STATE OF MICHIGAN

COURT OF APPEALS

INGRA LISA MILES, Plaintiff-Appellee,	UNPUBLISHED October 14, 2008
v	No. 283891 Clinton Circuit Court
TIMOTHY D. MILES, Defendant-Appellant.	LC No. 06-018951-DM

Before: Wilder, P.J., and Markey and Talbot, JJ.

PER CURIAM.

In this child custody action, defendant appeals by right from a judgment for the plaintiff granting her sole physical custody of the parties' three children. This child custody appeal concerns only two of the children, as the third child is now legally considered an adult. We affirm.

Defendant's argues on appeal that the trial court's conclusions regarding best interest factor (b), (d), (e), (f), (i) and (k). The best interest factors are set forth in MCL 722.23:

> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (b) The 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.
>
> (c) The 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.
>
> (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
>
> (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(*l*) Any other factor considered by the court to be relevant to a particular child custody dispute. [MCL 722.23(a)-(*l*).]

"The trial court must consider each of these factors and explicitly state its findings and conclusions regarding each." *Bowers v Bowers*, 198 Mich App 320, 328; 497 NW2d 602 (1993). However, "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts." MCR 2.517(A)(2). In custody cases, a court is not obliged to "'comment upon every matter in evidence or declare acceptance or rejection of every proposition argued.'" *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994), quoting *Baker v Baker*, 411 Mich 567, 583; 309 NW2d 532 (1981). In reviewing the trial court's findings, this Court should defer to the fact-finder's determination of credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000).

Factor (b)

The trial court found that this factor did not favor either party, reasoning that neither parent seems to have continued the children's religious training. The trial court noted that even though defendant testified that he tried to take the family to Mt. Hope Church, plaintiff apparently never shared his enthusiasm for the church's tenets. Defendant argues that because plaintiff has decided to stop attending his church, the evidence shows that it is he who will "continue" their religious education in their "religion or creed." On this point, the following discussion from *McCain v McCain*, 229 Mich App 123, 125-126; 580 NW2d 485 (1998) is instructive:

> In determining factor 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 focused on a religious dispute between the parties that, in large part, led to the dissolution of the marriage. It was clearly the parties who heavily weighed this religious dispute, not the court. The evidence established that plaintiff stopped attending the Lutheran church and began worshipping at an alternative

> home church before the separation, and that, after that, both children attended services with her during the marriage, choosing at times to attend with plaintiff rather than with defendant at Trinity Lutheran. Also, although plaintiff stopped attending Lutheran services, she testified that she was still practicing the Christian religion. We note that the trial court stated: "While others might find the differences between the religious views of these two churches, such as whether baptism should be as an infant or as an adult, to be not very significant, to Rodger and Laura McCain these are matters of great significance." In ruling on factor b, the trial court stated: "Since the parties view the differences between their two churches as being so major, the Court must also." It was proper for the trial court to consider the magnitude of the force that drove the parties apart. Its consequences were not overweighed. Before the religious dispute, this family attended the Lutheran church. Accordingly, it was reasonable for the trial court to consider defendant as more prepared to continue the children in their religion and to give this factor some weight in his favor.

Unlike *McCain*, the parties to the present appeal did not argue below that plaintiff's decision not to take the children to Mt. Hope Church is a matter of great significance or an underlying cause of the dissolution of the marriage. In context, defendant raised the issue of his religious beliefs below to counter assertions about his allegedly bad behavior. He did not contend that the differences between the churches the parties attend is of such significance that the court must consider who is best able to keep the children attending Mt. Hope Church. Accordingly, the court did not err in weighing factor (b) equally.

Factor (d)

Defendant argues that the trial court incorrectly ruled in plaintiff's favor on this factor and that the children had an equally stable, if not more stable, environment with him. The court's findings regarding this factor are as follows:

> This factor favors plaintiff, regardless of the fact she arbitrarily and inaccurately accused defendant of engaging in improper conduct with the children, and regardless of her threat to continue to sabotage defendant's relationship with the children.
>
> The court agrees with Dr. Vander Jagt [sic], that the children have a close relationship with plaintiff, and they have no desire to have their custody removed from her.
>
> The factor is weighed in plaintiff's favor not because she has provided a stable and satisfactory atmosphere, but because regardless of the atmosphere she has provided, and regardless of her unfortunate attempts to drive a wedge between defendant and the children, the children are still more comfortable in their current environment than they would be if they were abruptly placed in defendant's custody.

The court clearly considered plaintiff's behavior, including false allegations made against defendant, and the nature of the children's custodial environment, but nonetheless determined that it was desirable to maintain the children's current environment given VanderJagt's observations and the children's preferences. As the court noted in discussing factor (i), "the court has taken into serious consideration the comments made to the court by the minor children." The court's reasoning is sound and based on the record evidence. The court did consider the consequences of plaintiff's action when it addressed factor (j), which it determined "weighed heavily against plaintiff, for the reasons previously set forth."

Factor (e)

Defendant contends that the trial court erred in looking only at plaintiff's home since either party could provide permanence. This is a misunderstanding of the court's reasoning. The court stated the following:

> The court is satisfied that the children are as comfortable as they can be in their current circumstances, that plaintiff intends to maintain what for them has become a stable environment, and while defendant offers a return to the marital and family home, the level of current comfort with plaintiff maintained by the children causes this factor to be weighed slightly in plaintiff's favor.

Again, the court noted in discussing factor (i) that it "has taken into serious consideration the comments made to the court by the minor children." The court's analysis of factor (e) appears to have been significantly impacted by the children's stated preferences. Considering the court's superior position in this regard, its conclusion on factor (e) is not erroneous.

Factor (f)

Whether the court erred on this factor is a close question. The court concluded as follows:

> There was no evidence that would permit the court to weigh the moral fitness of one party favorably as to the other party, at least to the extent morality relates to one's conduct.
>
> In terms of which party is better equipped to teach the children right from wrong, each party comes to that obligation from a different perspective, but neither perspective can be discounted. This factor is weighed evenly.

This Court recently noted the following with respect to factor (f), the moral fitness of the parties:

> [W]ith respect to extramarital affairs . . . [,] a spouse's "questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function *as a parent*." *Fletcher*, *supra* at 887. Examples of such conduct include, but are not limited to, "verbal abuse, drinking problems, driving record, physical or sexual abuse of children, and other illegal or

> offensive behaviors." *Id.* at 877 n 6. Trial courts must "look to the parent-child relationship and the effect that the conduct at issue will have on that relationship." *Id.* at 877. Thus, under factor f, the issue is not who is the morally superior adult, but rather "the parties' relative fitness to provide for their child, given the moral disposition of each party as demonstrated by individual conduct." *Id.* [*Berger v Berger*, 277 Mich App 700, 712-713; 747 NW2d 336 (2008) (emphasis in original).]

Contrary to the court's observation, there was evidence from which the court could conclude that defendant's moral fitness was superior to plaintiff's. Specifically, as the court noted, the judge who entered the judgment of divorce had concluded that the allegations that lead to the suspension of defendant's parenting time "were not supported by the evidence." Further, the court observed the following:

> The court can think of no greater harm that can be accomplished within a family unit that has undergone a divorce between the parents than the damage caused by one parent who refuses to recognize the rights of the other parent, who continually misrepresents the actions of the other parent, who refuses to cooperate in providing important information to the other parent, and who promises to do whatever she can to sabotage the relationship between the other parent and the minor children.

It is clear from the evidence and the context of the comments in the opinion that plaintiff is the person described in this paragraph.

Plaintiff's conduct arguably displays a selfish disposition to lie and manipulate, conduct not in the interests of the children. This not only impacts the children directly by undermining their relationship with defendant, but also indirectly: at the very least, after observing such behavior for a long time, the children might well learn that such behavior is acceptable. Thus, the court did err in not weighing factor (f) in defendant's favor.

Factor (i)

Defendant argues that the trial court let the children decide the custody trial and allowed the children's preference to outweigh the other best interest factors. Defendant also contends that the trial court decision to meet the children as a group, instead of individually, is a palpable abuse of discretion.

Here, the trial court considered more than just the preferences of the children, as defendant contends. The trial court stated that it took the comments of the minor children into serious consideration, indicating that the comments were "frank, honest, sincere, and rational, and worthy of serious consideration." VanderJagt, after evaluating both parents and three children, also concluded that the children were best suited in plaintiff's custody. Defendant is correct that a child's stated preference does not automatically outweigh the other best interest factors. *Treulte v Treulte*, 197 Mich App 690, 694; 495 NW2d 836 (1992). But, it is also true that a court need not accord all the best interest factors equivalent weight when deciding the

issue of custody. See *McCain, supra* at 131. It is clear from the record that the court considered factor (i) significant, but that does not mean it treated it as dispositive.

Further, the assertion that the court erred in not interviewing the children separately is unsupported by authority. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Factor (k)

Defendant argues that the trial court decision to weigh this factor equally was against the great weight of the evidence. Defendant claims that the trial court failed to evaluate the credibility of the parties and should have concluded that this factor favored defendant. Although the trial court noted that the record is replete with allegations that both parties domestically abused the other, the court discounted the incidents in terms of which party shouldered the greater amount of the blame. Ultimately, the trial court was obligated to determine the weight and credibility of the evidence presented, and it did just that. *Gorelick v Dep't of State Hwys*, 127 Mich App 324, 333; 339 NW2d 635 (1983).

Although the court erred in concluding that factor (f) favored neither party, we need not overturn the custody determination. The court determined that factors (d) and (e) favored plaintiff, that factors (g) and (j) favored defendant, that factor (i) should be considered, and that the remaining factors weighed equally. In light of the importance that the court placed on the children's comments, it cannot be said that the custody decision was outside the range of principled outcomes even considering the erroneous determination of factor (f).

We affirm.

/s/ Kurtis T. Wilder
/s/ Jane E. Markey
/s/ Michael J. Talbot