

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN GREENHOE,

Plaintiff-Appellee,

v

ANGELA SLATER,

Defendant-Appellant.

UNPUBLISHED

July 26, 2012

No. 308716

Ingham Circuit Court

LC No. 99-008672-DC

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

In this child-custody case, defendant appeals the order of the circuit court modifying the custody arrangement between the parties concerning their minor daughter. We reverse and remand for a new child custody hearing.

I. FACTS

The parties entered into a custody arrangement in February, 2001 which provided the parties with joint physical and legal custody of their daughter, who was born in 1998. On October 2, 2011, plaintiff requested a change, seeking sole legal and primary physical custody for himself. In the motion, plaintiff alleged that Child Protective Services (CPS) had alerted him to allegations of physical abuse of the child by defendant, that defendant's home had been officially tagged as unsafe, and that defendant was residing with her abusive boyfriend, against whom she had obtained a personal protection order, but which she did not enforce.

The matter was then referred to the friend of the court, who recommended that joint legal and physical custody be maintained, but that defendant's parenting time be limited and supervised. Defendant objected to the proposal, and a hearing was held, following which the trial court found that plaintiff had established by clear and convincing evidence that the friend of the court recommendation was appropriate. The court expressed concern over defendant's ability to maintain a suitable living environment, specifying the presence of domestic violence in defendant's home and the amount of prescription medications she was using. The trial court noted that the limitations on defendant's parenting time might be temporary if defendant complied with the various recommendations of the friend of the court and CPS.

This appeal followed.

II. STANDARDS OF REVIEW

Three standards of review apply to child custody cases. *LaFleche v Ybarra*, 242 Mich App 692; 619 NW2d 738 (2000). The great weight of the evidence standard applies to all findings of fact. *Id.* at 740. An abuse of discretion standard applies to the trial court's discretionary rulings, including its custody decisions. *Id.* at 741. Finally, a trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law. *Id.*

III. ANALYSIS

Defendant argues that the trial court did not satisfy its duty to articulate specific findings concerning each of the statutory best-interest factors. See *In re AP*, 283 Mich App 574, 605; 770 NW2d 403 (2009). We agree that the trial court failed to make the requisite findings with regard to some of the statutory factors when rendering its oral opinion.

The child's best interests are evaluated under factors set forth in MCL 722.23:

(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.

The trial court specifically made findings and conclusions about factors (c), (g), and (k). However, the trial court admitted on the record that it failed to make findings and conclusions addressing the remainder of the factors. A trial court *must* render factual findings and conclusions with regard to *each* best interest factor, or at least render a finding regarding its applicability. *Parent v Parent*, 282 Mich App 152, 156–157; 762 NW2d 553 (2009). However, a trial court need not “comment upon every matter in evidence or declare acceptance or rejection of every proposition argued,” *Baker v Baker*, 411 Mich 567, 583; 309 NW2d 532 (1981). The record must be sufficient for this Court to determine whether the evidence clearly preponderates against the court's findings. *Rittershaus v Rittershaus*, 273 Mich App 462, 475; 730 NW2d 262 (2007). The remedy when a trial court fails to make reviewable findings on the record, as the trial court failed to do here, is a remand for a new child custody hearing. *Id.*

Because we remand for further proceedings, we decline to address defendant’s additional arguments that the trial court erred by: 1) modifying the parties’ custody arrangement, where there was not clear and convincing evidence that such a change was in the best interests of the child; 2) relying on the testimony of the CPS worker without providing written copies of his reports to the parties; 3) failing to interview the child despite defendant’s request that the trial court do so; 4) denying defendant her right to a jury trial by ordering custody to be modified rather than maintaining the status quo and opening the door for CPS to file an abuse and neglect petition; 5) construing certain hearsay evidence against defendant solely on the basis of defendant’s having objected to its admission; 6) refusing to consider an independent psychological evaluation offered by defendant, without stating the reasons why it considered the evaluating psychologist to lack credibility. Given that the trial court is required to hold a new child custody hearing, these issues are now moot.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Donald S. Owens