

STATE OF MICHIGAN
COURT OF APPEALS

KIM ALEXANDER BRUNS,

Plaintiff-Appellee,

v

DENISE MARIE BRUNS,

Defendant-Appellant.

UNPUBLISHED

September 24, 2009

No. 289312

Kent Circuit Court

LC No. 00-002680-DM

Before: Servitto, P.J., and Fitzgerald and Bandstra, JJ.

PER CURIAM.

Defendant mother appeals as of right the order awarding plaintiff father legal and physical custody of the parties' minor child. We affirm.

On appeal, mother only challenges the trial court's findings with respect to four of the best interests factors: MCL 722.23(b), (d), (g), and (j). She argues that the findings on these factors were against the great weight of the evidence and, consequently, the trial court's ultimate decision to change legal and physical custody solely to father was not supported by clear and convincing evidence. We review the trial court's factual findings under the great weight of the evidence standard. *McCain v McCain*, 229 Mich App 123, 125; 580 NW2d 485 (1998); *Fletcher v Fletcher*, 447 Mich 871, 877; 526 NW2d 889 (1994). We find that none of the challenged findings were against the great weight of the evidence.

With respect to factor (b), MCL 722.23(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 found that both parties had the capacity to provide love and affection for the child; however, the court concluded that factor (b) favored father. The trial court found that "[mother] can react to opposition from her children with anger and retaliation to the point of alienating the children¹ from her for an extended period," and that her "emotional ties with the [minor] child may be such that she views [the child] as a peer, to the point of an emotionally unhealthy enmeshment." The record reveals that

¹ The parties have three children from the marriage, two of whom were adults at the time of the custody ruling. Mother has an adult daughter through a previous relationship.

mother was verbally, emotionally, and physically abusive to the point of alienating her older children. The record further reveals that mother may have difficulty forming friendships, that she has an unhealthy focus on her children, and that she shared “adult problems” with the children.² The facts do not clearly preponderate in the direction opposite that reached by the trial court. *Rittershaus v Rittershaus*, 273 Mich App 462, 473; 730 NW2d 262 (2007). The trial court’s findings were not against the great weight of the evidence with respect to factor (b).

With respect to factor (d), MCL 722.23(d), “[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity,” the trial court found that the minor child did not live in a stable, satisfactory environment when she resided with mother because of mother’s derogatory attitude towards father and his wife. The trial court also cited an incident where father may have acted inappropriately in anger toward the minor child, but noted that father realized that his anger was misplaced at the child. The situation involved mother’s undermining of father’s authority with the child. The trial court concluded that factor (d) slightly favored father.

Mother does not provide any discernible facts that serve to outweigh the trial court’s conclusion that factor (d) favors father. Although mother claims that there was little evidence presented regarding her derogatory attitude toward father and his wife, the record is replete with examples of mother’s hostility toward father. The record demonstrates that mother spoke negatively of father and his wife to the child’s teacher and to the friend of the court supervisor. There are numerous examples of mother interfering with father’s parenting time throughout the history of this case. The evidence supported the trial court’s factual findings, and the trial court’s ultimate finding that factor (d) favored father is not against the great weight of the evidence.

With respect to factor (g), “[t]he mental and physical health of the parties involved,” the record reveals that mother has histrionic personality characteristics that contributed to her difficulties in interacting with her children. The psychological evaluation of mother, which was admitted at trial, supported the trial court’s findings. Mother maintains that the trial court referred only to the psychological evaluation without considering the opinion of a psychologist who testified on mother’s behalf at the evidentiary hearing. A trial court, however, is not required to comment upon every matter in evidence. *Bowers, supra* at 328. Moreover, mother places too much reliance on her psychologist’s brief testimony. And, notably, mother’s psychologist did not prepare a psychological evaluation of mother and did not dispute any of the findings, conclusions, or recommendations in the psychological evaluation admitted at the evidentiary hearing. Once again, the facts do not clearly preponderate in a direction opposite to that taken by the trial court, and the trial court’s findings with respect to factor (g) are not against the great weight of the evidence. *Rittershaus, supra* at 473.

² Mother’s assertions on appeal that the trial court failed to give weight to certain evidence lacks merit. A trial court need not comment on every matter in evidence or declare acceptance or rejection of every proposition argued. *Bowers v Bowers*, 198 Mich App 320, 328; 497 NW2d 602 (1993).

With respect to factor (j), MCL 722.23(j), “[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 found that this factor favored father:

[Mother] has consistently demonstrated a high level of hostility toward [father] to the extent that her inappropriate expression of that hostility in front of [the child] was a source of concern for school personnel. She has been substantiated for denying [father] parenting time. [Father] has provided [mother] with the parenting time ordered by the Court, and has been willing to expand the amount of time for [mother] to be with [the child] without the necessity of court involvement.

The same trial judge presided over these proceedings since 2000. At the divorce trial in 2002, father testified regarding mother’s mental, verbal, and physical abuse, as well as her false allegation of sexual abuse of the minor child by father. The record contains many examples of mother’s mental, verbal, and physical abuse; her failure to comply with court orders; and her efforts to undermine father’s authority with the children. On appeal, mother provides a litany of father’s transgressions during the history of this case, but those facts do not outweigh the trial court’s findings with respect to factor (j). Further, with regard to mother’s claim that the trial court failed to give her testimony due consideration, we defer to the trial court’s determination regarding credibility. *Fletcher v Fletcher*, 229 Mich App 19, 25; 581 NW2d 11 (1998). The facts do not clearly preponderate in a direction other than that taken by the trial court. The trial court’s findings with respect to factor (j) are not against the great weight of the evidence. *Rittershaus, supra* at 473. We find no abuse of discretion in the trial court’s decision to award father physical and legal custody of the minor child.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra