STATE OF MICHIGAN

COURT OF APPEALS

TERRA HESS, Plaintiff-Appellant,	UNPUBLISHED May 26, 2016
v	No. 328924 Wayne Circuit Court Family Division
KYLE HESS, Defendant-Appellee.	LC No. 14-107600-DM

Before: OWENS, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals as of right an August 14, 2015, judgment of divorce wherein the trial court awarded plaintiff and defendant joint legal and physical custody of their minor child LH. For the reasons set forth in this opinion, we affirm.

A. BACKGROUND

The parties were married in August 2011. They had a child, LH, on September 19, 2013. Plaintiff filed a complaint for divorce on July 8, 2014. Before trial, the court ordered that plaintiff maintain primary domicile and defendant have parenting time with LH every Tuesday evening and every alternate weekend.

At the time of trial, plaintiff lived with her parents in Monroe and her long-term plan was to have a home for her and LH after the marital home was sold as part of the property settlement in the divorce. During her trial testimony, plaintiff highlighted several incidents that took place before she left the marital home with LH in July 2014 that caused her great concern about defendant's ability to parent. Plaintiff testified that defendant criticized her for feeding LH formula on one occasion, yelled at LH on another occasion when she would not stop crying, although defendant disputed that assertion, and allegedly said "I could understand how someone could shake a baby." During her testimony plaintiff placed great emphasis on defendant's alleged reluctance to discard spoiled food. After plaintiff threatened to leave the marital home, defendant hid plaintiff's keys from her and took away LH's antibiotics that had been prescribed to her. As a result, plaintiff put together a "go-bag," where she placed LH's food, antibiotics, and immunization records and kept it in plaintiff's closet, apparently in case it was necessary to leave the marital home quickly.

Plaintiff further found fault with defendant's parenting of LH, stating that when defendant returned home after both he and plaintiff worked all day, he would retire to the basement to be alone, would not participate in eating dinner as a family and did not play with LH. For the first year of LH's life, plaintiff was the child's primary caregiver and she fed, bathed and cared for LH. On one occasion, plaintiff recalled that defendant was angry at plaintiff for leaving LH with him at the child's bedtime. Plaintiff testified that defendant did not participate in bathing or caring for LH when she awoke in the night.

Plaintiff agreed that LH should have a relationship with defendant. However, plaintiff stated that she did not believe joint physical custody would be best for LH, and that given her concerns about defendant's parenting, she favored "a healthy way to have [LH] involved in [defendant's] life." Plaintiff elaborated that her concerns about LH spending overnights with defendant stemmed from LH being only 21 months old at the time of trial and nonverbal. Plaintiff also testified that LH needed consistency and she was concerned about LH's safety with defendant given his expressions of frustration that he vented on LH and his reluctance to administer prescribed medication to LH. Plaintiff also testified that when she would stand up for LH, defendant's verbal abuse would get worse and would be directed at her.

Plaintiff also testified that defendant did not take advantage of his allocated parenting time with LH during the pendency of the divorce. She also stated that issues of cleanliness arose with regard to how defendant returned LH to her, particularly with regard to LH's diaper and her clothing.

Plaintiff testified that defendant resisted giving LH her immunizations as recommended by LH's pediatrician, but plaintiff "put [her] foot down[,]" and LH received all of her required immunizations. Plaintiff testified that she was the one who always took LH to her pediatrician's appointments, but she agreed defendant's work schedule conflicted and he expressed interest in attending the doctor's visits after plaintiff filed for divorce. Plaintiff testified that on one occasion when LH was sick, defendant did not think LH needed Tylenol or immediate medical attention. Later that evening, plaintiff and defendant took LH to the emergency room and LH was ultimately diagnosed with pneumonia. Toward the end of LH taking the two-week dosage of antibiotics, defendant expressed his reluctance about LH finishing the antibiotic. Plaintiff stated that she was concerned about LH spending overnights with defendant given his failure to take his own prescription and his reluctance to administer medication to LH. In addition, plaintiff testified that defendant was reluctant to discard spoiled food and he spent the night in her parent's driveway the day that she left the marital home.

