STATE OF MICHIGAN

COURT OF APPEALS

ROBERT WATROUS, Plaintiff-Appellee,	UNPUBLISHED September 6, 2012
v	No. 306744 Ionia Circuit Court
JESSICA WATROUS, Defendant-Appellant.	LC No. 2009-027274-DM

AFTER REMAND

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

This case returns to this Court after remand to the trial court. Before remand, defendant appealed the trial court's grant of primary physical custody of the parties' two children to plaintiff and joint legal custody to both parties in their judgment of divorce. We affirmed the trial court's grant of primary physical custody to plaintiff, but remanded to the trial court on the issue of joint legal custody for the trial court to make specific findings with respect to the ability of the parties to cooperate and generally agree concerning important decisions affecting the welfare of the children under MCL 722.26a(1)(b). On remand, the trial court made those findings and we now affirm the trial court's grant of joint legal custody.

This Court reviews the trial court's findings of fact for clear error, and questions of law de novo. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed...." *In re BZ*, 264 Mich App 286, 296–297; 690 NW2d 505 (2004).

"Joint custody" means, for the purposes of MCL 722.26a, an order of the court in which one or both of the following is specified:

> (a) That the child shall reside alternately for specific periods with each of the parents.
>
> (b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child. [MCL 722.26a(7)].

The parties' ability to cooperate is only one factor for the court to consider in its decision to grant or deny joint custody. *Nielsen v Nielsen*, 163 Mich App 430; 415 NW2d 6 (1987). MCL 722.26a(1)(b) requires the Court to make findings of fact as to the ability of the parties to cooperate and generally agree concerning important decisions affecting the welfare of the children. After having decided whether joint custody is in a child's best interest, a trial court is required to consider "[w]hether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." MCL 722.26a(1)(b). Joint custody is typically not appropriate where the record reflects that the parties would not be able to cooperate and generally agree concerning important decisions affecting the welfare of the children. *Wright v Wright*, 279 Mich App 291;761 NW2d 443 (2008).

This Court has previously indicated in *Fisher v Fisher*, 118 Mich App 227, 232–233, 324 NW2d 582 (1982) (citations omitted):

> In order for joint custody to work, parents must be able to agree with each other on basic issues in child rearing—including health care, religion, education, day to day decision-making and discipline—and they must be willing to cooperate with each other in joint decision-making. If two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children. The establishment of the right to custody in one parent does not constitute a determination of the unfitness of the noncustodial parent but is rather the result of the court's considered evaluation of several diverse factors relevant to the best interests of the children.

The question is whether the parents can cooperate on child-rearing issues; not whether the parents necessarily get along. *Shulick v Richards*, 273 Mich App 320, 729 NW2d 533 (2006). *In Nielsen*, 163 Mich App at 434, this Court held that despite the parties harboring some personal animosity and having some disputes about custody times, the trial court did not err when it awarded the parties joint legal and physical custody because the parties were able to cooperate and reach compromises for the best interests of their children.

Here, the trial court found that the parties could cooperate with one another. It stated:

> This is evidenced by the effective co-parenting the parties did of their children when the Plaintiff moved to Oklahoma to be near the Defendant and the children when they lived separately. During that time even though the parties continued to be in a relationship of sorts and did some things together as a family, without court involvement they each had separate residences and they cooperated with each other to coordinate the children's time between them. In addition, the Plaintiff has recognized his children's need to stay connected to their mother and has facilitated for them several telephone calls to her each week following their separation.
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> * * *

> To assist this Court with this determination as to whether the parties will be able to effectively co-parent their children, the Court inquired of the parenting time facilitation division of the Office of the Friend of the Court whether it has continued to be involved or its services sought by the parties to facilitate resolution of matters involving parenting time. The Court was advised that other than some initial involvement as to co-parenting arrangements, that office has not had any communication from either party.

The parties have shown that they have the ability to effectively communicate regarding their children. The trial court noted that after the initial tension surrounding the case, the parties have settled down and appear to be cooperative. These findings of fact have not left us with a "definite and firm conviction that a mistake has been committed...." *In re BZ*, 264 Mich App at 296–297.

Affirmed.

/s/ Jane E. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause