

The plaintiff has not brought to this court's attention any change of circumstances that would indicate, by the preponderance of the evidence, the necessity for an evidentiary hearing regarding custody. The agreement does not substantially change the custodial environment of the child. The plaintiff has further failed to demonstrate fraud, duress, or mutual mistake.

Chui objected to the judgment, arguing that it was not in the best interests of the child and that he wanted more parenting time. The trial court concluded that the parties entered into a binding separation agreement and thereafter entered a judgment of divorce consistent with the mediation agreement. The judgment of divorce also provided for an increase in child support after 36 months.

## II. Effect Of The Mediation Agreement

### A. Standard Of Review

Chui argues that the trial court erroneously concluded that the mediation agreement signed by both parties was binding. We review de novo the interpretation and application of court rules as a question of law.<sup>1</sup>

### B. Legal Standards

This Court accords every word or phrase of a court rule its plain and ordinary meaning.<sup>2</sup> MCR 3.216(A)(1) provides that all domestic relations cases are subject to mediation under court rule, unless otherwise provided. MCR 3.216(H)(7) provides:

If a settlement is reached as a result of the mediation, to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties on an audio or video recording. After a settlement has been reached, the parties shall take steps necessary to enter judgment as in the case of other settlements.

Under the plain meaning of MCR 3.216(H)(7), in order to bind the parties, the terms of the settlement must either be reduced to a signed writing *or* be acknowledged by the parties on an audio or video recording. “The word ‘or’ generally refers to a choice or alternative between two or more things.”<sup>3</sup> Thus, a writing signed by the parties is sufficient to bind the parties.

### C. Applying The Standards

We conclude that the parties are bound by the April 3, 2007, mediation agreement. The parties reached an agreement following the April 3, 2007, mediation, and that agreement was reduced to a writing, which the parties signed. Chui’s counsel apparently prepared the judgment of divorce based on that agreement, and Lam moved to enforce the April 3, 2007, mediation agreement. On appeal, Chui fails to acknowledge the court rule or even to provide any argument why the April 3, 2007, mediation agreement should not be binding other than a self-serving assertion regarding his own poor language skills. That argument lacks merit; there is nothing in the record to substantiate any language barrier on Chui’s part. On the contrary, the record provides the opposite inference. Moreover, Chui has not cited any authority to support his position. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims; nor may he give issues cursory treatment with little or no citation of supporting authority.<sup>4</sup>

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<sup>1</sup> *Haliw v City of Sterling Hts*, 471 Mich 700, 704; 691 NW2d 753 (2005).

<sup>2</sup> *Spires v Bergman*, 276 Mich App 432, 439; 741 NW2d 523 (2007).

<sup>3</sup> *Auto-Owners Ins Co v Stenberg Bros, Inc*, 227 Mich App 45, 50; 575 NW2d 79 (1997).

<sup>4</sup> *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

In short, Chui has failed to demonstrate that the mediation agreement was invalid. Moreover, he provides no argument that the mediation agreement should be set aside on meritorious grounds such as fraud, duress, or mutual mistake.<sup>5</sup> The record demonstrates that the requirements of MCR 3.216(H)(7) were satisfied; therefore, the agreement is binding on the parties.

### III. The Best Interest Factors

#### A. Standard Of Review

Chui contends that the trial court failed to consider the best interests of the child before entering the judgment of divorce. “This Court must affirm all custody orders unless the trial court’s findings of fact 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.”<sup>6</sup>

#### B. The Child Custody Act

The Child Custody Act<sup>7</sup> applies to all custody disputes and vests trial courts with continuing jurisdiction.<sup>8</sup> “The act makes clear that the best interests of the child control the resolution of a custody dispute between parents, as gauged by the factors set forth at MCL 722.23.”<sup>9</sup> Thus, the trial court had an affirmative obligation “to ensure that the resolution of any dispute is in the best interests of the child.”<sup>10</sup> Although trial courts are required to satisfy themselves regarding the best interests of the child,<sup>11</sup> an evidentiary hearing is not required in all cases, so long as the trial court is able to “determine independently what custodial placement is in the best interests of the children.”<sup>12</sup>

On this record, we conclude that the trial court satisfied itself regarding the best interests of the child.<sup>13</sup> In its previous ruling related to the temporary order, the trial court awarded sole legal and physical custody of the child to Lam and acknowledged and incorporated the friend of the court conciliator’s findings in detail as part of its rationale for the custody award. The conciliator previously applied its findings to each of the best interests factors. On appeal, Chui takes no exception to any of those findings. The trial court also mentioned those findings in its ruling that enforced the April 3, 2007, mediation agreement. The trial court was not required to

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<sup>5</sup> See *Kline v Kline*, 92 Mich App 62, 71; 284 NW2d 488 (1979).

<sup>6</sup> *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008), citing MCL 722.28.

<sup>7</sup> MCL 722.21 *et seq.*

<sup>8</sup> *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004), citing MCL 722.26.

<sup>9</sup> *Id.*, citing MCL 722.25(1).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 193.

<sup>12</sup> *Id.* at 187.

<sup>13</sup> See *id.* at 193.

conduct a hearing or engage in intensive fact-finding where the parties agreed to a custody arrangement because the trial court was able to determine independently what custodial placement was in the best interests of the child.<sup>14</sup> Significantly, this is not a case where the agreement usurped the trial court's authority to determine suitable provisions for the child's best interests.<sup>15</sup> Here, the trial court was able to make an independent determination on the record and information before it without a formal hearing.

There were no errors warranting relief.

Affirmed.

/s/ Jane E. Markey  
/s/ William C. Whitbeck  
/s/ Elizabeth Gleicher

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<sup>14</sup> *Id.* at 187, 192-193.

<sup>15</sup> *Id.* at 194.