STATE OF MICHIGAN

COURT OF APPEALS

JOEY D. HUSEN,

Plaintiff-Appellee,

v

AMY ELIZABETH CAMPBELL,

Defendant-Appellant.

UNPUBLISHED
October 1, 2009

No. 289918
Bay Circuit Court
LC No. 07-007522-DC

Before: Jansen, P.J., and Fort Hood and Gleicher, JJ.

PER CURIAM.

Defendant appeals by right the circuit court's order granting plaintiff's petition for sole custody of the parties' minor children. We affirm.

In child custody cases, the circuit court's orders must be affirmed on appeal unless the court's factual findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). Questions of law are reviewed for clear legal error. The circuit court commits legal error when it incorrectly chooses, interprets or applies the law. *Fletcher v Fletcher*, 447 Mich 871, 881 (BRICKLEY, J.), 900 (GRIFFIN, J.); 526 NW2d 889 (1994).

In this case, the circuit court held that an established custodial environment existed with defendant only. Accordingly, the circuit court concluded that plaintiff had to prove by clear and convincing evidence that a change in that custodial environment would be in the best interests of the minor children. Defendant does not dispute that the circuit court correctly held that the clear-and-convincing standard was applicable in this case. Instead, defendant argues that the circuit court's description of the clear-and-convincing-evidence standard demonstrated that the court, in actuality, only held plaintiff to a preponderance-of-the-evidence standard.

Changes to a child's established custodial environment should be permitted only "in the most compelling cases," *Baker v Baker*, 411 Mich 567, 577; 309 NW2d 532 (1981), and only where the moving party can show by clear and convincing evidence that the change is in the best interest of the child, MCL 722.27(1)(c); *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001). The clear-and-convincing evidentiary standard imposes a higher burden of proof than the preponderance-of-the-evidence standard. See *id*. Albeit in a different context, we have defined clear and convincing evidence as evidence that ""produce[s] in the mind of a trier of

fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the trier of fact] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."'" *Kefgen v Davidson*, 241 Mich App 611, 625; 617 NW2d 351 (2000) (citations omitted); see also *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). When determining whether a circuit court has properly interpreted and applied the clear-and-convincing evidentiary standard, our focus is not necessarily on the words the court uses to describe the standard, but is rather on the evidence presented, the court's findings, and the court's analysis of the best interest factors in light of that evidence. We agree with defendant that the circuit court's description of the clear-and-convincing-evidence standard as "elevated" and a "little higher" was not precisely correct or entirely clear. However, we conclude, based on a review of the totality of the circumstances surrounding the circuit court's analysis, that the court understood and applied the correct standard. The court's statement that it was looking at the best interest factors from different perspectives does not call this conclusion into question. Indeed, when considering the best interests of the children, it would have been improper for the court to confine its review to a one-sided account of the facts. We conclude that the court correctly applied the clear-and-convincing-evidence standard in this case, and find no clear legal error.

Defendant also argues that the circuit court's analysis of the best interest factors was against the great weight of the evidence. Custody issues are to be resolved in the child's best interests, as measured by the best interest factors enumerated in MCL 722.23. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). The best interest factors of MCL 722.23 include:

> (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.

The circuit court must state its findings and conclusions regarding each of the best interest factors. *Rittershaus v Rittershaus*, 273 Mich App 462, 475; 730 NW2d 262 (2007). Failure to do so generally results in reversible error. *Id.* However, the court need not comment on every matter in evidence or declare acceptance or rejection of every proposition argued. *Fletcher*, 447 Mich at 883 (BRICKLEY, J.), 900 (GRIFFIN, J.). Moreover, a court need not give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances. *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006).

The circuit court addressed each factor or determined that it was not applicable. On appeal, defendant only challenges the circuit court's findings with respect to factor g, MCL 722.23(g) (the mental and physical health of the parties). After reviewing the record, we find no error.

The circuit court considered testimony concerning the condition of defendant's home, the cleanliness of the parties' minor children, and the effect of defendant's bipolar condition on the parties' daughter. We disagree with defendant that the circuit court's findings were against the great weight of the evidence. There was ample testimony establishing that defendant's home was unclean and smelled of animal excrement, and that the parties' minor children were dirty, unkempt, and always in need of a bath. The record also clearly established that the parties' daughter had anxiety and emotional issues that were negatively affected by defendant's bipolar disorder. Contrary to defendant's argument on appeal, expert testimony is not always required before a circuit court may find that a party's mental illness negatively impacts his or her ability to parent. Nor has defendant presented any evidence that the circuit court was unable to properly consider this issue without expert testimony. We perceive no error requiring reversal with respect to the circuit court's findings concerning factor g, MCL 722.23(g).

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher