STATE OF MICHIGAN

COURT OF APPEALS

DENNIS GERARD KNIEPER, Plaintiff-Appellant,	UNPUBLISHED March 16, 2010
v	No. 293494 Genesee Circuit Court Family Division
JENNIE ELISE DUMAS-KNIEPER, Defendant-Appellee.	LC No. 08-283542-DM

Before: K. F. Kelly, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of divorce entered after a two-day trial. Specifically, plaintiff argues that the trial court erred in the allocation of parenting time between the parties. We disagree and affirm.

I. BASIC FACTS

Plaintiff and defendant were married on May 26, 2007. Shortly after the birth of their child, the parties separated on July 20, 2008 when defendant left the marital home with the minor child and went to defendant's parents' home. Plaintiff filed for divorce shortly thereafter. At the time of trial, both plaintiff and defendant were teachers at a Clio Middle School, with working hours of 7:15 a.m. to 2:45 p.m. during the school year. Defendant's mother provided day care while the parties worked.

With the parties' consent, the court conducted a conference trial instead of a traditional adversarial trial. While the parties stipulated to having joint legal and joint physical custody, the frequency and duration of parenting time was contested.

At trial, defendant testified that she wanted plaintiff to have parenting time every Tuesday and Thursday from 4:00 p.m. until 8:00 p.m. and one day on the weekend from 10:00 a.m. until 6:00 p.m. Defendant further wanted to allow any overnights with plaintiff only after the minor child reached three years of age. Plaintiff sought to have an equal split of parenting time. Plaintiff proposed that plaintiff would have Monday through Wednesday with two overnights and defendant would have Wednesday through Friday with two overnights. Then

plaintiff would have three overnights for the weekend. The parties would then alternate. Plaintiff also suggested that when the minor child reached five years old, the parents would alternate full weeks at a time during the summer.

After hearing all the testimony, the trial court made its findings. The court evaluated each of the "child's best interest" factors listed under MCL 722.23. The trial judge listed all of the MCL 722.23 factors and found that the applicable ones each equally favored or disfavored each party alike. The trial judge then implemented a tiered approach to parenting time with different schedules dependant upon the child's age and whether it was during the school year as follows:

> A. Until the Clio Schools are released for the 2009 summer, Plaintiff's parenting time shall be as set forth in the temporary order, to wit:
>
> 1. Every Tuesday and Thursday from 4:00 p.m. until 8:00 p.m. . . .
>
> 2. Every Saturday from 10:00 a.m. until 6:00 p.m.
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> * * *
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> C. Once the Clio Schools are released for the summer, Plaintiff shall have parenting time as follows until the minor child attains the age of three:
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> 1. Every Tuesday, starting June 16, 2009, beginning at 10:00 a.m. through Wednesday at 10:00 a.m.
>
> 2. Every other Friday, beginning June 19, 2009, from at 10:00 a.m. to Saturday at 10:00 a.m.
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> 3. Every other Saturday, beginning June 13, 2009, from 10:00 a.m. to Sunday at 10:00 a.m.
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> D. Once the minor child attains the age of three years to the age of seven years, Plaintiff shall have the following parenting time:
>
> 1. During the summer, Plaintiff shall have the minor child on alternate weekends, beginning Friday at 10:00 a.m. through Monday morning at 10:00 a.m. In addition, Plaintiff shall have the minor child every other week from Wednesday at 10:00 a.m. to Friday at 10:00 a.m.
>
> 2. During the school year, Plaintiff shall have the minor child on alternate weekends, beginning Friday at 10:00 a.m. through Monday morning at 10:00 a.m. In addition, Plaintiff shall have the minor child every week from Wednesday at 10:00 a.m. to Thursday at 10:00 a.m.
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> E. Once the minor child attains the age of seven years to the age of ten years, Plaintiff shall have the following parenting time:

1. During the summer, Plaintiff shall have the minor child on alternate weekends, beginning Thursday at 10:00 a.m. through Monday morning at 10:00 a.m. In addition, Plaintiff shall have the minor child every week from Tuesday at 10:00 a.m. to Wednesday at 10:00 a.m.

2. During the school year, Plaintiff shall have the minor child on alternate weekends, beginning Thursday at 10:00 a.m. through Monday morning at 10:00 a.m. In addition, Plaintiff shall have the minor child every week from Tuesday at 10:00 a.m. to Wednesday at 10:00 a.m.

F. Once the minor child attains ten years of age, then Plaintiff's parenting time shall be as follows:

1. During the summer, the parties shall alternate weeks, every Sunday at 8:00 p.m.

* * *

2. During the school year, Plaintiff shall have alternate weekends, commencing Thursday at 10:00 a.m. through Monday 10:00 a.m. and every Tuesday from 10:00 a.m. to Wednesday at 10:00 a.m.

On appeal, plaintiff claims that the trial court both abused its discretion and committed clear legal error when it issued the order allocating parenting time.

II. STANDARDS OF REVIEW

"Orders regarding parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005). An abuse of discretion occurs 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). However, rulings, such as custody decisions, are discretionary and are reviewed for an abuse of discretion. *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000).

III. ANALYSIS

Parenting time is governed by statute, MCL 722.27a:

(1) Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.

Though MCL 722.27a(6) lists some factors a trial court "may" consider in determining parenting time, here, the trial court instead performed an analysis of the "best interests of the child" factors listed in MCL 722.23. Given how the factors listed in MCL 722.27a(6) are permissive and how they are substantially related and intertwined with the factors listed in MCL 722.23, the trial court did not commit any clear legal error. It determined that, essentially, the MCL 722.23 best-interest factors favored neither parent. Neither party contested those findings at the lower court nor contests them on appeal.

Based on the trial court's finding that parties were essentially on the best-nterest factors, plaintiff argues that parenting time should have been apportioned more evenly between himself and defendant. However, the trial court also acknowledged another fact that influenced its decision: the substantial "communication problem" that existed between the parties. The trial judge stressed that he was not awarding any overnights to plaintiff initially, not because plaintiff was not *individually* fit or worthy, but because of the high level of acrimony, distrust, and lack of cooperation between plaintiff and defendant. In essence, the parents' inability to communicate hampered their ability to co-parent, which was not in the minor child's best interest. Given the current poor ability of the parents to cooperate, the trial court determined it best to minimize the amount of disruption to the minor child by gradually increasing the amount of parenting time plaintiff exercised, thereby allowing plaintiff and defendant to build up to a higher level of trust between the two of them. The goal and end result of the schedule culminated with an essentially equal division of parenting time between plaintiff and defendant when the child reached seven years of age. To facilitate that goal, the trial court also ordered parenting classes and "adjustment" counseling for the parties.

The record supports the trial courts determination that the communication problem between plaintiff and defendant was extremely significant. The issue dominated the two-day trial. While this factor was not enumerated in MCL 722.23 or MCL 722.27a(6), it clearly falls under the catch-all exceptions of MCL 722.23(l) ("Any other factor considered by the court to be relevant to a particular child custody dispute"), and MCL 722.27a(6)(i) ("Any other relevant factor"). Hence, the trial court properly considered this important factor in formulating a parenting time schedule. Given the severity of the communication problem between plaintiff and defendant, the court's tiered approach to parenting time seems reasonable and calculated and was not "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*, 277 Mich App at 705.

Finally, as further proof of the trial court's error, plaintiff points to where the trial court stated that while its goal was to divide the parenting time divided as equally as possible, it failed to do so. However, while this was the stated goal, the trial judge never stated that he intended to meet this goal immediately in light of the parties' acrimonious relationship. Rather, the fact that the order builds up to equal parenting time is consistent with the goal of equal parenting time and reflects a reasoned and thoughtful application of the relevant law to the specific facts presented in this case. The trial court did not abuse its discretion in its allocation of parenting time.

We also note that the parenting time order is only a back-up or default provision. The schedule is only to take effect "[i]n the event the parties are unable to agree on reasonable parenting time." Moreover, we note that the trial judge did not *preclude* plaintiff from seeking more frequent specific parenting time, which would have been an abuse of discretion. See, MCL 722.27a(7).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Brian K. Zahra