STATE OF MICHIGAN

COURT OF APPEALS

CARRIE L. ENOS, Plaintiff/Counter-Defendant/Appellant,	UNPUBLISHED May 24, 2016
v	No. 330788 Tuscola Circuit Court Family Division
JASON T. HAAG, Defendant/Counter-Plaintiff/Appellee.	LC No. 11-026718-DM

Before: BOONSTRA, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Plaintiff/counter-defendant, Carrie Enos (plaintiff), appeals as of right from an order entered by the circuit court following a de novo review of the referee's order that awarded defendant/counter-plaintiff , Jason Haag (defendant), sole legal and primary physical custody of the parties' minor children, LM and LE. We affirm.

I. FACTS

The June 18, 2012 judgment of divorce between plaintiff and defendant provided for joint legal custody of the parties' children and a joint physical custody arrangement that alternated parenting time between the parties in a pattern of "2 days, 2 days, 5 days." On January 31, 2014, the trial court granted defendant's motion for a change of custody and awarded him sole legal custody of the children, with the parties sharing joint physical custody on week-on/week-off basis. The first full week of the new custody arrangement commenced on February 2, 2014.

In March 2014, approximately one month into the new custody schedule, LM began experiencing significant behavioral issues at school and at daycare. On November 25, 2014, defendant sought a modification of parenting time in which he sought, in part, that the children's primary domicile be with him. Defendant alleged numerous ways in which circumstances had changed since entry of the last order, including LM's severe behavior at school and daycare and plaintiff's inability to provide the structure and stability needed for the emotional and mental wellbeing of the children. On December 15, 2014, plaintiff filed a countercomplaint seeking sole legal and physical custody of the children and that their domicile be with her.

The evidence presented during the course of an eight-day custody hearing revealed that in March 2014, LM, who was in kindergarten, began displaying inappropriate behavior in the classroom and in the afterschool daycare program. LM began having temper tantrums in the classroom, throwing objects, escaping from the classroom, hitting and kicking school staff and children, and refusing to obey his teachers. Defendant sought mental health services for LM and was referred to Pamela Kohn, a therapist and expert in pediatric mental health. Kohn first saw LM on April 8, 2014, and diagnosed him with oppositional defiant disorder (ODD). Kohn worked with LM to learn how to "stop, think, and make different choices." She found that LM absorbed her suggestions and put them into practice in her office, but that his inappropriate behavior continued at school. Kohn referred LM to a psychiatrist, Dr. Kaushik Raval. Dr. Raval diagnosed LM as bipolar and prescribed psychotropic medication. Despite therapy and medication, LM continued to display inappropriate behavior. The parties were asked to have LM take a break from the daycare program in June 2014 because the program did not have the staff to provide one-on-one care for LM. According to the daycare director, she could also see LE's behavior "going down [LM's] road."

LM's behavioral issues continued into the new school year, his first-grade year. He had his first incident on the third day of school, and received a two-day, out-of-school suspension in September 2014. The school instituted monthly child study meetings involving the parents and school staff and developed a behavior intervention plan for LM. LM continued to have incidents at least on a weekly basis, he received in-school suspensions, and his behavior disrupted the classroom as well as the students' and LM's education.

According to Kohn, consistency is very important for a child with ODD. Dr. Raval believed, and Kohn agreed, that it would be beneficial for LM to have one consistent place to live. Kohn agreed with Dr. Raval's recommendation that the children live during the school year with defendant because Kohn saw more consistency and follow through with regard to suggestions aimed at correcting LM's behavior from defendant than from plaintiff. School and daycare staff also testified that they observed more consistency from defendant with respect to his pick-up and drop-off times and with respect to compliance with the school's suggestions and recommendations. According to Kohn, her communication was better with defendant than with plaintiff. This sentiment was echoed by personnel at LM's school as well as personnel at the daycare housed at LM's school.

In addition to Kohn and Dr. Raval, several witnesses testified that consistency and structure would be beneficial to LM. Elizabeth Treiber, the principal of LM's school, made suggestions to the parents in an effort to provide more consistency for LM, such as utilizing consistent drop-off times at school and pick-up times from school. Treiber testified that defendant complied with her suggestions and that plaintiff sometimes complied. Julie Ruth, the director of the daycare center that was housed at LM's elementary school and which LM attended after school, testified that during defendant's weeks of parenting time, LM was consistently picked up at approximately 4:00 p.m. Ruth testified that plaintiff's pick-up times varied between 4:00 p.m. and 5:30 p.m.

Following trial, the referee prepared an extensive report and recommendation in which the referee recommended that defendant be awarded sole legal custody and primary physical custody of the children. The referee found proper cause or a change in circumstance to warrant

reexamining the existing custody order, concluding that LM's change in behavior, which began shortly after the custody order switching parenting time to a week-on, week-off schedule took effect, was extreme enough to support such a finding. Next, the referee made specific findings on the statutory best-interest factors set forth in MCL 722.23. Finally, the referee concluded that a change in the parties' custody agreement would amount to a change in the children's established custodial environment and that defendant satisfied the clear-and-convincing evidence standard required to change the established custodial environment. In so finding, the referee paid heed to the testimony concerning the importance of consistency and structure for LM, as well as the testimony concerning defendant's consistency in following recommendations made by various mental health professionals and school personnel.

Plaintiff filed objections to the referee report and recommendation stemming from the hearing and sought de novo review in circuit court. Plaintiff objected to the referee's finding that defendant established proper cause or change of circumstances, as well as the referee's findings with respect to best-interest factors (b), (c), (f), and (j).

The trial court found that defendant established a change of circumstances by a preponderance of the evidence and that an established custodial environment existed with both parties. Turning to the statutory best-interest factors, the court found the parties equal on factors (a), (d), (g), and (k), that factors (f) and (j) favored neither party, that factors (b), (c), (h), and (*l*) favored defendant, and that factor (e) favored plaintiff. The court determined that there was clear and convincing evidence that a change of custody was in the best interests of the children and that there was not clear and convincing evidence that a change in legal custody was in the best interests of the children. The court ruled that legal custody would remain with defendant, and it awarded primary physical custody of the children to defendant, with plaintiff having parenting time on the first, second, and fourth weekend of every month during the school year from 6:00 p.m. Friday until 6:00 p.m. Sunday, with holiday and summer parenting time pursuant to the Friend of the Court guidelines.

II. ANALYSIS

A. CHANGE OF CIRCUMSTANCE

Plaintiff first argues that the trial court erred by finding that defendant demonstrated a change of circumstances. This Court reviews a trial court's determination regarding whether a party has demonstrated proper cause or change or circumstances under the great weight of the evidence standard. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). "Under the great weight of the evidence standard, this Court defers to the trial court's findings of fact unless the trial court's findings clearly preponderate in the opposite direction." *Id.* (internal quotation marks and citation omitted).

"[A] trial court may modify a custody award only if the moving party first establishes proper cause or a change in circumstances." *Id.* at 603, citing MCL 722.27(1)(c) and *Vodvarka v Grasmeyer,* 259 Mich App 499, 508-509; 675 NW2d 847 (2003). The party seeking a change in custody must establish the existence of either proper cause or a change of circumstances by a preponderance of the evidence. *Vodvarka,* 259 Mich App at 509.

In order to establish a change of circumstances, the moving party must "prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a significant effect on the child's well-being, have materially changed." *Id.* at 513 (emphasis omitted). More specifically, "the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child." *Id.* at 513-514. If the moving party fails to demonstrate proper cause or a change of circumstances, the trial court may not hold a child custody hearing. *Id*. at 508. The purpose of this threshold requirement "is to minimize unwarranted and disruptive changes of custody orders, except under the most compelling circumstances." *Corporan,* 282 Mich App at 603.

Despite arguing below that there was a change in circumstances sufficient to warrant reexamination of the existing custody order, plaintiff argues that there was no change of circumstances that had or will have any effect on the children since the entry of the January 31, 2014 order. She contends that the only thing that changed was that LM was diagnosed with ODD and bipolar disorder, and that these conditions were unrelated to whether the children lived with plaintiff or with defendant. The referee found in pertinent part with respect to the threshold issue the following:

> [B]oth parties have demonstrated by a preponderance of the evidence proper cause or a change in circumstance to warrant at least looking at a modification of the custody order. Granted, it has only been just over a year since the entry of the last order. However, the testimony showed [LM], to whom much of the testimony was dedicated, is suffering in particular and [LE] is beginning to act out as well. [LM] has been suspended from school **as a first grader**. He is physically violent with students and staff. He has good weeks and bad weeks, certainly, but his bad weeks are disastrous. This situation **must** be remedied before he hurts someone else, himself, or winds up expelled from school. Additionally, although this has been a long standing issue in this case, these parents cannot co-parent in any way, shape, or form. What is clear to this Referee is that these children need a change of some kind to see if it will remedy their issues. [Emphasis in original.]

On de novo review, the trial court similarly based its determination that a change of circumstances had occurred in part on the "drastic behaviors of [LM] and a potential behavior change[] for [LE]," and stated that "[u]pon review of the Referee's Recommendation, the court concludes that the Referee properly determined that there was a change in circumstances."

We conclude that the change of circumstances in question was more than a minor change in LM's behavior. The record is abundant with evidence that LM began to experience severe behavioral issues in school beginning in March 2014, just one month after the alternating week parenting schedule went into effect. The severity of his behavior at school escalated to the point that LM began seeing a pediatric mental health therapist in April 2014 and was diagnosed with ODD. Despite LM's treatment with the therapist, he continued to have severe behavioral issues at school. LM was removed from daycare in June 2014 for a month due to his behavior. In July 2014, the therapist referred LM to a psychiatrist, who additionally diagnosed LM as bipolar and placed him on psychotropic medication. When LM returned to school and daycare in September

2014, his severe behavior continued and resulted in his suspension from school on more than one occasion, restrictions on the length of his school day, and eventually his expulsion from the daycare program.

These facts demonstrate more than just a "normal life change" and were sufficient to support a finding of change of circumstances. It is clear that turmoil and hostility was a characteristic pattern in the lives of the parties and the children under the existing joint physical custody order with week-on/week-off parenting time. There was no error by the trial court on the matter of change of circumstances, and it was permissible for the trial court to proceed to a determination of the children's best interests.

Plaintiff also argues that a separate hearing regarding proper cause or a change of circumstances should have been held before the hearing to modify custody was held. Caselaw is clear that a trial court is not required to conduct an evidentiary hearing on this threshold showing. *Corporan*, 272 Mich App at 605. See also *Vodvarka*, 259 Mich App at 512 ("Often times, the facts alleged to constitute proper cause or a change of circumstances will be undisputed, or the court can accept as true the facts allegedly comprising proper cause or a change of circumstances, and then decide if they are legally sufficient to satisfy the standard."). "The trial court is merely required to preliminarily determine whether proper cause or a change of circumstances exists before reviewing the statutory best-interest factors with an eye to possibly modifying a prior custody order." *Mitchell v Mitchell*, 296 Mich App 513, 518; 823 NW2d 153 (2012). Here, the trial court properly stated the reasons for finding that the change of circumstances standard had been established before proceeding with a custody analysis of the statutory best interest factors.

B. BEST INTERESTS

Plaintiff argues that the trial court erred in its findings regarding all of the statutory best-interest factors except factors (a) and (i), and that the trial court abused its discretion by finding that a change of custody was in the best interests of the children.

In child custody disputes, " 'all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.' " *Dailey v Kloenhamer*, 291 Mich App 660, 667; 811 NW2d 501 (2011), quoting MCL 722.28. Accordingly, the trial court's factual findings are reviewed under the great weight of the evidence standard, which precludes a reviewing court from substituting its judgment on questions of fact unless they "clearly preponderate[] in the other direction." *Mitchell*, 296 Mich App at 519. Under this standard, a court "should review the record in order to determine whether the verdict is so contrary to the great weight of the evidence as to disclose an unwarranted finding, or whether the verdict is so plainly a miscarriage of justice as to call for a new trial . . . ." *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994) (internal quotation marks and citation omitted). Discretionary rulings, including an ultimate award of custody, are reviewed for an abuse of discretion. *Id*. at 877. An abuse of discretion exists when the trial court's decision is so palpably and grossly violative of fact and logic. *Dailey*, 291 Mich App at 664-665. Further, clear error occurs when the trial court chooses, interprets, or applies the law incorrectly. *Fletcher*, 447 Mich at 881.

1. ESTABLISHED CUSTODIAL ENVIRONMENT

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). The court concluded that an established custodial environment existed with both parties, and the parties agree with this determination.

When a proposed change of custody would alter the established custodial environment, the movant must prove by clear and convincing evidence that the modification is in the child's best interests. MCL 722.27(1)(c); *Dailey*, 291 Mich App at 667. When determining the best interests of the child, the court must review the best-interest factors found in MCL 722.23. *Dailey*, 291 Mich App at 667. The "trial court need not make its custody determination on the basis of a mathematical calculation and may assign differing weights to the various best-interest factors." *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008).

2. BEST-INTEREST FACTORS

Plaintiff argues that the trial court's findings regarding factors (b), (c), (d), (e), (f), (g), (h), (j), (k), and (*l*) were against the great weight of the evidence.

Factor (b) requires the trial court to consider the capacity and disposition of the parties involved to give the child love, affection, and guidance, as well as the parties' capacity and disposition to raise the child in his or her religion or creed, if any. MCL 722.23(b).

Plaintiff first challenges the trial court's reference to plaintiff's attendance at "Daddy Donut day," and asserts that the event that defendant referred to where plaintiff was the only female in attendance was "Big Buddy day." Whether the trial court intended to refer to Daddy Donut day or Big Buddy day is of little consequence because the trial court used the event to illustrate that plaintiff attended school events when asked not to attend, and to demonstrate that LM could have been affected by plaintiff's attendance at an event that was intended to be for dads and their children.

Plaintiff also argues that the evidence presented refutes the trial court's finding that defendant has demonstrated he is more capable of providing the children the routine needed. Plaintiff does not specifically address the factual findings made by the trial court. Rather, she notes that defendant testified that he does not go to school at the direction of the school so as not to interfere with the consistency of LM's school day, but then asserts, without any citation to the record and without any specific examples, that "there were numerous occasions where the father showed up unannounced at the school during the mother's parenting time, confronting the mother on various issues and leading to the disruption of [LM's] school day." She asserts that defendant "has the least consistent pick up times" and that he "admitted that he has had multiple

people involved in the pick-up of the children."[1] Again, plaintiff provides no citation to the record and provides no specific examples. Nor does she provide record citation or specific examples to support her argument that defendant only has the greater ability to be consistent because he has legal custody of the children and that she has been "all but shut out" by the teachers, administrators, and staff and therefore is prevented from obtaining the information necessary to comply with school directives." No error has been shown.

Factor (c) requires the trial court to consider the capacity and disposition of the parties to provide the child with food, clothing, medical care, and other needs. MCL 722.23(c). The trial court found that "the parents aren't able to work together for the best interest of the children when it comes to medical necessities" and that "their lack of cooperation has led to the children not receiving consistent medicine dosages or attention to times for medication" The court found that both parents possessed the capacity and disposition to provide the children with the necessities of life, but that since entry of the January 21, 2014 order awarding him legal custody, defendant had "forged ahead with the treatment" and, therefore, that this factor weighed only slightly in favor of defendant. These findings are supported by the record evidence.

Factor (d) requires the trial court to consider the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity. MCL 722.23(d). Plaintiff notes that she did not object to the referee's finding that the parties were equal on this factor, but "refers the Court to the arguments made above and below" with respect to "[defendant's] revolving door policy with respect to his online conquests." This assertion, a variation of which is repeated throughout plaintiff's brief, implicates the court's conclusions with regard to the permanence of the family unit, which is addressed in factor (e), as opposed to the stability of the children's environment with defendant. The trial court found, as did the referee, that both parties provided a stable, satisfactory environment, that both parties intended to maintain their current housing, and that the parties were equal on this factor. Plaintiff has failed to demonstrate that the trial court's findings clearly preponderate in the opposite direction.

Factor (e) requires the trial court to consider the permanence, as a family unit, of the existing or proposed custodial home or homes. MCL 722.23(e). The trial court found that this factor weighed "slightly" in favor of plaintiff "due to [defendant] introducing a short[-]term 'member' of the family to the children." Plaintiff argues that this factor should weigh strongly in her favor. The "short-term 'member' of the family" referenced by the trial court was defendant's former fiancée, a woman defendant had only known for approximately two months and with whom defendant's relationship had ended by the time the trial court rendered its opinion. On this record, we find no evidence to conclude that the court erred by finding that this factor only slightly favored plaintiff. Plaintiff cites no evidence to support her assertion that defendant "repeatedly introduces significant others" to the children, nor does she cite any evidence to support her assertion that defendant was seeking a "replacement mother." Plaintiff also has

[1] Defendant testified that he nearly always picks up the children, but if there is a day when he is working out of town his mother will pick up the children. He also admitted that his former fiancée picked the children up from school, but did not specify how often she did so.

failed to cite any evidence with respect to the impact of defendant's relationships on the psychological and emotional development of the children. Plaintiff has failed to demonstrate that the trial court's findings clearly preponderate in the opposite direction.

Factor (f) requires the trial court to consider the moral fitness of the parties involved. Although the trial court deemed the parties equal on this factor, plaintiff contends that she should have been favored. MCL 722.23(f). Factor (f) relates "to the parent-child relationship and the effect that the conduct at issue will have on that relationship." *Fletcher,* 447 Mich at 887. "[Q]uestionable 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*." *Id*. Morally questionable conduct pertinent to a parent's moral fitness includes, but is not limited to, "verbal abuse, drinking problems, driving record, physical or sexual abuse of children, and other illegal or offensive behaviors." *Id.* at 887 n 6.

Plaintiff raises the exact same argument here regarding defendant's relationship with his former fiancée that she raised with respect to factors (b), (d), and (e). Again, plaintiff cites no evidence to support her assertion that defendant "repeatedly introduces significant others" to the children, nor does she cite to any evidence to support her assertion that defendant was seeking a "replacement mother." Plaintiff has also failed to cite any evidence suggesting that the children were adversely affected by defendant's relationship with his former fiancée or other women, or that any such relationships affected his ability to be an effective parent. In light of this, it was not against the great weight of the evidence for the trial court to conclude that the parties were equally morally fit within the meaning of MCL 722.23(f).

Factor (g) requires the trial court to consider the mental and physical health of the parties involved. MCL 722.23(g). Although the trial court deemed the parties equal on this factor, plaintiff contends that this factor should favor her because defendant "has acted with great animosity toward" her. Plaintiff cites *McCain v McCain*, 229 Mich App 123; 580 NW2d 485 (1998), in support of her argument. Plaintiff's reliance on *McCain* is misplaced. The quoted portion of *McCain* on which plaintiff relies is the trial court's analysis of factor (j). *Id*. at 128-129. More importantly, we find the case to be factually distinguishable from *McCain*, as there is simply no evidence of any behavior by defendant that "borders on" demonstrating a mental health issue, as was the case in *McCain*. Indeed, plaintiff has not identified any evidence presented at trial to support this argument. Plaintiff has failed to demonstrate that the trial court's findings clearly preponderate in the opposite direction.

Factor (h) requires the trial court to consider the home, school, and community record of the child. MCL 722.23(h). The trial court made its most extensive findings with respect to this factor, stating that "[t]he crux of this case revolved around the children, and more specifically [LM], and their home, school and community record." The court found that this factor favored defendant.

Plaintiff does not identify any specific objection with respect to the trial court's factual findings. Instead, she generally "objects to the findings in h that this factor favors father for the reasons stated above and below" without any additional analysis or citation to the record. This argument has been abandoned. See *Yee v Shiawassee Co Bd of Comm'rs,* 251 Mich App 379, 406; 651 NW2d 756 (2002).

Further, plaintiff's contention that LM's behavioral situation has "corrected itself through the love and consistency of both parents, and the passage of time" is contrary to the evidence that LM's behavior had, for the most part, not improved and that the mental health experts believed that consistency within one home during the school year could be the key to addressing LM's mental health issues. And, with regard to the recommendation that LM should reside with one parent during the school year, mental health experts testified that LM and his brother should reside with defendant. School personnel also testified that defendant offered more consistency to LM in terms of maintaining a consistent schedule, better communication, and in regard to following through with suggestions. Plaintiff has failed to demonstrate that the trial court's findings clearly preponderate in the opposite direction.

Factor (j) requires the court to consider the willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship. MCL 722.23(j). The trial court found that this factor favored neither party. The court noted that plaintiff wanted to participate in co-parenting classes and she testified that she "always tried to communicate and co-parent" and that her communication had gotten better. The court also noted that defendant testified that he responded to all of plaintiff's e-mails but that plaintiff did not respond to all of his. Further, the court noted that defendant testified that he always informed plaintiff of the children's activities, but that plaintiff failed to do the same and tried to exclude him from events. The court found that both parties were guilty of acting without thinking, and that neither parent was willing to continue or facilitate the relationship that exists between the children and the other parent.

Plaintiff argues that this factor should have favored her because she is dedicated to attending co-parenting counseling, whereas defendant has no desire to attend counseling. Defendant testified, however, that the parties had previously been ordered to participate in co-parenting counseling and had been dismissed from the class due to their inability to get along. Plaintiff also suggests that the trial court ignored the referee's concern "that if either parent were granted primary custody, it could irreparably damage the relationship the children have with the other parent." Contrary to plaintiff's suggestion, the trial court did consider the referee's recommendation when it determined that "[n]either party is willing to continue to facilitate the relationship that exists between the children and the other parent" and that this factor favored neither party. Further, the trial court's decision is not an abuse of discretion simply because it gave more weight to concerns about LM's need for consistency than it did to the referee's concerns that granting primary custody to one parent jeopardized the child's relationship with the noncustodial parent. See *Berger*, 277 Mich App at 712. Plaintiff has failed to demonstrate that the trial court's findings clearly preponderate in the opposite direction.

Factor (k) requires the trial court to consider domestic violence, regardless of whether the violence was directed against or witnessed by the child. MCL 722.23(k). The trial court found this factor to be equal because both parents were involved in an aggressive situation at school over an iPad, as well as an incident at a dentist's office that occurred after the referee hearing. Plaintiff argues that this factor should have weighed in her favor because defendant kicked her in front of LM while they attempted to take him to a doctor's appointment. Plaintiff has not shown that evidence on this allegation was presented below. Thus, not only is the argument abandoned, *Yee*, 251 Mich App at 406, but plaintiff has failed to demonstrate that the trial court's findings clearly preponderate in the opposite direction.

Factor (*l*) is a "catch-all" provision covering "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." MCL 722.23(*l*). This Court has previously held that matters as varied as one parent's ill treatment of the other, *Diez v Davey,* 307 Mich App 366, 394; 861 NW2d 323 (2014), and a parent's inability or unwillingness to understand how his inappropriate behavior was affecting the child, *McIntosh v McIntosh,* 282 Mich App 471, 482-483; 768 NW2d 325 (2009), are proper matters for a court's consideration under factor (*l*).

The trial court agreed with the referee with respect to factor (*l*) that the relationship between the parents had disintegrated to the point that it would be detrimental to the children to allow the situation to continue and that the court was "nearly obligated to choose one parent over the other to see if the stability benefits the children." Although the court found that this factor had the potential to favor either parent, due to the independent requests of each parent [with respect to physical custody], the court found that the factor favored defendant. The court's reference to the "independent requests" of the parties appears to be a reference to defendant's request for primary physical custody and plaintiff's request to maintain a joint physical custody arrangement but return to the previous 2-2-5 schedule, which would have meant more inconsistency in the children's day-to-day lives. In addition, the court noted defendant's failure to respond to plaintiff's requests for input regarding changing the children's health insurance, which plaintiff provided, and concluded that "[t]his portion of this factor weighs in favor of mother."

The court referred to the testimony of Kohn and Ruth to support its finding. Ruth testified regarding LM's confusion about which parent he would be with during the previous 2-2-5 schedule:

> It seemed when their custody was the split two or three days however that all worked prior, I would hear [LM] often ask, who's picking me up today because he wouldn't always know. Whereas I have not witnessed that with [LE] for example since their custody is week on/week off. I haven't noticed that. But I do recall [LM] used to always ask me, who's picking me up. Probably he didn't know whose day was whose.

Kohn testified extensively on the need for consistency for a child with ODD and a diagnosis of bipolar disorder. She recommended consistency with consequences for LM. Kohn testified that she saw positive effects from the medication LM was taking, including the ability to be calmer and address his anxiety and outbursts. Kohn agreed with Dr. Raval's opinion that LM would benefit from a more consistent living situation during the school year and, in Kohn's opinion, defendant provided more consistency.

