

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL WALTER SANDEL,

Plaintiff/Counter Defendant-
Appellee,

v

ANGELA SHINING WATER EAGLE f/k/a
ANGELA LYNN SANDEL,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED
July 17, 2012

No. 306994
Manistee Circuit Court
Family Division
LC No. 03-011040-DM

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting sole legal and physical custody of the parties' two minor children to plaintiff. Because we conclude that the trial court's factual determinations regarding proper cause or change of circumstances to warrant a custody hearing and regarding the statutory best interest factors were not against the great weight of the evidence, we affirm.

The parties were married in 1995 and had two minor children. They were divorced in 2004, and were granted joint legal custody of the children, with defendant having primary physical custody. Plaintiff was granted parenting time every other weekend from Friday after school until Monday morning when school resumed. In 2006, plaintiff's parenting time was amended to be every other weekend from Friday after school until Tuesday morning when school started.

In 2008, Child Protective Services (CPS) filed an ex parte motion to suspend plaintiff's parenting time based on allegations that plaintiff was sexually abusing the children. The motion was granted, but was set aside in July 2009, and parenting time was reinstated. On July 31, 2009, defendant filed an ex parte motion requesting plaintiff's parenting time be terminated once again, and the trial court granted the motion on August 5, 2009. In March 2010, defendant filed another complaint with CPS alleging that plaintiff sexually abused the children. Neither CPS complaint against plaintiff was ever substantiated.

In September 2010, plaintiff moved for a change in custody based largely on the continued and unsubstantiated allegations of sexual abuse. Following four days of hearings on custody, the hearing referee issued a report and recommendation finding that plaintiff should be granted sole legal and sole physical custody of both minor children. It was further recommended that defendant's parenting time be suspended until further order and until after she engaged in counseling to address her suspected Munchausen syndrome by proxy.¹ The trial court adopted the referee's report and entered the recommended order. Defendant timely objected to the report and recommendation, and the trial court held a de novo hearing. During the hearing, the parties agreed that there would be no new evidence admitted and the trial court would review only what was available at the initial custody hearing. After the hearing, the trial court awarded plaintiff sole legal and physical custody of the minor children. Defendant's parenting time was suspended until further order.

I. STANDARDS OF REVIEW

We must affirm all custody orders on appeal unless the trial court's findings were against the great weight of the evidence, the trial court committed an abuse of discretion, or the trial court clearly erred on major legal issue. MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). Whether proper cause or a change in circumstance has been established is a factual question. On review we give deference to the trial court's findings unless "the trial court's findings clearly preponderate in the opposite direction." *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009) (internal quotation marks and citation omitted). A court's discretionary ruling as to which party custody is granted is reviewed for an abuse of discretion. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). "An 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." *Id.* Finally questions of law are reviewed for clear legal error. *Id.* at 706.

II. PROPER CAUSE OR CHANGE IN CIRCUMSTANCES

Defendant first argues that the trial court erred in determining there was proper cause or a change in circumstances that justified continuing with the custody hearing, and ultimately the change in custody.

Before amending or modifying a custody award, proper cause or a change in circumstances must be demonstrated. MCL 722.27(1)(c); *Parent v Parent*, 282 Mich App 152, 154; 762 NW2d 553 (2009). In order to establish proper cause, the existence of grounds justifying legal action must be demonstrated by a preponderance of the evidence. *Vodvarka v Grasmeyer*, 259 Mich App 499, 512; 675 NW2d 847 (2003). "The appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being." *Id.* To establish a change in

¹ Munchausen syndrome by proxy is a term used to describe a behavior pattern in which a caregiver deliberately exaggerates, fabricates, or induces physical, psychological, behavioral, or mental health problems in those who are in their care.

circumstances, “the movant 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. Only after proper cause or a change in circumstances has been established may a trial court reevaluate the statutory best-interest factors. *Id.* at 512, 514.

Defendant specifically argues that the fact that plaintiff did not receive some medical records or similar material does not have “significant effect” on the children’s lives, and accordingly does not constitute proper cause. Defendant also maintains that plaintiff failed to demonstrate any change in circumstances, and that plaintiff’s claim that defendant had mental issues should be considered preexisting and not a new development since the original custody order.

Defendant fails to recognize the fact that the trial court also indicated that proper cause existed because the evidence demonstrated that defendant either coached the two minor children so that the children would make up stories of sexual abuse perpetrated by plaintiff or fostered stories concocted by the children.

Frank Langer, M.S.W., Ph.D, testified that he was ordered by the trial court to complete a custody evaluation, which is a combined psychological evaluation of the parties and the children. Langer concluded that the sexual and physical abuse allegations appeared to be fabricated. Langer testified that neither child demonstrated the trauma markers that would be expected in a case with such severe alleged sexual and physical abuse. Langer testified that it appeared defendant was attempting to seriously undermine plaintiff’s relationship with the children. There was also testimony that CPS, the prosecutor, and the police had decided that the allegations from 2008 and March 2010 could not be substantiated. Plaintiff also testified at the custody hearing, and denied the allegations of child abuse.

Based on the evidence, the trial court’s determination that defendant was either coaching or fostering the allegations of sexual abuse was not against the great weight of the evidence. *Corporan*, 282 Mich App at 605. Moreover, the trial court’s finding that defendant was either coaching or fostering the sexual abuse allegations was proper cause to revisit the custody arrangement because defendant’s actions significantly impacted the children’s lives, and undermined their relationship with plaintiff. See *Vodvarka*, 259 Mich App at 512. Langer testified that “based on the psychological evidence, [plaintiff] does not appear to . . . be abusive as has been alleged, that these allegations of abuse, you know, have been damaging to the children and that constitutes a form of psychological child abuse, and that the children should be protected from further such abuse by being placed with [plaintiff].” Therefore, the trial court’s determination that there was proper cause to revisit the custody arrangement was not error.

III. BEST INTERESTS

Defendant also argues that the trial court erred in determining that a change of custody was in the best interests of the children. Defendant argues that the trial court ignored evidence relevant to each factor and instead focused solely on whether defendant coached the children regarding the allegations of sexual abuse or fostered the allegations.

The Child Custody Act, MCL 722.21 *et seq.*, promotes the best interests of the child and is used to govern custody disputes. *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004). Based on the act, the trial court is obligated to consider the best-interest factors laid out in MCL 722.23 when resolving custody disputes. MCL 722.23 provides:

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.

When evaluating the best-interest factors, the trial has discretion in determining what weight to give each factor. *Kessler v Kessler*, 295 Mich App 54, 64; 811 NW2d 39 (2011). On appeal, we defer to the trial court’s credibility determinations because of the trial court’s superior position to judge such matters. *Id.*; *Fletcher v Fletcher*, 229 Mich App 19, 25; 581 NW2d 11

(1998). The parties do not dispute that an established custodial environment existed with defendant. When an established custodial environment exists, clear and convincing evidence that a change in custody is in the best interests of the children is required. *Pierron*, 486 Mich at 86.

In this case, the trial court evaluated the statutory best-interest factors and concluded that factors (b), (c), (d), (f), (g), and (j) favored plaintiff, factors (a), (e), and (k) favored defendant, and factor (h) favored neither party. The trial court did not indicate which party factor (i) favored, stating only that it “has considered the preference of the children.” In regard to factor (l), the trial court noted that plaintiff had arranged for counseling in the event that he obtained custody. The trial court also noted that the evidence clearly demonstrated that defendant either coached the children regarding the fabrication of stories of sexual abuse perpetrated upon them by plaintiff or fostered any stories concocted by the children regarding the alleged and unsubstantiated sexual abuse.

The trial court’s conclusion that defendant either coached the children into fabricating allegations of sexual abuse or fostered the children’s fabrications of sexual abuse after it became clear those allegations had no basis in fact was central to its weighing of most of the best-interest factors. Defendant challenges the trial court’s determinations regarding the weight of each factor found to be in favor of plaintiff based largely on her theory that the trial court’s focus on the coaching or fostering ignored additional more relevant evidence that required finding the factors in favor of defendant. However, the trial court does not need to consider every piece of evidence presented or every argument made when making its determination on each factor, nor does a trial court’s failure to discuss every piece of evidence suggest that any evidence was overlooked. *Kessler*, 295 Mich App at 65. Moreover, a review of the record and the trial court’s detailed findings demonstrates that the trial court did not fail to consider other relevant evidence; rather, it merely found defendant’s behavior regarding the coaching or fostering determinative in regard to many of the best-interest factors in light of the evidentiary record.

In finding that (a) favored defendant, the trial court noted that the children’s attachment to defendant was based on the fact that plaintiff’s parenting time was largely suspended since 2008,² and defendant has had very little contact with the children since that time. The trial court found that while factor (a) favors defendant, the children’s strong ties to defendant were likely formulated because defendant improperly withheld parenting time from plaintiff by bringing false accusations of sexual abuse.

In regard to factor (b), the trial court focused on defendant’s inability to provide guidance to the children in light of the apparent coaching or fostering regarding the abuse allegations. In regard to factor (c), the trial court focused on the mental health concerns arising from defendant’s coaching or fostering of the sexual abuse fabrications and concluded that defendant was unable to provide appropriate medical care for the children. In regard to factor (d), the trial

² An ex parte order suspending plaintiff’s parenting time was entered in April 2008, parenting time was briefly reinstated and then another order suspending plaintiff’s parenting time was entered on August 5, 2009.

court found that the children's home environment was unstable based on defendant's coaching or fostering of the sexual abuse allegations because the children's mental wellbeing was being jeopardized. In regard to factor (f), the trial court noted defendant's 2007 conviction for operating while impaired, and lewd photographs of defendant that were available online and viewed by the children in addition to the fact that it believed the evidence demonstrated that defendant coached or fostered the false sexual abuse allegations to support its conclusion that factor (f) favored plaintiff. In regard to factor (g), the trial court found that neither party had physical health problems, but defendant's questionable mental health tipped the factor in favor of plaintiff. In regard to factor (j), the trial court found it favored plaintiff because defendant intentionally undermined the relationship between plaintiff and defendant by coaching or fostering the sexual abuse allegations.

We conclude that the trial court's determinations regarding the weight of the best-interest factors were not against the great weight of the evidence. The weight of the evidence supported the trial court's conclusion that the accusations of sexual abuse had no factual support. A Child Protective Services employee involved in the investigation testified that the 2008 and 2010 allegations of sexual abuse were never substantiated, and that as the 2010 investigation became more involved, defendant's accusations of sexual abuse became "bizarre." Defendant claimed that there was a witness to the sexual abuse, but when the alleged witness was confronted he denied witnessing anything. Additionally, defendant claimed that plaintiff also sexually assaulted the two daughters of another woman who plaintiff was living with; however, the daughters denied that any sexual abuse or inappropriate behavior ever occurred. Further, a letter was introduced into evidence from an assistant prosecuting attorney stating that the prosecutor believed the children's stories were concocted and that the defendant had been coaching the children. Moreover, the evidence demonstrated that defendant was counselor-shopping whereby she would take the children to a new counselor whenever an individual counselor expressed doubt regarding the sexual abuse allegations. Based on this record, we cannot conclude that the trial court's factual determinations were against the great weight of the evidence, or that its ultimate decision regarding custody was an abuse of discretion.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck