STATE OF MICHIGAN

COURT OF APPEALS

MARY C. LORENZETTI,

Plaintiff-Appellee,

v

DANIEL LORENZETTI,

Defendant-Appellant.

UNPUBLISHED
August 9, 1996

No. 179356
LC No. 92-000466

Before: Reilly, P.J., and Cavanagh and R.C. Anderson,* JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce which awards custody of the parties' minor child, Rebecca, to plaintiff, divides the marital assets, and awards alimony to plaintiff. We affirm.

I

Defendant contends that the trial court erred in awarding custody of Rebecca to plaintiff. In reviewing custody cases, appellate courts must apply three different standards of review to three distinct types of findings. Findings of fact are reviewed under the great weight standard; discretionary rulings are reviewed for an abuse of discretion; and questions of law are reviewed for clear legal error. *Fletcher v Fletcher*, 447 Mich 871, 877; 526 NW2d 889 (1994); *Hayes v Hayes*, 209 Mich App 385, 389; 532 NW2d 190 (1995). A trial court's findings on each of the statutory best-interest factors should be affirmed unless the evidence clearly preponderates in the opposite direction. *Fletcher*, *supra* at 879.

If an established custodial environment exists, clear and convincing evidence must be presented to support a change in custody. The determination whether an established custodial environment exists is a question of fact for the trial court and is resolved on the basis of statutory criteria. *Hayes*, *supra* at 387-388.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant argues that because custody was disputed throughout the divorce proceedings, the trial court erred in finding that an established custodial relationship existed. However, in determining whether an established custodial relationship exists, the focus of the analysis is on the circumstances surrounding the care of the child during the time preceding the trial, and not the reasons behind the existence of the custodial environment. *Id*. at 388. Accordingly, defendant's argument is without merit.

Defendant also contends that the trial court erred in its evaluation of many of the statutory best-interest factors. We conclude that defendant has not clearly and convincingly demonstrated that these factors favor him rather than plaintiff or neither party.

With regard to factor c, we find no clear error in the trial court's finding that both parties could provide Rebecca's material needs. The trial court properly determined that it could equalize the parties' incomes by a child support order. *Dempsey v Dempsey*, 96 Mich App 276, 290; 292 NW2d 549, modified as to remedy 409 Mich 495 (1980). Despite plaintiff's agoraphobia, she is able to go to the grocery store, take Rebecca to the doctor, engage in activities, and travel an hour from her home.

Defendant argues that the trial court erred in finding that factor e did not weigh in favor of either party. We disagree. Plaintiff lived in the marital home and visited her relatives often. Plaintiff's plans to remarry were not definite. The trial court's finding that the fact that plaintiff filed for divorce established her independence is not clearly erroneous.

The trial court's finding on factor f is not clearly erroneous. Factor f relates to a person's moral fitness *as a parent*. *Fletcher*, *supra* at 886. Defendant argues that plaintiff had an extramarital relationship, but presented no evidence, and does not even argue, that the alleged affair had any effect on plaintiff's fitness as a parent.

Defendant argues that due to plaintiff's agoraphobia, history of alcoholism, and endometriosis, the trial court should have weighed factor g in his favor. However, Dr. Simms testified that plaintiff has been able to effectively address some of the problems associated with her agoraphobia, and Mary Ann Gogoleski testified that an agoraphobic could be an excellent parent. The trial court concluded that any disability to plaintiff was more than offset by defendant's prior manipulative behavior and poor self-control. In addition, the parties stipulated that plaintiff no longer had a problem with alcohol. Moreover, the trial court found that although plaintiff does suffer from endometriosis, there was no evidence that her condition would prevent her from leading a normal life. Defendant has not shown that the trial court's findings were clearly erroneous.

Defendant also argues that factor j favored him. However, the trial court specifically found that although plaintiff had denied defendant visitation in the past, she had indicated a willingness to encourage and facilitate visitation. This finding was supported by plaintiff's testimony at the evidentiary hearing. Accordingly, the trial court's finding on this factor is not clearly erroneous.

Defendant next contends that the trial court's finding under factor k was erroneous because the court gave improper emphasis to plaintiff's unsupported testimony. However, this Court defers to the

trial court's superior position for weighing evidence and assessing credibility. *Fletcher*, *supra* at 889-890.

Finally, defendant contends that the trial court should have considered the effect of separating Rebecca and the parties' son under factor l. However, Christopher Sermo, the Friend of the Court investigator, and Dr. Simms both recommended that the children be separated because it would be in Rebecca's best interest to be with plaintiff and the son's best interest to be with defendant. While in general it will be in the best interests of each child to keep siblings together, where keeping them together is not in the best interest of an individual child, the best interest of that child will control. *Wiechmann v Wiechmann*, 212 Mich App 436, 440; 538 NW2d 57 (1995). In light of the opinions of Sermo and Simms, we cannot find that the trial court's failure to specifically consider the effect of separating the children constitutes error requiring reversal.

II

Defendant next contends that the division of property was inequitable. In reviewing a dispositional ruling in a divorce case, we first review the trial court's findings of fact for clear error and then decide whether the dispositional ruling was fair and equitable in light of all the facts. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). A factual finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made. *Mitchell v Mitchell*, 198 Mich App 393, 396; 499 NW2d 386 (1993).

Defendant argues that the trial court improperly awarded plaintiff approximately $44,000[1] as part of an inheritance. The decision whether to include inheritance as part of the valuation of marital assets is discretionary and dependent upon the particular circumstances of the case. *Demman v Demman*, 195 Mich App 109, 112; 489 NW2d 161 (1992). However, because in the present case both parties were credited with the portion of their inheritances which were easily traceable, the trial court did not abuse its discretion.

Defendant contends that the trial court awarded plaintiff $40,000 in personal property. However, the trial court did not assign a value to the parties' personal property, and there is no evidence in the record that such a valuation was ever made.[2] By failing to raise this issue in the trial court, defendant has effectively waived it.

After reviewing the record, we find no error requiring reversal in the property distribution. The allocation of marital assets was roughly congruent, with plaintiff slightly favored. However, as the trial court noted, plaintiff's earning capacity is significantly below defendant's. Under the circumstances of this case, the division of marital property was fair and equitable in light of all the facts. *Hanaway*, *supra*.

III

Finally, defendant also asserts that the trial court erred in awarding alimony to plaintiff. The decisions as to whether alimony should be awarded at all and how much to award is reviewed de novo. *Ianitelli v Ianitelli*, 199 Mich App 641, 642; 502 NW2d 691 (1993). The main objective of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party. *Hanaway, supra* at 295.

We conclude that the trial court did not err in awarding plaintiff $100 a week in alimony for five years. Alimony is not precluded by the fact that plaintiff is working, as there is a significant disparity in income between the parties. The fact that plaintiff acquired a roommate after defendant moved out is irrelevant to the alimony determination, particularly as the record is devoid of evidence that the roommate pays rent or contributes to the household expenses.

Defendant contends that the alimony award is inequitable because plaintiff may soon remarry. However, as a matter of public policy, courts are prohibited from ordering a property distribution based on speculative future events. *Applekamp v Applekamp*, 195 Mich App 656, 661; 491 NW2d 644 (1992). Moreover, if plaintiff does remarry, defendant's alimony obligation will cease. In the present case, the trial court's findings were not clearly erroneous, and its award of $100 per week in alimony to plaintiff was fair and equitable in light of all the circumstances. See *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

Defendant also asserts that the alimony award was improper because he is paying child support. However, the purpose of alimony is to assist in the former spouse's support, *Postema v Postema*, 189 Mich App 89, 98; 471 NW2d 912 (1991), whereas child support is not imposed to benefit the custodial parent, but rather to satisfy the present needs of the child, *Pellar v Pellar*, 178 Mich App 29, 35; 443 NW2d 427 (1989).

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Mark J. Cavanagh
/s/ Robert C. Anderson

[1] Defendant actually argues that the court incorrectly awarded plaintiff $45,000 in inheritance. However, it appears that the court only awarded plaintiff $44,000 ($36,000 + 8,000).

[2] Defendant apparently has taken the figure of $40,000 from exhibit 6, admitted at the evidentiary hearing before the referee. However, this exhibit was admitted only for the purpose of identifying the items of property and not for assigning value to them. Moreover, in the proposed property settlement that he presented to the lower court, defendant valued plaintiff's personal property at $30,000, not $40,000.