STATE OF MICHIGAN

COURT OF APPEALS

DWAYNE W. BOROWICZ

Plaintiff-Appellant,

v

LAURIE M. DEMAEGHT,

Defendant-Appellee.

UNPUBLISHED
November 22, 1996

No. 187971
LC No. 94-000212-DP

Before: Hoekstra, P.J., and Sawyer and T.P. Pickard,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting physical custody of Kaitlyn Borowicz (DOB 11/20/93) to defendant and joint legal custody to plaintiff and defendant. We affirm in part, reverse in part, and remand.

Kaitlyn was born of a mutually adulterous affair. Kaitlyn has lived with defendant since her birth. As of the time of the hearing, both parties had remained married to their respective spouses.

Plaintiff first argues that the trial court erred in finding that a custodial environment had been established with defendant. However, Kaitlyn had lived with defendant since her birth, except during the times that plaintiff had visitation with her, and defendant had provided Kaitlyn with the necessities of life such as food, clothing and medical care. *Ireland v Smith*, 214 Mich App 235, 241-242; 542 NW2d 344 (1995). That Kaitlyn had been with a baby-sitter while plaintiff worked was not determinative.

There was an eight-month period where defendant was not working and was with Kaitlyn all the time. Moreover, that Kaitlyn was with the baby-sitter part of the time is not a factor that would disturb the other evidence presented as to the establishment of a custodial environment. *Ireland*, *supra*, 214 Mich App 242. Accordingly, the trial court did not err in holding that a custodial environment had been established.

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

Plaintiff next argues that many of the trial court's findings on the best interests factors as set forth in the Child Custody Act, MCL 722.25; MSA 25.312(5) were against the great weight of the evidence. We disagree. The trial court properly found that Kaitlyn's emotional ties to defendant were stronger than her ties to plaintiff because Kaitlyn had spent her entire life with defendant except for visitation with plaintiff. MCL 722.23(a); MSA 25.312(3)(a). The trial court properly found that the parties shared the same general Christian philosophy because, while defendant admitted that she did not follow any particular religion, she testified that her three other children attended church and that she would encourage Kaitlyn if she wanted to go to church. MCL 722.23(b); MSA 25.312(3)(b).

The trial court properly found that defendant's home was a stable environment. Defendant's husband testified that he attended Alcoholics Anonymous meetings and that he felt his drinking was under control. Moreover, although they had been late on their mobile home rental payment, defendant and her husband had always paid their bills and had never been evicted. Further, Kaitlyn was a healthy baby and had received all her immunizations. See MCL 722.23(d); MSA 25.312(3)(d). The trial court properly found that separating Kaitlyn from her half-siblings would be detrimental. Several witnesses testified to the closeness of these relationships. Testimony by plaintiff's expert did not compel a different finding, as the expert had never examined Kaitlyn directly and was only speaking from general empirical studies. MCL 722.23(d); MSA 25.312(3)(d).

The trial court properly found that the parties were equal on the factor of the permanence of the family unit. Defendant and her husband both testified that they intended to stay married to each other. MCL 722.23(e); MSA 25.312(3)(e). Regarding the moral fitness of the parties, the trial court did not focus on the parties' extra-marital affairs, rather than on who was better able to take care of Kaitlyn, as plaintiff claims. The trial court properly focused on Kaitlyn and found that the parties' conduct had not thus far affected Kaitlyn. *Fletcher v Fletcher*, 447 Mich 871, 887 (1994).

The trial court properly found that defendant would be willing to encourage a relationship with plaintiff. Defendant and her husband acknowledged plaintiff's paternity without litigation. Plaintiff and his wife were invited to be at the hospital when Kaitlyn was born. Moreover, defendant testified that she wanted to nurture Kaitlyn's relationship with plaintiff. MCL 722.23(j); MSA 25.312(3)(j).

The findings on the above factors were justified by the evidence. Accordingly, the trial court properly found that plaintiff failed in his burden of proving that a change in custody was warranted.

Plaintiff next argues that the trial court exhibited a preconceived notion that custody should remain with defendant unless she was unfit. However, there was no evidence of such a preconceived notion either from the lower court record or from the trial court's opinion.

Finally, plaintiff correctly points out that the trial court awarded defendant attorney fees without determining if the fees were reasonable. Accordingly, we remand to the trial court for such a determination. *Howard v Canteen Corp*, 192 Mich App 427, 437; 481 NW2d 718 (1991). On remand the trial court should consider the following factors:

(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. [*Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982), quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973).]

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Timothy P. Pickard