Defendant described his mental and physical health as "very good[,]" and he stated that he has not ever treated with a psychologist or a psychiatrist. Defendant testified that he was an active member of a local church.

Recalling LH's impending birth, defendant stated that his and plaintiff's world "soon revolved around [LH]" and that before she was born defendant spent a significant amount of time preparing the home for the new baby. Specifically, defendant attended a breast-feeding class with plaintiff, as well as birthing classes and multiple visits to plaintiff's obstetrician-gynecologist. After LH was born, the couple spent a great deal of time with their daughter at the home of plaintiff's parents in Monroe.

According to defendant, when LH was first born and before divorce proceedings began, he was very involved in LH's life and his "whole world revolved around" the child. Defendant would greet LH in the morning if she was awake before he went to work. Plaintiff would send him multiple pictures and videos of LH throughout defendant's work day and defendant would rush home from work so that he could be a part of LH's bedtime routine. Defendant helped clothe, feed and bathe LH on a daily basis. Stating that he was not involved in other activities outside of the home, defendant exclaimed, "[LH] was my life." Defendant was very involved with LH, carrying her and walking around the family yard and he spent "hours and hours with her every evening." Defendant denied plaintiff's assertion that he would avoid the family and spend the evenings in the basement of the family home. Instead, according to defendant, he would only do so after LH was asleep and plaintiff was working on her laptop, retreating into what he described as his "man-cave."

After the divorce proceedings started, defendant cared for LH during parenting time. Defendant testified that after plaintiff filed for divorce, she told him, "I'll tell you when and where you can see [LH], when and when [sic] you can't see her." Plaintiff refused to allow defendant to see LH on the day that she left the marital home or on the following day.

Defendant summarized that he had a close bond with LH and explained that the child is always happy to see him. Defendant stated that LH hugs him and the two play and read together and defendant teaches LH new words. Defendant testified that he clears his schedule when he is spending time with LH so his parenting time with her is "ninety percent me." Defendant explained that he took LH to an indoor playground in the winter and an outdoor park in the summer. Defendant explained that LH's world revolved around both of her parents. Defendant testified that he took advantage of all of his parenting time with LH and he and plaintiff exchanged holidays and spring break and he stated that he tried to spend "every second" he could with LH.

In response to questions from the trial court, defendant stated that he had no problem with LH being immunized and that he had also received all of his own immunizations. Defendant also denied interfering with plaintiff administering medication to LH. Defendant conceded that he attempted to stop his wife from leaving the marital home in April 2014 with LH by blocking plaintiff's access to her car keys, but he did not attempt to keep plaintiff from accessing LH's medication.

Defendant explained that if he were granted "equal parenting time," his mother would move in with him to help care for LH while he was at work.

Ronya David, a licensed Master Social Worker (MSW) and Licensed Professional Counselor testified on behalf of plaintiff. David interviewed plaintiff and defendant and testified that she did not see any "red flags" regarding their parenting, but she did observe that plaintiff and defendant had issues related to their marriage and that they were unable to agree with regard to certain issues. David testified that some "issues" in this case involved defendant administering medication to LH, defendant's handling of spoiled food, and defendant's frustration and patience levels. However, David admitted that her information concerning these issues came from plaintiff. David noted that there was no history of domestic violence and she ultimately recommended that the parties should continue with their existing parenting time

schedule, with defendant spending time with LH every Tuesday night from 6:00 p.m. until 8:30 p.m., and one overnight every weekend. On cross-examination, David stated that she observed LH was comfortable with defendant during her time with him, aside from crying for her mother when defendant sat on the floor and played with her and that defendant did not present any signs of anger.

