THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Robert Lester, Jr., Respondent,

v.

Marco and Timea Sanchez and Eva Sanchez, Defendants,

Of whom Marco and Timea Sanchez are the Appellants.

In the interest of a minor under the age of eighteen.

Appellate Case No. 2015-000027

Appeal From York County
Wayne M. Creech, Family Court Judge

Unpublished Opinion No. 2017-UP-241
Submitted March 1, 2017 – Filed June 14, 2017

AFFIRMED

Thomas Franklin McDow, IV, and Erin K. Urquhart, both of McDow and Urquhart, LLC, of Rock Hill, for Appellants.

Joshua Brian Mitchell, of Rock Hill, for Respondent.

James Wilson Tucker, Jr., of Rock Hill, as Guardian ad Litem.

PER CURIAM: Marco and Timea Sanchez (Grandparents) appeal the family court's order awarding custody of a six-year-old girl (Child) to Robert Lester, Jr. (Father). On appeal, Grandparents argue the family court erred in (1) not finding they were Child's psychological parents or de facto custodians, (2) finding Father and Shelia Hartsell credible, (3) considering Grandparents' affair when determining whether they should be awarded custody of Child, (4) finding custody with Father would be in Child's best interest, (5) giving undue weight to Grandparents' move from Rock Hill to Hilton Head, and (6) awarding Guardian ad Litem (GAL) fees in excess of the cap previously set by the family court. We affirm.

On appeal from the family court, this court reviews factual and legal issues de novo. *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011); *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). Although this court reviews the family court's findings de novo, we are not required to ignore the fact the family court, which saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. *Lewis*, 392 S.C. at 385, 709 S.E.2d at 651-52.

Contrary to Grandparents' assertion, we find psychological parents are not on equal footing with parents in a custody dispute. In *Middleton v. Johnson*, this court adopted a test for determining whether a person is a psychological parent. 369 S.C. 585, 596-97, 633 S.E.2d 162, 168 (Ct. App. 2006). In *Marquez v. Caudill*, our supreme court approved the *Middleton* test, determined a stepfather was the child's psychological parent, and awarded custody to the stepfather instead of the child's grandmother. 376 S.C. 229, 244-45, 656 S.E.2d 737, 744-45 (2008). In doing so, our supreme court cautioned, "It must be remembered that this is a custody action between a stepfather and a grandmother. A biological parent is not involved; and therefore, there is no reason to recognize the superior rights of a natural parent in this case." *Id*. at 245, 656 S.E.2d at 745. Based on this cautionary language, we find our supreme court did not intend the psychological parent doctrine to overrule the "rebuttable presumption that it is in the best interest of any child to be in the custody of its biological parent." *Moore v. Moore*, 300 S.C. 75, 78-79, 386 S.E.2d 456, 458 (1989). Because psychological parents are not on equal footing with biological parents, we need not decide whether the family court erred in not finding Grandparents were Child's psychological parents. *See McCall v. Farley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("[W]hatever doesn't make a difference, doesn't matter.").

Further, we find de facto custodians are not on equal footing with biological parents in a custody dispute.[1] The de facto custodian statute provides, "The family court may grant visitation or custody of a child to the de facto custodian if it finds by clear and convincing evidence that the child's natural parents are unfit or that other compelling circumstances exist." S.C. Code Ann. § 63-15-60(C) (2010). This language does not negate the rebuttable presumption that it is in a child's best interest to be in the custody of a biological parent or suggest de facto custodians are on equal footing with biological parents. Thus, it is unnecessary to determine whether the family court erred in not finding Grandparents were Child's de facto custodians.

Under the test set forth in *Moore*, we find the family court properly determined custody with Father was in Child's best interest. First, the evidence showed Father was fit. *See Moore*, 300 S.C. at 79, 386 S.E.2d at 458 (providing the first factor a court should consider when a biological parent seeks to regain custody from a third party is whether the biological parent is fit and "able to properly care for the child and provide a good home"). Father's mother and aunt testified Father had matured considerably, and even Timea admitted Father "got better" after his other child was born. The evidence showed Father earned $10 per hour and worked forty to sixty hours per week, maintained a clean and suitable home where he had resided for three years, and provided for his other child. We find the foregoing established Father was fit to have custody of Child.

Next, we find Father maintained regular visitation with Child and supported her regularly. *See id*. (providing the second factor a court should consider is the amount of contact the parent maintained with the child). Although the record contains conflicting evidence about Father's visitation prior to Child's second birthday, Grandparents acknowledged Father visited regularly thereafter. Further, Father provided child support after the family court ordered it, and Marco

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[1] We find Grandparents' argument regarding the de facto custodian statute is not preserved. Although Grandparents generally asserted in their motion to reconsider and at the reconsideration hearing that Father "put into motion the events that led to [G]randparents becoming de facto and psychological parents," the record contains no evidence showing they raised the statute or argued the statutory factors to the family court. Nonetheless, we will address this argument because it impacts a minor child. *See Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 107, 536 S.E.2d 372, 374 (2000) ("[P]rocedural rules are subservient to the court's duty to zealously guard the rights of minors.").

acknowledged he refused Father's offers of support before that time. We find the foregoing showed Father maintained contact with Child.

Third, we find the circumstances under which Grandparents obtained custody showed Father was reasonable in allowing them to care for Child at the time. *See id*. (providing the third factor a court should consider is "[t]he circumstances under which temporary relinquishment occurred"). Father was a teenager when Child was born, and Marco obtained legal custody of Child during Mother's juvenile delinquency action. Marco admitted Father was not aware of the prior order awarding Marco custody until around the time Father filed the underlying custody action. Marco also admitted he told Father he did not want to parent Child but would support her until Father became stable. Based on Father's young age, we find it was reasonable for Father to accept Marco's offer to care for Child while Father obtained an education. We further find the parties' initial agreement was thwarted by Grandparents' desire to move to Florida—a decision Father had no role in making. Overall, we find Father's young age at the time of Child's birth and his need to obtain an education made it reasonable for Father to allow Child to remain in Grandparents' custody prior to filing this custody action.

Fourth, although Child was bonded to Grandparents, we find Child's attachment to Grandparents did not override the presumption that it was in Child's best interest to be in Father's custody. *See id*. at 80, 386 S.E.2d at 458 (providing the fourth factor a court should consider is "[t]he degree of attachment between the child and the temporary custodian"); *id*. at 79, 386 S.E.2d at 458 ("[T]here is a rebuttable presumption that it is in the best interest of any child to be in the custody of its biological parent."). Child knew Father was her biological father, and Child had a relationship with Father and his family. Father began regularly visiting Child when she was one-and-a-half to two years old. Father was a teenager when Child was born, but the testimony showed he had established a stable and adequate home and could provide for Child by the time of the final hearing. Further, Child had extensive family in Rock Hill, where Father lived, whereas she did not have extended family in Hilton Head; even Timea admitted Child needed her extended family. Based on the *Moore* factors, we find Grandparents did not overcome the rebuttable presumption that custody with Father was in Child's best interest.[2]

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[2] We decline to address Grandparents' remaining arguments regarding custody. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address remaining issues when a prior issue is dispositive).

Finally, we find Grandparents' argument regarding the GAL fee is not preserved because the argument raised in the motion to reconsider was not sufficient to put the argument before the court. *See Buist v. Buist*, 410 S.C. 569, 574-75, 766 S.E.2d 381, 383-84 (2014) ("While 'a party is not required to use the exact name of a legal doctrine in order to preserve the issue,' the party nonetheless must be sufficiently clear in framing his objection so as to draw the court's attention to the precise nature of the alleged error." (quoting *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011))). Although the record indicates the motion for reconsideration was the first opportunity Grandparents had to raise this issue, Grandparents were not "sufficiently clear in framing [their] objection so as to draw the court's attention to the precise nature of the alleged error." *Id.* at 575, 766 S.E.2d at 383-84. In their motion, Grandparents simply stated, "The [p]retrial order . . . raised the cap on the guardian's fee to $7,500." The record contains no indication Grandparents further argued this issue during the reconsideration hearing. Thus, although the motion for reconsideration was the first opportunity Grandparents had to raise this argument, they did not sufficiently raise it in their motion, and it is therefore not preserved. *See id.* at 575, 766 S.E.2d at 384 ("If the party is not reasonably clear in his objection to the perceived error, he waives his right to challenge the erroneous ruling on appeal.").

AFFIRMED.[3]

WILLIAMS and KONDUROS, JJ., and LEE, A.J., concur.

[3] We decide this case without oral argument pursuant to Rule 215, SCACR.