STATE OF MICHIGAN

COURT OF APPEALS

JOEL MACHETA,

Plaintiff-Appellant,

v

CHRISTOPHER GINTER,

Defendant-Appellee.

UNPUBLISHED
October 13, 2009

No. 290576
Schoolcraft Circuit Court
LC No. 02-003308-DS

Before: Saad, C.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Plaintiff Joel Macheta appeals as of right from an order awarding defendant Christopher Ginter sole legal and physical custody of the parties' minor child. We affirm.

Although plaintiff and defendant never married, they lived together and had one child, born on March 24, 2001. On January 22, 2002, defendant, the child's father, signed an affidavit of parentage. The parties ended their relationship in 2002, and the minor child remained with plaintiff, his mother. On September 17, 2002, the trial court granted plaintiff sole legal and physical custody.

Defendant did not believe that plaintiff was capable of properly taking care of the child and filed a motion for a change in custody. In October 2008, a hearing was held before a friend of the court referee, who subsequently issued an opinion and recommendation awarding defendant sole legal and physical custody. Plaintiff filed objections, and a de novo hearing was held in the trial court. The trial court adopted the referee's findings of fact and recommendation, and issued an order granting defendant sole legal and physical custody of the parties' minor child.

In child custody cases, there are three standards of review:

> First, the trial court's findings of fact are reviewed under the great weight of the evidence standard and will be affirmed unless the evidence clearly preponderates in the opposite direction. *Fletcher v Fletcher*, 447 Mich 871, 877-878; 526 NW2d 889 (1994) (*Fletcher I*). The trial court need not comment on each item of evidence or argument raised by the parties, but its findings must be sufficient for this Court to determine whether the evidence clearly preponderates in the opposite direction. *MacIntyre v MacIntyre* (*On Remand*), 267 Mich App 449, 452; 705

> NW2d 144 (2005). This Court defers to the trial court's determinations of credibility. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008); *Fletcher v Fletcher*, 229 Mich App 19, 25; 581 NW2d 11 (1998) (*Fletcher II*). Second, a trial court commits clear legal error under MCL 722.28 when it incorrectly chooses, interprets, or applies the law. *Fletcher I*, *supra* at 881. Third, discretionary rulings are reviewed for an abuse of discretion. *Id.* at 879; *Shulick v Richards*, 273 Mich App 320, 323-325; 729 NW2d 533 (2006). [*McIntosh v McIntosh*, 282 Mich App 471, 474-475; 768 NW2d 325 (2009).]

A trial court may modify an established custody order only upon a showing of proper cause or a change in circumstances demonstrating that the modification is in the best interest of the child. MCL 722.27(1)(c); *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). The moving party has the burden of proving by a preponderance of the evidence that proper cause or a change in circumstances exists to warrant a reconsideration of the established custody order. MCL 722.27(1)(c); *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). If the moving party fails to meet its burden, the trial court is precluded from revisiting the custody order. *Vodvarka*, *supra* at 508.

Parties to a child custody dispute may submit their case to a referee for resolution of their dispute. MCL 552.507(2)(d); *Harvey v Harvey* (*Harvey I*), 470 Mich 186, 190; 680 NW2d 835 (2004). Following a hearing, the referee must either make a statement of findings on the record or submit a written report containing a summary of the testimony and a statement of findings, and must make a recommendation for an order. MCR 3.215(E)(1); *Rivette v Rose-Molina*, 278 Mich App 327, 329; 750 NW2d 603 (2008). In making a recommendation, the referee must consider the statutory best interest factors. *Rivette*, *supra* at 330. If a party challenges the referee's recommendation, the trial court must hold a de novo hearing. MCL 552.507(4); *Harvey I*, *supra* at 190. The referee's findings and recommendation must be submitted to the trial court. *Harvey v Harvey* (*Harvey II*), 257 Mich App 278, 291-292; 668 NW2d 187 (2003), aff'd 470 Mich 186 (2004).

Here, the referee found that defendant had demonstrated both proper cause and a change in circumstances. Specifically, the referee stated,

> Clearly there is both proper cause and change in circumstances to review custody. The assault on the 13 year old child standing alone would support review. Add to that the unstable and uncertain living environment of Plaintiff, as well as Plaintiff's reaction to officials, such as Protective Services Workers and teachers, who were attempting to intervene to benefit the child and the case fairly cries out for review.

Plaintiff first argues that the trial court erred in failing to hold an evidentiary hearing and independently rule on the question whether defendant demonstrated that proper cause or a change in circumstances existed to warrant reconsideration of the custody order.

However, a trial court is not required to hold a separate evidentiary hearing to determine whether the moving party has met her burden of proof. *Vodvarka*, *supra* at 512. Such issues can be determined at the de novo hearing. *Id.* Moreover, the trial court did not err when it adopted the referee's findings and conclusion that defendant had met his burden of proof. A "trial court

may designate a referee to act as a fact-finder in domestic relations matters." *Rivette*, *supra* at 329, citing MCL 552.507. However, a trial court reviewing a referee's findings and conclusions must make its own findings and conclusions based on the de novo hearing. *Truit v Truit*, 172 Mich App 38, 42; 431 NW2d 454 (1988). If a trial court allows the parties to present live evidence at the de novo hearing, the trial court is not prohibited from considering the referee's findings and conclusions in rendering its decision. *Dumm v Brodbeck*, 276 Mich App 460, 465-466; 740 NW2d 751 (2007). Where a referee issues findings and conclusions that comport with appropriate law and the referee properly applied the law to the governing case, the trial court may properly adopt the referee's findings and conclusions. See *Rivette*, *supra* at 332-333. Here, it is apparent that the trial court found, on consideration of the entire record, that the referee properly analyzed the facts of this case in accord with the applicable law and reached the correct conclusion. Based on our review of the entire record, we cannot conclude that the trial court's findings were against the great weight of the evidence. Nor do we find that either the referee's or the trial court's conclusions of law constitute clear legal error.

However, plaintiff argues that because the referee did not state the specific impact that the subject conduct would have on the minor child's well-being, the referee's findings were insufficient. Consequently, plaintiff asserts, it was improper for the trial court to adopt the referee's findings without making an independent determination on the issue. We disagree. It is sufficient for the court to state the applicable law and the specific findings on which the court bases its decision that the moving party has met its burden of proof. See, e.g., *Brausch v Brausch*, 283 Mich App 339, 356-358; 770 NW2d 77 (2009). Moreover, it goes without saying that the child might experience emotional trauma from witnessing plaintiff's verbally and physically abusive relationship with her boyfriend and from being uprooted from his home after fights with the boyfriend.

Lastly, plaintiff argues that the referee made findings that were against the great weight of the evidence and committed clear legal error in his application of the clear and convincing evidentiary standard to the best interest of the child factors. Specifically, plaintiff argues that a majority of the best interest factors should have been weighed in her favor. Accordingly, plaintiff argues that the trial court abused its discretion when it held that defendant should be granted sole legal and physical custody of the parties' minor child.

Custody issues are to be resolved in the child's best interest, as measured by the best interest of the child factors found in MCL 722.23. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). These factors are set forth in MCL 722.23:

> As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:
>
> > (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.

Where an established custodial environment exists, a trial court may not issue an order changing the established custodial environment of the child unless the moving party demonstrates by clear and convincing evidence that the change is in the best interest of the child. MCL 722.27(1)(c). Changes to a child's established custodial environment should be permitted only "in the most compelling cases." *Baker v Baker*, 411 Mich 567, 576-577; 309 NW2d 532 (1981).

Here, the referee found that an established custodial environment existed with plaintiff. The referee correctly held that defendant had to prove by clear and convincing evidence that a change in custody was in the best interest of the child. Following an analysis of the best interest factors, the referee held that factors (a), (d), (e), (f), (g), (i), and (j) did not weigh in favor of either party, that factors (b) and (c) favored defendant, and that factors (h) and (k) favored plaintiff. The trial court, in its opinion upholding the referee's findings and conclusions, discussed some of the evidence presented at the de novo hearing and how it related to specific best interest factors to support its holding.

Although plaintiff argues that a majority of the best interest factors should have been weighed in her favor, it is unclear from her brief exactly which factors she believes should have been so weighed. We are also unable to ascertain plaintiff's precise argument concerning why the referee and the trial court's findings were against the great weight of the evidence. Rather

than precisely stating her argument, supporting the argument with facts, and stating with specificity why we should adopt her position, plaintiff's argument is little more than a statement of her position and a regurgitation of the facts. It is not the function of this Court to unravel and elaborate a party's argument: "The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Affirmed.

/s/ Henry William Saad
/s/ Peter D. O'Connell
/s/ Brian K. Zahra