The trial court appointed Dr. James N. Bow, Ph.D., a licensed psychologist, board certified in forensic psychology, to review the case and plaintiff called him to testify. Dr. Bow administered three objective tests on the parties. With regard to plaintiff, Dr. Bow described her as "highly defensive," and as "want[ing] to look good[,]" which, while common in child custody cases, plaintiff exhibited more than usual. Dr. Bow also described plaintiff as "friendly, outgoing and positive[,]" and in charge in her relationship with defendant. Dr. Bow described defendant as feeling "targeted and mistreated[,]" and also shared that he had some obsessive-compulsive traits. Neither party had any issues with their "mood, thinking, alcohol, drugs, [or] anti social behavior[.]" Defendant was noted to be "engaging[,]" "friendly," and "outgoing[.]"

Dr. Bow noted that both parents did a "nice job" with LH, but it was clear that plaintiff was LH's primary caregiver, and, while LH was bonded with both parents, LH's primary attachment was with her mother. During his testimony, Dr. Bow touched on the potential negative repercussions of removing a child from their caregiver with whom they have a strong attachment, but said that in today's society, children can attach to many people, and the dispositive inquiry is who will take care of the child's basic needs best. Dr. Bow surmised that in LH's life, that person was "overwhelmingly" plaintiff. Although both plaintiff and defendant had "good knowledge" about LH's life, Dr. Bow described plaintiff as "much more on top of things, much more knowledgeable" about matters related to LH. According to Dr. Bow, because plaintiff stayed home with LH for six months after she was born and has returned to work part-time, plaintiff did "the vast, vast majority" of caretaking for LH.

At the request of the trial court, Dr. Bow testified that best interest factors (a), (b), (c) and (h) favored plaintiff, while the rest of the factors were equal. Dr. Bow, while noting that plaintiff had "rigid," inflexible and perfectionist tendencies, and viewed LH as her possession, nonetheless characterized plaintiff as "an extremely confident person, who [he] had no reservations about in terms of taking care of [LH.]" Dr. Bow acknowledged that plaintiff could be described as a "gatekeeper" of defendant's time with LH, but stated that such behavior was understandable given plaintiff's concerns about defendant's stance on spoiled food and medication.

Dr. Bow testified that while defendant "means well[,]" he did not "step up to the plate for a good period of time there during the marriage[,]" and further noted that he had concerns regarding defendant's stance on medication, seeking medical attention for LH and spoiled food. Dr. Bow also expressed concern about how defendant's spiritual beliefs impeded him providing medication to his daughter. In other words, Dr. Bow stated he had "an uneasiness about [defendant's] ability to kind of follow through and do what he has to do [with LH]." Dr. Bow also noted that defendant had "screamed" at LH on occasion, and that while some of this information came from plaintiff, defendant conceded to Dr. Bow that he often became frustrated. In his report, Dr. Bow noted that defendant admitted yelling at plaintiff once, but he denied screaming at LH. Moreover, Dr. Bow testified that while there had been concerns about

defendant's mental health during the lower court proceedings, his evaluation did not yield any major concerns in terms of "major psycho pathology" or anything of that nature.

In conclusion, Dr. Bow also testified that he did not think it would be in LH's best interests for the parties to share equally in overnights during the week, and that defendant had suffered a "narcissistic wound" following the divorce proceedings. Dr. Bow opined that defendant's interest in 50/50 custody was retaliatory against plaintiff. Dr. Bow characterized a 50/50 custody arrangement as "extremely difficult" with a child of LH's tender age. Dr. Bow noted that the current research on the issue of 50/50 custody is split, with one side believing that there should be even overnights, and the other side opining that overnights should not take place before a child turns four. Because LH needs "consistency, a routine, and ongoing contact with both parents," Dr. Bow opined that a 50/50 custody arrangement would not be appropriate in this case. His recommendation of LH spending 2½ to 3 hours with defendant on Tuesdays and Thursdays and one overnight on the weekends would foster LH's relationship with both parents. Dr. Bow also noted that his recommendation was congruent with the Wayne County Circuit Court Co-Parenting Order.

Both parties presented testimony from family and acquaintances to support that they were good parents.

Following the close of proofs, the court adjourned and ultimately issued a written opinion and order on August 11, 2015. The trial court concluded that an established custodial environment existed with both plaintiff and defendant. The trial court then weighed the best interest factors relating to child custody, MCL 722.23, concluding that it was in LH's best interests for plaintiff and defendant to share physical custody. The trial court then issued, in relevant part, the following parenting time order:

> The court finds it's in the minor child's best interest to award the following parenting time to the parties: Plaintiff-mother shall be awarded parenting time every Tuesday at 6 pm through Friday at 6 pm and Fridays at 6 pm until Sundays at 6 pm every other weekend. The Defendant-father is awarded parenting time every Sunday at 6 pm through Tuesday at 6 pm and Fridays at 6 pm until Sunday at 6 pm every other weekend. . . .

The opinion and order was incorporated into the judgment of divorce. This appeal ensued.

B. STANDARD OF REVIEW

Plaintiff argues that the trial court erred with respect to its finding that there was an established custodial environment with both parents, erred in applying the best interest factors, erred in considering "fairness," erred in failing to considering the parenting time factors, and generally abused its discretion in making its custody determination.

"This Court must affirm all custody orders unless the trial court's findings of fact 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; *Fletcher v Fletcher*, 447 Mich 871, 876–877; 526 N.W.2d 889 (1994). "Thus, a trial court's findings regarding the existence of

an established custodial environment and with respect to each factor regarding the best interest of a child under MCL 722.23 should be affirmed unless the evidence clearly preponderates in the opposite direction." *Fletcher*, 447 Mich at 879. "The trial court's discretionary rulings, such as to whom to award custody, are reviewed for an abuse of discretion." *Id*. at 879. In child custody cases, "[a]n abuse of discretion exists 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). Clear legal error occurs "when the trial court errs in its choice, interpretation, or application of the existing law." *Shulick v Richards*, 273 Mich App 320, 323; 729 NW2d 533 (2006).

C. ANALYSIS

I. ESTABLISHED CUSTODIAL ENVIRONMENT

Plaintiff argues that the trial court's finding that there was an established custodial environment with both parents was against the great weight of the evidence.

MCL 722.27(1)(c) provides:

> The court shall not modify or amend its previous judgments or orders or 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. The custodial environment of a child 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, both physical and psychological, in which the relationship between the custodian and the child is marked by security, stability and permanence." *Butler v Butler*, 308 Mich App 195, 202-203; 863 NW2d 677 (2014) (citations omitted). The existence of a parenting time order and the provisions contained within it will not of themselves establish a custodial environment. *Id*. at 203.

The statutory requirement that an established custodial environment not be altered without clear and convincing evidence is intended to "erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive change of custody orders." *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003).

The trial court made the following findings with regard to the existence of an established custodial environment.

> In the present case, testimony established that both parties were equally engaged in the minor's prenatal care and planning. The Defendant testified he child proofed the home, attended pre-natal doctor appointments with Plaintiff and ensured the safety of the minor's car seat with the local fire department. And, although the Defendant worked all day, the testimony established that he

> remained actively involved with his daughter's daily care. He testified he would; kiss the minor every morning before he left to work, he would receive daily photos of the minor at work and he would assist in her care after work including feeding her, playing with her and reading to her. Plaintiff cared for the minor child primarily during the days when she was not working. Both parties have provided appropriate care, discipline, love, guidance, and attention for most of the minor's young life. Accordingly, the parties share a joint custodial relationship with the minor child.

The record evidence supported the trial court's conclusion that LH looked to both plaintiff and defendant for guidance, parental comfort and the necessities of life. Defendant testified that he had a close relationship with LH. Defendant played and read with LH. Defendant exercised parenting time every other weekend and one evening per week where LH looked to him for parental care and guidance. Defendant was involved in LH's life since her birth. He prepared the home for LH, attended birthing classes and spent time with the child after her birth. Defendant participated in feeding, clothing, bathing and caring for LH. Defendant had a close bond with LH. During the pendency of the divorce proceeding, defendant played with LH and read to her and taught her new words. Defendant testified that LH was always excited to see him. Defendant testified that he did not object to immunizing LH and he stated that he tried to take advantage of all of the parenting time that he could obtain. Furthermore, David testified that LH was comfortable with defendant and Dr. Bow testified that LH was bonded with defendant.

Defendant also presented the testimony of his mother Marcia Hess and Kirsten Wheeler. Marcia testified that defendant was very involved in LH's life even before the divorce proceedings began, and that as recently as the week of trial, she observed that defendant and LH had a "strong bond." Marcia further characterized defendant as "loving[ ]" and "caring[ ]" toward the minor child. Marcia further stated that with defendant, LH found a "very safe, protected environment[.] She's always watching for [defendant]. He's very focused on her."

Wheeler testified that she observed defendant and LH enjoy an appropriate father-daughter relationship while attending church. If LH encountered a stranger that she was not familiar with at church, she will turn toward defendant and look to him for comfort and protection, according to Wheeler. Wheeler further testified that LH reacted to defendant "[l]ike any child would react to their father, you can tell that she cares for him and that she wants to be around him." Wheeler continued:

> I would feel that [defendant and LH] are bonded from the way [the minor child] reacts to him and how he reacts to her. You can tell that it is a loving relationship from what I've experienced.

While plaintiff is correct that Dr. Bow testified that plaintiff was LH's primary caregiver and her primary attachment was to plaintiff, Dr. Bow also testified that LH was bonded with defendant. Moreover, a child may have an established custodial environment with both parents. *Foskett v Foskett*, 247 Mich App 1, 8; 634 NW2d 363 (2001).

Plaintiff also argues that the trial court overlooked David's testimony. However, David testified that LH "seemed comfortable and content with both parents[,]" and that both plaintiff and defendant "presented as loving and caring parents[.]" The trial court considered David's testimony in making its findings. In sum, the record evidence does not clearly preponderate against the trial court's finding that there was an established custodial environment with both parents. *Fletcher*, 447 Mich at 879.

II. BEST INTEREST FACTORS

Plaintiff next challenges the trial court's factual findings in weighing the statutory best interest factors.

As this Court observed in *Berger*, 277 Mich App at 705, in entering a custody order, the Child Custody Act (CCA), MCL 722.21 *et seq.*, governs and it "is intended to promote the best interests of children, and it is liberally construed" (citations omitted.) When evaluating and weighing the best interest factors, the trial court is not required to give equal weight to each factor, but is permitted to consider "the relative weight of the factors as appropriate to the circumstances." *Butler*, 308 Mich App at 204-205, quoting *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006).

MCL 722.23 sets forth the best interest factors to be considered in a child custody dispute:

> 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. [MCL 722.23.]

The trial court weighed each factor equally between both parties, except for factor (j), which it weighed in favor of defendant when it concluded that plaintiff had accused defendant of questionable behavior and challenged his fitness as a parent in an overt attempt to limit his contact with LH. Plaintiff challenges the court's findings with respect to best interest factors (a), (b), (c), (*l*) and (j).

Factor (a)

This factor addresses "[t]he love, affection, and other emotional ties existing between the parties involved and the child." MCL 722.23(a). Here, the trial court weighed this factor equally. The trial court found defendant administered medication to the minor child properly, and accepted defendant's testimony of the version of events regarding the issue with the minor child in her walker. The trial court also rejected plaintiff's allegations that defendant fed the minor child "stale" food when he gave her expired formula, and disagreed with plaintiff's contention that defendant failed to exercise the parenting time allocated to him. These findings involved issues of credibility and "[t]his Court will defer to the trial court's credibility determinations." *Sinicropi*, 273 Mich App at 155.

On appeal, plaintiff argues that the court failed to give proper weight to the testimony of Dr. Bow and David, claiming that their testimonies confirmed that LH had a stronger emotional bond with plaintiff. Both Dr. Bow and David testified that plaintiff was the minor child's primary caregiver, and that the minor child's primary attachment was to plaintiff. However, their testimony also established that defendant and LH shared a loving and affectionate relationship and had a strong emotional bond. More importantly, the trial court's finding with respect to the expert testimony involved credibility determinations that we will not second-guess on appeal. *Id*. Accordingly, the trial court's finding on this best interest factor was not against the great weight of the evidence. *Fletcher*, 447 Mich at 879.

Factor (b)

This factor considers "[t]he 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." MCL 722.23(b). The trial court found that both parties had capacity to provide love, affection and guidance. The thrust of plaintiff's argument with regard to this factor appears to be that she is challenging defendant's ability and fitness to parent and

raise the minor child because of his spiritual beliefs. The trial court's conclusion on this factor was not against the great weight of the evidence. While an issue at trial was defendant's alleged religious fanaticism, defendant testified that he was in favor of doctors and medicine, noting that both had been of great service to his daughter and he denied that he would withhold medication from her.

Defendant also stated that he favored a careful and conscientious use of Tylenol for the minor child. Indeed, the trial court specifically noted that it accepted and found credible defendant's testimony that "[defendant] appropriately administered [the minor child's] medications." While there was conflicting testimony in the record from plaintiff, her mother and her sister concerning defendant's spiritual beliefs and how these beliefs may have negatively influenced his parenting decisions, issues of credibility and the weight to give such evidence were within the province of the trial court. *Sinicropi*, 273 Mich App at 155.

Factor (c)

This factor weighs "[t]he 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." MCL 722.23(c).

The trial court weighed this factor equally between both parties, finding as follows:

> Both parties are employed, earing almost equivalent salaries. They are equally able to provide for the minor. The Plaintiff earns $86,000. per year while the Defendant earns $81,744. per year. The Plaintiff testified that she no longer breast feeds the minor who has been bottle fed since she was one. Plaintiff alleged that Defendant was unable to provide the minor with appropriate food and medical care. After hearing all this testimony, the court does not find Plaintiff's allegations of Defendant providing the minor with stale food and refusing to provide medicine to the minor credible.

These findings were not against the great weight of the evidence. Both parties had similar salaries and there was no evidence to support that defendant failed to provide for the child while she was in his care. Rather, Dr. Bow and David's testimony supports that defendant provided appropriately for LH. To the extent that plaintiff argues that the court failed to give appropriate weight to her testimony regarding defendant's reluctance to discard spoiled food, issues of credibility fall within the province of the trial court. *Sinicropi*, 273 Mich App at 155.

Factor (j)

This factor weighs "[t]he 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." MCL 722.23(j). The trial court weighed this factor in favor of defendant, finding as follows:

> It does not appear Plaintiff has been willing to facilitate and encourage a close parent-child relationship between the child and Defendant. The record was replete with examples wherein the Plaintiff accused the Defendant of questionable

> behavior in an obvious attempt to control his contact with the minor, referred to by Plaintiff as "gatekeeping." Plaintiff's unsubstantiated allegations led to court orders limiting Defendant's contact with the minor and restricting his ability to provide food for the minor. The court does not find Plaintiff's allegations of testimony concerning Defendant's mental instability credible.

This finding was not against the great weight of the evidence. At trial, defendant testified that after plaintiff left the home, plaintiff refused to allow him to see LH and instead suggested that he obtain legal counsel. Indeed, defendant found it necessary to file an emergency motion for parenting time to see his child. Plaintiff opposed this motion, and filed a motion seeking psychological testing of defendant, alleging defendant was "emotionally unstable and a religious fanatic, who does not believe in medical intervention." In the answer and cross-motion to defendant's motion seeking parenting time, plaintiff described defendant's behavior following the parties' separation as "bizarre and troubling." In support of the motion for psychological testing and supervised parenting time, plaintiff made numerous serious allegations against defendant relating to his care of the minor child, specifically noting his "refus[al] to administer medication[,]" his reluctance to allow the minor child to have formula, his anger expressed toward the minor child, as well as defendant "knowingly [feeding] the minor child stale food" by giving formula two weeks past the 48 hour lifespan of opened formula. Plaintiff continued to make these and other serious allegations against defendant at the August 7, 2014 motion hearing in front of the referee, and the October 24, 2014 hearing before the trial court.

