STATE OF MICHIGAN

COURT OF APPEALS

GENEVA K. DELONG, Plaintiff-Appellee,	UNPUBLISHED May 24, 2016
v	No. 329261 Gratiot Circuit Court Family Division
DANIEL J. DELONG, Defendant-Appellant.	LC No. 14-002683-DM

Before: MURPHY, P.J., and CAVANAGH and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant father appeals by right the trial court's judgment of divorce awarding sole legal and physical custody of the parties' minor son, DD, to plaintiff mother. The parties had been married for 23 years and have three other children who are no longer minors[1] and whose custody is therefore not at issue. DD was ten years old at the time of the trial court's judgment. All four of the children have special needs. We affirm.

All custody orders must be affirmed unless the trial court's 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; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). We afford great deference to the trial court's superior ability and opportunity to evaluate the relative credibility of the witnesses. *McGonegal v McGonegal*, 46 Mich 66, 67; 8 NW 724 (1881); *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). In general, a trial court's conclusions of law are reviewed de novo. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). However, we do not substitute our judgment for the trial court's factual determinations "unless the factual determination clearly preponderates in the opposite direction." *Pierron*, 486 Mich at 85 (internal quotation marks and citation omitted).

[1] One of them was still a minor at the commencement of proceedings but had turned 18 by the time of the trial court's judgment.

Defendant first challenges the trial court's findings that DD's established custodial environment was with plaintiff alone. The trial court correctly articulated the standard, which is set forth in MCL 722.27(c) as follows:

> 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 . . .

Whether an established custodial environment exists is a question of fact to be determined before the trial court makes any custody determination. *Kessler v Kessler*, 295 Mich App 54, 61; 811 NW2d 39 (2011). When deciding whether an established custodial environment exists, the trial court should "focus . . . on the circumstances surrounding the care of the children in the time preceding trial, not the reasons behind the existence of a custodial environment." *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995). "An established custodial environment . . . need not be limited to one household; it can exist in more than one home." *Mogle v Scriver*, 241 Mich App 192, 197-198; 614 NW2d 696 (2000).

There is no dispute that DD had an established custodial relationship with plaintiff mother. The trial court's finding that DD did not also have an established custodial environment with defendant father was premised on the significance of an "appreciable time." The court observed, and defendant does not dispute, that plaintiff had been DD's primary caretaker for most of DD's life, while defendant was the primary income producer and worked for much of the day. Defendant points out, fairly, that he was not an absentee parent, and subsequent to the parties' separation, he has worked fewer hours and been more involved in DD's daily life. The trial court found defendant's "more recent efforts" to be highly praiseworthy, and it expressed confidence that defendant would "continue in that engagement with [DD]." However, it found defendant's "elevated involvement" to be insufficient to rise to the level of an established custodial environment. The trial court noted that DD continued to live in the marital home with plaintiff mother throughout the proceedings. Finally, it is clear from other statements made by the trial court that it was influenced by observations of defendant father's demeanor and actions which it viewed during the proceedings.

As stated, trial courts' factual findings are generally inviolate unless the record clearly shows them to be wrong. The standard should not immunize the trial court's findings from review, but it is the same standard applied to the review of jury findings and thus is highly deferential. *Fletcher v Fletcher*, 447 Mich 871, 877-879; 526 NW2d 889 (1994). We may not base a reversal on a finding that we would have drawn a different conclusion, but rather only on finding that the evidence should not reasonably have permitted the trial court's finding. See *Murchie v Standard Oil Co*, 355 Mich 550, 557-558; 94 NW2d 799 (1959). On the basis of that standard, we are unable to conclude that the trial court's findings were clearly erroneous. While defendant was certainly more involved in DD's life, the testimony was not entirely without conflict, and the question seemingly a close one. In cases of doubt, we defer to the trial court. *McGonegal*, 46 Mich at 67.

Defendant father also argues that the trial court erroneously found sole custody with plaintiff mother to be in DD's best interests. We do not find the trial court's conclusion against the great weight of the evidence.

Child custody disputes must be resolved in the best interests of the child, and by statute the courts must explicitly consider a number of factors set forth in MCL 722.23. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). The factors are:

> (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 must expressly set forth its conclusions regarding each factor in enough detail for this Court to determine whether the evidence preponderates against that finding, although the trial court need not exhaustively address every detail argued or submitted. *Rittershaus v*

Rittershaus, 273 Mich App 462, 475; 730 NW2d 262 (2007). Defendant does not challenge the trial court's findings that factors (a), (b), (d), (e), (h), and (j) favored both parties equally. The trial court found factor (i) inapplicable because neither party asked it to interview DD, and defendant also does not challenge that finding. Defendant challenges the court's findings regarding factors (c), (f), (g), (k), and (*l*).

Factor (c) "looks to the future, not to which party earned more money at the time of trial, or which party historically has been the family's main source of income." *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008). Defendant argues that the trial court should not have found the parties equal, because plaintiff had medically neglected DD by missing certain dental and eye appointments. Plaintiff contended that she had not missed any appointments except when the children did not have insurance. Particularly given the trial court's better ability to make credibility assessments, we are not persuaded that the trial court clearly erred in declining to extrapolate overmuch from those missed appointments and thus finding both parties able to provide for DD's medical, food, and clothing needs.

Factor (f) does not concern itself with some objective moral superiority in the abstract, but rather "the parties' relative fitness to provide for their child, given the moral disposition of each party as demonstrated by individual conduct . . . " *Fletcher*, 447 Mich at 886-887. The trial court found in favor of plaintiff because of defendant's domestic violence conviction against another of the children, descriptions comparing plaintiff as "motherly" with defendant as "controlling," and other testimony describing tense moments in the marital home and allegations that the children were afraid of defendant. We appreciate that there was conflicting testimony regarding the extent, if any, to which defendant was otherwise verbally or physically abusive toward the children and plaintiff. However, again, we must defer to the trial court's superior ability to make credibility determinations. Consequently, we cannot find that the trial court clearly erred.

Factor (g) concerns "the mental and physical health of the parties involved." The trial court found, and defendant does not contest, that the physical health of the parties was not at issue. Defendant argues that the trial court based its decision favoring plaintiff on defendant taking anger management classes. First, that assertion is hyperbolic to the point of being flatly wrong. Second, although there is nothing *per se* "bad" about taking anger management classes in the abstract, the trial court is entirely justified in assessing the implications of doing so from the context of all of the other evidence regarding defendant's behavior, as well as its own assessment of defendant's demeanor and conduct directly before it. The trial court noted in particular that plaintiff was passive and maternal in her approach to day-to-day life, whereas there was substantial evidence that defendant was a bully and that his anger actually affected his relationships with the children. The trial court did not clearly err in finding that this factor favors plaintiff.

Factor (k) addresses "domestic violence, regardless of whether the violence was directed against or witnessed by the child." Defendant protests that he was never shown to have engaged in any domestic violence against DD, which misses the point. He also argues that the child against whom he committed the act of domestic violence for which he was convicted would later choose to live with him instead of plaintiff, which not only misses the point but fundamentally misunderstands the effect abuse can have on a person. The fact is that defendant was convicted

of domestic violence, and other evidence suggests that that incident was not an entirely isolated or out-of-character occurrence. Defendant's attempts to justify his actions are outrageous, and the trial court certainly did not clearly err in finding this factor to favor plaintiff.

Factor (*l*) is a catch-all factor for anything else the trial court deems relevant. The trial court reemphasized defendant's "controlling nature," and in that context observed that defendant had initiated CPS complaints against plaintiff for minor issues. The trial court also noted in that context that defendant had appeared to be making faces at plaintiff during her testimony and attempting "to either make fun of her, to make her feel uncomfortable, or to put her down." Even more significantly, that testimony was plaintiff attempting to explain an allegation made by defendant. Defendant's assertion that the trial court had found this factor to favor plaintiff merely because he had made CPS reports and smirked during the trial ignores the significant context and nuance of those actions. We find no clear error.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Amy Ronayne Krause