

STATE OF MICHIGAN
COURT OF APPEALS

ALICIA DEFORGE,

Plaintiff/Counter-Defendant-
Appellee,

v

KEITH DEFORGE,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED

July 13, 2010

No. 295959

Iron Circuit Court

LC No. 09-003999-DM

Before: HOEKSTRA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

In this child custody and divorce action, defendant appeals by right a judgment awarding the parties joint legal custody of their minor child, with plaintiff retaining primary physical custody, and distributing the marital property. We affirm.

Defendant first argues that the trial court erred in awarding plaintiff primary physical custody of the minor child without considering plaintiff's history of mental illness and addiction to controlled substances. Defendant specifically argues that the trial court erred in its ruling regarding best interest factors (f) and (g). See MCL 722.23. We disagree. We review a trial court's findings of fact to determine whether they are against the great weight of the evidence. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003).

Regarding factor (f)—the moral fitness of the parties—of the best-interest child custody factors, our Supreme Court has ruled as follows:

Factor f (moral fitness), like all the other statutory factors, relates to a person's fitness *as a parent*. To evaluate parental fitness, courts must look to the parent-child relationship and the effect that the conduct at issue will have on that relationship. Thus, the question under factor f is *not* "who is the morally superior adult;" the question concerns the parties' relative fitness to provide for their child, given the moral disposition of each party as demonstrated by individual conduct. We hold that in making that finding, questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how

one will function *as a parent*. [*Fletcher v Fletcher*, 447 Mich 871, 886-887; 526 NW2d 889 (1994) (emphasis in original).]

There was ample evidence for the court to consider regarding the parties' moral fitness. First, there was evidence that plaintiff had a drug addiction that lead to her arrest for prescription fraud. There was also testimony that while serving probation for the charge, plaintiff attended regular AA meetings, abstained from using drugs, attended counseling, passed random urine tests, and was able to retain a job as a registered nurse. As of the date of trial, plaintiff testified that she had not used illegal drugs for 15 months, which was corroborated by her counselor. Moreover, plaintiff's counselor also stated that plaintiff had an excellent ability to parent the minor child and perform her job functions.

There was also evidence that defendant was an alcoholic and one of his counselors recommended that he attend AA meetings and stop drinking alcohol. Defendant declined to attend AA meetings or stop drinking, and denied that he was an alcoholic. There was also evidence that defendant could be preoccupied and neglectful in his parenting, and that he was a workaholic who sometimes drank alcohol in front of his child wherein the child would check for empty beer cans and bring defendant fresh beers, and that he smoked marijuana while the child was in the house.

As quoted by defendant in his brief: "questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function *as a parent*." *Fletcher*, 447 Mich at 887 (emphasis in original). Both plaintiff and defendant engaged in arguably questionable conduct. 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." *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). Here, there was sufficient evidence for the court to conclude that the parties should be equally weighed under this factor, and the trial court did not err.

The trial court also concluded that the parties were equal under factor (g)—the mental and physical health of the parties involved. Defendant argues that the trial court erred by not considering plaintiff's history of drug addiction and mental illness.¹ However, testimony was presented that plaintiff was no longer in a state of severe depression or suffering from suicidal tendencies, and that plaintiff had an excellent ability to parent the minor child and perform her job functions. The court could properly consider the relevant testimony regarding plaintiff's mental condition and determine that it was a condition that was under control and not a factor to plaintiff's ability to parent her child. In reviewing the trial court's findings, we defer to the fact-finder's determination of credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000). Based on the evidence, and deferring to the trial court's determination of credibility, the trial court's decision was not against the great weight of the evidence. See MCL 722.28.

¹ There was no evidence that defendant had mental or physical health concerns.

Next, defendant argues that the trial court erred in calculating the value of the marital property awarded to the parties. We disagree. We review a trial court's findings of fact relative to property distribution for clear error. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992).

Defendant's argument lacks merit. Although defendant's argument may represent his understanding of the property split, it misrepresents the full award. Defendant's presentation fails to adequately account for the assets of Ironland Construction awarded to defendant, and does not include an equalization payment award from plaintiff to defendant. Defendant cannot show clear error in the trial court's calculations.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kathleen Jansen

/s/ Jane M. Beckering