The referee subsequently recommended, and the trial court adopted, parenting time limiting defendant's contact with LH during the pendency of these divorce proceedings in spite of defendant seeking additional time with her. Where the trial court ultimately concluded that the allegations plaintiff made against defendant were without merit, its resulting finding that plaintiff made allegations against defendant in an effort to limit defendant's parenting time with the minor child was not against the great weight of the evidence.

Finally, while plaintiff presented evidence from Dr. Bow justifying plaintiff's behavior of limiting defendant's contact with the minor child, and a statement from David that neither party alleged that the other limited contact with the minor child, the trial court, after considering the record evidence, made a concerted decision to reject this evidence, a decision that involved the weight and credibility of the evidence that we will not revisit on appeal. *Sinicropi*, 273 Mich App at 155.

Factor (*l*)

This factor considers, "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." MCL 722.23(*l*). The court weighed this factor equally, finding that both parties cooperated in raising the minor child without incident. This finding was not against the great weight of the evidence. While both parties had challenges to overcome, overall, the evidence supported that they both provided love, guidance and support to LH and they both had a strong bond with her. Plaintiff argues that the trial court failed to give proper weight to Dr. Bow's testimony that young children had separation issues when separated from their primary caregiver. However, the trial court noted that it considered Dr. Bow's testimony and Dr. Bow testified that, although plaintiff was the primary caregiver, LH was also bonded with defendant.

In short, the trial court properly considered Dr. Bow's opinion, made a credibility determination, and its ultimate finding on best interest factor (*l*) was not against the great weight of the evidence. *Sinicropi*, 273 Mich App at 155.

III. DISCRETIONARY CUSTODY DETERMINATION

Lastly, plaintiff argues that the trial court improperly considered issues of fairness to the parties, rather than the minor child's best interests, in fashioning a custody order and she maintains that the trial court's ultimate order amounted to an abuse of discretion. We disagree.

Having reviewed the record, the trial court's comments regarding "fairness," reflected the court's concern with the proper application of the CCA and reflected its conclusion that LH's best interests would be served by having an equal relationship with both parents. Moreover, contrary to plaintiff's arguments, the court properly weighed the testimonies of Dr. Bow and David. While plaintiff contends that the trial court's custody determination was "illogical" and that it was not related to its findings on the best interest factors, this assertion is without merit. The trial court concluded that the best interest factors weighed equally in favor of each party, aside from factor (j), and its parenting time order reflected that balanced finding. As noted above, these findings were not against the great weight of the evidence. In sum, the trial court did not abuse its discretion in fashioning the parenting time order. *Fletcher*, 447 Mich at 879.

IV. PARENTING TIME FACTORS

Finally, plaintiff argues that the trial court erred in failing to weigh the parenting time factors set forth in MCL 722.27a.

MCL 722.27a governs parenting time orders and it provides in relevant part as follows:

> (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.

MCL 722.27a(6) provides a list of best interest factors that a court "*may consider* . . . when determining the frequency, duration, and type of parenting time to be granted" (emphasis added).

In this case, while the court did not specifically reference the factors set forth in MCL 722.27a(6) in fashioning the frequency, duration and type of parenting time, it is clear that the court considered the best interests of LH in so doing. In *Shade v Wright*, 291 Mich App 17, 32; 805 NW2d 1 (2010), this Court recognized that where it is clear from statements on the record that the trial court considered the minor child's best interests when modifying parenting time, its failure to "explicitly address" the parenting time best interest factors did not amount to clear legal error requiring reversal. Here, the court's written opinion combined with its statements on the record supports that it took LH's best interests into account in fashioning the parenting time arrangement. In short, the court did not err in entering the parenting time order. *Id*.

Affirmed. Defendant having prevailed in full, may tax costs. MCR 7.219(A). We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens