

STATE OF MICHIGAN
COURT OF APPEALS

KATRINA LYNN PEPIN,

Plaintiff/Counter Defendant-
Appellee,

v

WAYNE FRANCIS PEPIN,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED
January 12, 2012

No. 305245
Delta Circuit Court
LC No. 10-020672-DM

Before: HOEKSTRA, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by right a judgment of divorce. We affirm in part, and remand in part.

Defendant first argues that the trial court erred in its findings of fact under MCL 722.23(c), (h), and (k), and thus erred in granting sole legal custody of the parties' minor child to plaintiff. In child custody determinations, "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 . . ." MCL 722.28. "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). The trial court must explicitly state its findings regarding each custody factor. *Foskett v Foskett*, 247 Mich App 1, 9; 634 NW2d 363 (2001). But the trial court need not comment on every bit of evidence, nor accept or reject every proposition the parties present. *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 899 (1994); *Baker v Baker*, 411 Mich 567, 583; 309 NW2d 532 (1981); MCR 2.517(A)(2).

Defendant argues that the trial court did not consider certain evidence defendant presented in regard to his financial support of his son, his involvement in his son's schooling, and domestic violence on the part of plaintiff. See MCL 722.23(c), (h), and (k). Defendant bases these arguments on the fact that the trial court did not address this evidence in its ruling. However, as noted above the trial court must explicitly state its findings as to each custody factor, but need not comment on every matter in evidence. Just because the trial court did not address certain evidence defendant presented does not mean it went unconsidered. After reviewing the record and findings below, we conclude that the trial court's findings of fact were not against the great weight of the evidence, and that the court sufficiently explained those

findings as required by law. Thus, we affirm the trial court's findings as to custody factors MCL 722.23(c), (h), and (k), as is its custody determination.

Defendant next argues that the trial court erred by failing to make a finding of fact as to a sum of money plaintiff withdrew from a savings account. A trial court's findings of fact in matters other than custody are reviewed for clear error. *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake was made." *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990). We accord deference to the trial court's special opportunity to determine the credibility of witnesses who appeared before it. MCR 2.613(C); *Woodington*, 288 Mich App at 355.

Plaintiff and defendant purchased an annuity with an initial investment of \$30,000. There was conflicting testimony as to the source of that \$30,000. Plaintiff testified that the funds came from \$28,138.38 she had withdrawn from a savings account over a year earlier. Defendant testified that the funds came from an inheritance he received. The trial court determined that the initial investment had come from defendant's inheritance. Giving the proper deference to the trial court's superior position to judge witness credibility, we must agree with this determination.

However, it is undisputed that plaintiff also withdrew \$28,138.38 from a savings account in 2006, converted the money into cash, and held it in a safe deposit box for at least one year. In its ruling, the trial court stated that it had "no idea what might have happened" to these funds. This is not a sufficient finding of fact. As we have stated:

An appellate court's primary function in regard to fact finding is review of the trial court's record and determination whether that record supports the trial court's findings. It is not the function of an appellate court to decide disputed questions of fact in the first instance Clear and complete findings by the trial judge are essential to enable us to properly exercise and not exceed our powers of review. [*Nicpon v Nicpon*, 9 Mich App 373, 377-378; 157 NW2d 464 (1968).]

Had the trial court stated that it found the funds to have been spent, in the possession of plaintiff, or offered another explanation, we would likely defer to the trial court's judgment. However, no such determination was made, and the sum is substantial, especially in light of the overall amount of marital property. We therefore remand this issue to the circuit court for findings of fact regarding the \$28,138.38 plaintiff withdrew from the savings account. As this finding could substantially alter the value of the marital estate, a modification of the marital property allocation in the judgment of divorce may be necessary.

We affirm the trial court's custody determination but remand to the trial court for supplemental proceedings regarding the missing \$28,138.38, and possible modification of the judgment of divorce. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Stephen L. Borrello