STATE OF MICHIGAN

COURT OF APPEALS

JAMES DEE SHINN,

Plaintiff-Appellant,

v

KELLIE MARIE SHINN,

Defendant-Appellee.

UNPUBLISHED
June 11, 2009

No. 288458
Allegan Circuit Court
LC No. 07-042550-DM

Before: Beckering, P.J., and Wilder and Davis, JJ.

PER CURIAM.

Plaintiff appeals in propria persona as of right a divorce judgment that incorporated a custody agreement between the parties concerning the custody of their minor child. We vacate the judgment in part and remand for further proceedings consistent with this opinion.

Plaintiff filed a complaint for divorce on December 27, 2007, and shortly thereafter moved the trial court for an ex-parte order and filed a motion for temporary custody and support of the parties' minor child. On February 1, 2008, the trial court held a motion hearing to address defendant's objections. At the hearing, the trial court granted defendant temporary physical custody of the child pending a March 4, 2008, evidentiary hearing; it declined plaintiff's request to conduct the evidentiary hearing that day. At the evidentiary hearing in March, defendant offered testimonial evidence, but plaintiff specifically declined the trial court's offer to present evidence. After hearing the offered testimony, and considering plaintiff's comments made at the start of the hearing, the trial court granted temporary physical custody to defendant and granted plaintiff supervised parenting time with no overnight visits. The trial court also ordered plaintiff to undergo a psychiatric evaluation, and stated that plaintiff would not be granted overnight visits or unsupervised parenting time pending the psychiatric evaluation. On October 7, 2008, the day scheduled for trial, the parties reached a divorce settlement that included a custody agreement. Pursuant to the agreement, defendant retained physical custody of the minor child, the parties shared joint legal custody, and plaintiff was given unsupervised parenting time with overnight visits. The trial court entered a divorce judgment incorporating the terms of the custody agreement on the same day.

I

On appeal, plaintiff contends the trial court failed to act in the best interests of the minor child. This issue was not properly preserved for our review because plaintiff did not raise any

objection to the terms of the divorce judgment in the lower court. See *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). In fact, plaintiff specifically agreed to the terms. Nevertheless, "this Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice . . . ." *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006). This issue involves the custody of a minor child, and the court's failure to consider whether the custody order was in the best interests of the child may result in manifest injustice. We therefore will address the merits of this issue.

We review a trial court's entry of a custody order for an abuse of discretion. *Fletcher v Fletcher*, 447 Mich 871, 879-881; 526 NW2d 889 (1994). "An abuse of discretion exists when the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008).

Child custody disputes are governed by the Child Custody Act (CCA), MCL 722.21 *et seq*. *Harvey v Harvey*, 470 Mich 186, 191-192; 680 NW2d 835 (2004). A trial court has a duty to "ensure that the resolution of any custody dispute is in the best interests of the child." *Id*. at 192. Stipulated agreements regarding custody do not relieve the trial court of its affirmative duty under the CCA, as "[t]he trial court cannot blindly accept the stipulation of the parents, but must independently determine what is in the best interests of the child." *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000). Where parties agree to a custody arrangement, the trial court is not required to hold an evidentiary hearing so long as the court can "determine independently what custodial placement is in the best interests of the children." *Harvey*, *supra* at 187, 192-193.

In this case, nothing on the record suggests that the trial court satisfied itself regarding the best interests of the minor child. The trial court did not reference the provisions of the custody agreement or the child's best interests before it entered the divorce judgment. At the March 4, evidentiary hearing, the trial court did not make findings with respect to the statutory best interest factors when it entered the temporary custody order, and there appears to be no independent Friend of the Court (FOC) evaluation in this case where the best interest factors were considered. In addition, nothing on the record suggests that plaintiff complied with the trial court's March 4, order to undergo a psychiatric evaluation, yet the trial court entered the divorce judgment which provided plaintiff with unsupervised parenting time and overnight visits that were not formerly permitted under the temporary order.[1] The record does not reflect that the trial court made an independent determination that these and other aspects of the custody agreement were in the best interests of the minor child. Therefore, a remand for determination whether the custody arrangement is in the minor child's best interests is appropriate. *Rivette v Rose-Molina*, 278 Mich App 327, 330; 750 NW2d 603 (2008).

[1] Parenting time was to occur at the home of plaintiff's sister, Teresa Obst, but references to supervision of plaintiff's parenting time in the judgment of divorce were crossed out.

II

Next, plaintiff alleges that the trial court "withheld proofs and evidences," and he cites to the February 1, 2008, motion hearing where the trial court declined to accept evidence or hold the evidentiary hearing that day. However, plaintiff refused the court's offer to introduce evidence at the scheduled March 4, 2008, evidentiary hearing. He stated, "I'll withhold all other evidence until such temporary arrangements can be made with the Government to secure the child." "'One who waives his rights . . . may not then seek appellate review of a claimed deprivation of those rights . . . .'" *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000), quoting *United States v Griffin*, 84 F3d 912, 924 (CA 7, 1996). In ruling, we note that plaintiff's argument that the trial court did not act on evidence of abuse and neglect has no merit where such evidence was not presented.

III

Plaintiff raises several other issues on appeal including reference to emergency jurisdiction and federal immunity, an assertion that defense counsel and both judges involved in the lower court proceedings committed misconduct, an assertion that the City of Allegan is involved in a conspiracy against him, and allegations that the trial court violated several of his constitutional rights. Plaintiff provides cursory treatment of all of these issues; many of plaintiff's arguments are also incoherent and all are undeveloped. Further, he fails to provide any supporting authority or citation to the lower court record to create a factual basis to substantiate his claims. "A party may not leave it to this Court to search for a factual basis to sustain or reject its position." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998). And, where an issue is not discussed, explained or rationalized, it is abandoned. See *People v Anderson*, 209 Mich App 527, 538; 531 NW2d 780 (1995). We therefore decline to review these issues.

Vacated in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Kurtis T. Wilder
/s/ Alton T. Davis