Plaintiff argues that this factor should have favored her because she "was clearly seeking a return to a schedule in which [LM] showed no problems whatsoever," i.e., the 2-2-5 arrangement. However, the 2-2-5 schedule existed before LM was diagnosed with a psychiatric disorder, and plaintiff's argument ignores the expert testimony that placement with one parent would be better for him. The evidence clearly supported a finding that the current custodial arrangement was detrimental to LM and that a more stable and consistent custodial arrangement would be in his best interests. Although the trial court noted that either parent in isolation had the potential to provide a consistent environment, the court had to determine which parent would

provide a more consistent environment under the circumstances. And the circumstances showed that defendant offered more consistency for the children with regard to communication with mental health professionals and teachers, with regard to the children's school day routine, and with regard to following through on recommendations for LM. Plaintiff has failed to demonstrate that the trial court's findings clearly preponderate in the opposite direction.

3. CHANGING THE ESTABLISHED CUSTODIAL ENVIRONMENT

Plaintiff also argues that the trial court erred by finding clear and convincing evidence that a change of custody was in the best interests of the children. She contends that the trial court "could not meet this high legal hurdle [clear and convincing evidence] with the evidence presented, so the court sidestepped the law entirely . . . with no more legal or factual grounding than to see if the change would benefit the children."

Plaintiff's argument is without merit. Plaintiff has not demonstrated that any of the trial court's findings regarding the best-interest factors were against the great weight of the evidence. The trial court found four of the factors weighed in defendant's favor and that one factor weighed slightly in plaintiff's favor, with the remainder of the factors being equal or favoring neither party. Further, the court found, consistent with the expert testimony, that the best interests of the children required a more stable and consistent custodial arrangement. In light of the testimony about the severity of LM's behavior, LM's need for consistency, LE's onset of some of LM's behavioral problems, and the testimony that defendant offered the most consistent home, we cannot conclude that the trial court abused its discretion in awarding primary physical custody and sole legal custody to defendant. Although plaintiff takes issue with the weight given to certain factors and attempts to emphasize certain factors over others, a "trial court need not make its custody determination on the basis of a mathematical calculation and may assign differing weights to the various best-interest factors." *Berger*, 277 Mich App at 712.

4. INDIVIDUAL DETERMINATION

Lastly, plaintiff argues that the trial court erred by failing to make a separate determination as to the best interests of each child in this custody dispute. She argues that the court treated LE, "apparently for the convenience of the court, as if he did not exist separately from his troubled brother."

In *Wiechmann v Wiechmann*, 212 Mich App 436, 439; 538 NW2d 57 (1995), the trial court, finding "nothing sacred in the parties' insistence that the children be raise[d] together," decided that it was in the best interests of each child that the parties share legal custody of the children, with the plaintiff retaining custody of two of the children and the defendant retaining custody of two of the children. This Court opined as follows:

> This Court appreciates the importance of attempting to keep siblings together. The sibling bond and the potentially detrimental effects of physically severing that bond should be seriously considered in custody cases where the children likely have already experienced serious disruption in their lives as well as a sense of deep personal loss. Ultimately, however, it is the best interests of each individual child that will control the custody decision. MCL 722.25. "In any

> custody dispute, our overriding concern and the overwhelmingly predominant factor is the welfare of the child." *Heid v Aasulewski (After Remand)*, 209 Mich App 587, 595; 532 NW2d 205 (1995). We believe that in most cases it will be in the best interests of each child to keep brothers and sisters together. However, if keeping the children together is contrary to the best interests of an individual child, the best interests of that child will control. [*Id*. at 439-440.]

At the outset, our review of the trial court's opinion and order reveals no support for plaintiff's assertion that the trial court simply ignored LE. And, there was no evidence to support a finding that it would be contrary to LE's best interests to keep the children together. The trial court realized that the abundance of the evidence focused on LM's behavior, but the court carefully considered each of the best-interest factors in determining that a change of custody was in the best interests of *the children*. In this regard, the court expressly noted testimony regarding the concerns of both parties, as LE was watching the demeanor of LM. Plaintiff's contention that LE "has experienced no behavioral changes" is contrary to Ruth's testimony that she could see LE's behavior "going down [the same] road [as LM's]." Plaintiff has failed to demonstrate that the trial court abused its discretion.

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Jane M. Beckering