STATE OF MICHIGAN

COURT OF APPEALS

JOANNE MORIN,

Plaintiff-Appellant,

v

BERNIE MORIN,

Defendant-Appellee.

UNPUBLISHED
September 24, 2009

No. 290203
Dickinson Circuit Court
LC No. 08-015235-DC

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

PER CURIAM.

In this child custody action, plaintiff appeals as of right a judgment awarding the parties joint legal custody of their minor children, with plaintiff retaining primary physical custody. We affirm.

Plaintiff contends that the trial court committed clear legal error and abused its discretion by awarding the parties' joint legal custody. Plaintiff first asserts that the trial court erred by failing to determine if there was an established custodial environment. We disagree.

This Court reviews a trial court's findings of fact in a custody matter to determine whether they are against the great weight of the evidence. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003). Whether an established custodial environment exists is a question of fact. *Mogle v Scriver*, 241 Mich App 192, 196; 614 NW2d 696 (2000). This Court reviews a trial court's discretionary rulings, such as custody decisions, for an abuse of discretion. *Vodvarka*, *supra* at 507-508; *Mogle*, *supra*. In order to find an abuse of discretion in a custody matter, "the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994). See also *Shulick v Richards*, 273 Mich App 320, 325; 729 NW2d 533 (2006). This Court reviews questions of law for clear legal error. *Vodvarka*, *supra* at 508. "'A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law.'" *Id*. (citation omitted).

Here, the parties acknowledged that they had a valid Canadian divorce. However, the custody arrangement in the Canadian affidavit of divorce was merely an agreement between the parties for the initial petition of divorce and not an adjudicated custody order. In fact, plaintiff points out that there were no orders entered in Canada to codify the custody agreement. Because

there was no custody adjudication on the merits, and no court order establishing custody, the trial court was required to determine the initial custody arrangement.

When determining custody, the court must first make a finding regarding the child's established custodial environment. *Jack v Jack*, 239 Mich App 668, 670; 610 NW2d 231 (2000); *Baker v Baker*, 411 Mich 567, 579; 309 NW2d 532 (1981). Whether an established custodial environment exists is a question of fact that the trial court must address before it determines the child's best interest. *Brausch v Brausch*, 283 Mich App 339, 356-357; ___ NW2d ___ (2009), quoting *Mogle*, *supra* at 197. A custodial environment is established if

> over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. [MCL 722.27(1)(c).]

"An established custodial environment is one of significant duration in which a parent provides care, discipline, love, guidance, and attention that is appropriate to the age and individual needs of the child. It is both a physical and a psychological environment that fosters a relationship between custodian and child and is marked by security, stability, and permanence." *Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 336 (2008). Generally, the court's concern is not with the reasons the custodial environment was established, but with whether it exists. *Treutle v Treutle*, 197 Mich App 690, 693; 495 NW2d 836 (1992).

In the instant case, the trial court stated that it adopted the Friend of the Court report and recommendation. By adopting the FOC report, the trial court accepted the reasoning and conclusions of that report as its own, including the following finding:

> I believe that both parents love [the children]. I believe that both parents have provided parental care, comfort, love and the necessities of life for the children. However, I believe that [plaintiff] is providing the day-to-day care for the children. I believe there is an established custodial environment with [plaintiff].

The trial court thus concluded that there was an established custodial environment with plaintiff.

Plaintiff also argues that the trial court failed to clearly articulate the evidentiary standard it applied when determining the best interests of the child. Plaintiff is correct that the trial court did not articulate the applicable evidentiary standard, but the standard to be applied was easily ascertainable as a function of law. This Court has held that the party petitioning for a change of custody always has the burden of proof. *Mann v Mann*, 190 Mich App 526, 535; 476 NW2d 439 (1991). Moreover, a "court shall not modify or amend its previous judgments or orders to issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child." MCL 722.27(1)(c). Further, "[a] trial judge is presumed to know the law." *Auto-Owners Ins Co v Keizer-Morris, Inc*, ___ Mich App ___; ___ NW2d ___ (2009); *In re Costs and Attorney Fees*, 250 Mich App 89, 101; 645 NW2d 697 (2002). In this case, defendant was the party seeking to change the custodial arrangement, and therefore, the party with the burden of proof based on clear and convincing evidence. "Moreover, absent a request from the parties, nothing requires a

trial court to explicitly state, in advance, which party has the burden of proof." *Mann*, *supra* at 535-536.

Plaintiff next argues that the trial court erred by accepting the Friend of the Court referee's custody recommendation without itself considering the best interest factors. We disagree.

We must affirm the trial court's child custody decision "unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28. See also *Baker*, *supra* at 573. In this case, the trial court did not fail to consider the evidence, but instead admitted the FOC report, heard testimony from the parties and a therapist, and finally concluded, after a three-hour hearing, that it did not have enough evidence to make a permanent decision. The court then requested that the parties schedule a two-day hearing to present additional evidence. Had the trial court intended merely to adopt the FOC report, it would not have required additional evidence from the parties in that subsequent two-day hearing. The court did not adopt the FOC report as its own until it had considered the evidence and reached a conclusion. That the trial court reached the same conclusion as that stated in the FOC report, and was able to adopt the report as its own, does not undermine its cognitive process or indicate that it did not make an independent determination.

Plaintiff next argues that the trial court committed clear legal error by not considering whether the parents would be able to cooperate on important decisions regarding the children, as required by MCL 722.26a(1)(b). This argument lacks merit.

The trial court heard testimony from, and discussed communication options with, both parties. The court also ordered that the parties attend the Start Making It Livable for Everyone (SMILE) Program to learn how to better communicate with one another. Further, the court established that both parties had e-mail and could communicate through that medium to minimize miscommunications. Finally, the trial court addressed plaintiff's concerns about whether the parties could reach agreement on major issues, advising the parties that if they were not able to do so, either could contact the Friend of the Court or the trial court for useful intervention. The trial court's comments indicate that, not only did the court consider whether the parties would be able to cooperate and agree upon major decisions, it also fashioned a future strategy should any concerns or difficulties arise.

Finally, plaintiff argues that the trial court's decision to grant joint legal custody did not comport with the great weight of the evidence. We disagree. Under the great weight of the evidence standard, a trial court's findings regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. *Vodvarka*, *supra* at 507, citing *Fletcher*, *supra* at 24. In this case, plaintiff does not challenge any specific findings under the best-interest factors, but instead argues in general that joint legal custody is not possible in light of the positions and relationships among the parties and children. However, plaintiff's broad assertion that the evidence overall does not support the decision, without reference to any of the best-interest factors, presents an insufficiently specific challenge for this Court to consider. An appellant may not merely announce a position and leave it up to this Court to discover the basis for the argument. *DeGeorge v Warheit*, 276 Mich App 587, 594-595; 741 NW2d 384 (2007). Because plaintiff has not specified which of the trial court's findings were against the

great weight of the evidence, we deem this argument abandoned and decline to consider it further.

We affirm.

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