STATE OF MICHIGAN

COURT OF APPEALS

SHANNON IONE SCHUITEBOER, a/k/a SHANNON IONE BLACKMAN, Plaintiff-Appellee,	UNPUBLISHED March 17, 2009
v JOHN J. SCHUITEBOER, Defendant-Appellant.	No. 286868 Allegan Circuit Court LC No. 99-024136-DM

Before: Sawyer, P.J., and Zahra and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order, denying his motion for a change of custody of the parties' minor child. We affirm.

Defendant challenges the trial court's findings with respect to two of the statutory best interests factors, MCL 722.23(d) and (j), and argues that his motion was improperly denied where there was clear and convincing evidence that plaintiff actively undermined his relationship with the minor child. This Court applies three standards of review in child custody disputes, *Fletcher v Fletcher*, 447 Mich 871, 877; 526 NW2d 889 (1994), reviewing "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).

In deciding a custody dispute, a trial court must make specific findings of fact regarding each of the twelve best-interest factors that are to be considered in determining the best interests of the child. *Id.* at 124. In the instant case, the trial court found that factor (d) favored plaintiff, and that the parties were equal with respect to factors (a), (b), (c), (e), (f), (g), (h), (j), and (k).[1]

[1] The trial court did not make an express finding regarding factor (e), but this appears to be an inadvertent omission. The trial court also did not provide an express finding with respect to factor (i), but it took the child's preference into consideration. Defendant makes no allegation of error on appeal regarding these factors.

The trial court ultimately did not find, upon considering the factors, that clear and convincing evidence existed to change custody.

With respect to MCL 722.23(d), the trial court must consider "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." The trial court found:

> The child has lived all his life with—primarily with [plaintiff] . . . He's done well socially as far as I can tell. Does well in school. Has healthy interest in both academia and athletics. So you know, in that respect I didn't hear anybody—[defendant] says he doesn't think he's always appropriately dressed and his hygiene isn't all that good, but he never got—never told me what it was exactly. So, I think if there's any evidence that favors one side or the other I would say it's in favor of the plaintiff.

On appeal, defendant provides only a cursory assertion related to the trial court's finding regarding factor (d), and he does not provide any discernible facts that outweigh the trial court's conclusion regarding factor (d). An appellant may not merely announce his 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). Moreover, the record demonstrates that the child primarily lived with plaintiff for his entire life, and that the child did well as a result. Ultimately, those facts do not clearly preponderate in the direction opposite to that reached by the trial court. *Rittershaus v Rittershaus*, 273 Mich App 462, 473; 730 NW2d 262 (2007). Thus, the trial court's ultimate finding that factor (d) favored plaintiff was not against the great weight of the evidence.

With respect to MCL 722.23(j), the trial court must consider "[t]he 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." The trial court did not find "any evidence favoring one side or the other above the other party." The trial court also returned to this factor in discussing "any other factor," MCL 722.23(l), where it found:

> [Defendant] and his friends or relatives that feel that [plaintiff] isn't receptive to allowing the child to act naturally when he encounters them when he's with [plaintiff]. If in fact that's a reality, or if the child just feels because of the situation and because of the conflict between these two over the years, that he can't act naturally whether [plaintiff] has anything to do with it or not, is not something I feel that the proofs established. It appears that other people perceive he doesn't feel comfortable doing that. There's no direct evidence that the defendant wants me to speculate that he acts that way because [plaintiff] put him up to it, and I'm not convinced that's true. So, I have no way of knowing one way or the other.

Defendant on appeal essentially challenges the trial court's evaluation of the various witnesses' conflicting testimony. Defendant's relatives and friends testified about plaintiff's alleged practice of preventing the child from interacting with them. A court-appointed

psychologist supported that plaintiff's conduct interfered with defendant's relationship to the child. Plaintiff, however, denied doing anything to undermine the relationship of defendant and the child. Moreover, plaintiff testified that defendant's wife dissuades the child from interacting with plaintiff during defendant's parenting time, and plaintiff's mother testified that defendant does not encourage a close relationship between the child and plaintiff's family. Since the determination of this factor turns on credibility, we will defer to the trial court. *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006). The great weight of the evidence did not support that this factor favored defendant. Moreover, we find that in making his argument on appeal, defendant misrepresents the testimony of plaintiff's mother and the child's former teacher; neither of those witnesses confirmed that plaintiff "was manipulative and negative towards" defendant.

Further, defendant places a great deal of emphasis on the report and testimony of the court-appointed psychologist, Dr. Victor Dmitruk. Significantly, defendant contends that the trial court improperly discounted Dr. Dmitruk's testimony by relying on testimony from a previous proceeding. The trial court referenced the specific portion of Dr. Dmitruk's report and noted that it addressed some of those matters at the parties' 1999 divorce trial, where it reached a contrary conclusion. The record from the divorce trial, which was part of the lower court record, supports the trial court's conclusion. See *Adams v Adams*, 100 Mich App 1, 14; 298 NW2d 871 (1980) ("the trial court must resolve a petition for change of custody on the record as it stands at the time of hearing").

In reaching our conclusions, we note that Dr. Dmitruk recommended joint legal and physical custody.[2] The trial court rejected that recommendation of joint physical custody because there has been so much conflict between the parties. The record demonstrated that the parties have difficulty communicating; and during the evidentiary hearing, there was a great deal of testimony regarding petty disputes between the parties, including a dentist appointment, defendant giving the child "sports beans"[3] before a youth basketball game, and plaintiff's unwillingness to permit defendant to pick the child up two hours early for parenting time. The friend of the court investigator noted that "[t]he indications are throughout the entire investigation that both parties perceived that the other party was in fact interfering with their relationship with the child." Under the circumstances of this case, we conclude that the trial court properly rejected Dr. Dmitruk's recommendation of joint physical custody, where there is no indication that the parties are able to agree on even the most basic issues of child rearing. See *Fisher v Fisher*, 118 Mich App 227, 232-233; 324 NW2d 582 (1982).

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[2] Notably, Dr. Dmitruk opined that sole physical custody in favor of defendant would not be in the child's best interests because it would not be appropriate to separate him for great periods of time from his sibling, plaintiff's other child by a different father.

[3] Sports Beans are manufactured by Jelly Belly jelly beans, and are purportedly enhanced with vitamins and nutrients.

In sum, the trial court's findings with respect to factors (d) and (j) were not against the great weight of the evidence. And, on this record, the trial court did not commit a palpable abuse of discretion in maintaining primary physical custody with plaintiff.

Affirmed.

/s/ David H. Sawyer
/s/ Brian K. Zahra
/s/ Douglas B. Shapiro