STATE OF MICHIGAN

COURT OF APPEALS

JUDITH JOHNSON,

Plaintiff-Appellant,

v

JOHN R. SAATIO,

Defendant-Appellee.

UNPUBLISHED
December 17, 1996

No. 189497
LC No. 92-8263-DM

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order modifying the parties' judgment of divorce to award physical custody of their minor child, Nichole Lynn Saatio (born 3/3/87), to defendant. We affirm.

Plaintiff and defendant separated in 1991, after years of physical abuse and alcoholism on the part of both parties. On July 20, 1992, plaintiff filed for divorce. The judgment of divorce, entered on October 4, 1993, awarded plaintiff physical custody of the parties' child. Since the divorce, defendant has undergone treatment for alcohol abuse, become committed to a life of sobriety, and remarried. Plaintiff, on the other hand, continues to abuse alcohol and provided an unstable living environment for the child. At one point after the divorce, plaintiff temporarily relinquished custody of the child to defendant's mother when the Department of Social Services (DSS) filed a neglect petition following a suicide attempt by plaintiff's boyfriend in plaintiff's home.

At the time defendant filed his petition to change custody, DSS was engaged in an ongoing investigation with regard to the child and her home with plaintiff. In his petition, defendant alleged that plaintiff allowed her other minor children, both of whom have been in trouble with the law, to baby-sit, that she left the child alone, and that she failed to provide the child with a bed of her own. Following a four-day hearing on defendant's petition, the trial court determined that, although an established custodial environment existed with plaintiff, there was clear and convincing evidence that it was in the child's best interests to modify the judgment of divorce and award physical custody to defendant.

On appeal, plaintiff first argues that the trial court's findings of fact were too conclusory to determine what evidence the court determined justified the change of physical custody. We review

decisions of the trial court de novo and will not reverse unless there are findings of fact against the great weight of evidence, the decision was a palpable abuse of discretion, or there was a clear legal error on a major issue. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871; 526 NW2d 889 (1994). We defer to the trial court's findings regarding credibility and preferences under the statutory factors. *Harper v Harper*, 199 Mich App 409, 414; 502 NW2d 731 (1993).

Where a custodial environment has already been established, a trial court should not modify a custody order unless the evidence presented demonstrates by clear and convincing evidence that such a modification would be in the best interest of the child. MCL 722.27; MSA 25.312(7)(c). MCL 722.23; MSA 25.312(7) lists the factors that must be "considered, evaluated and determined by the court":

> 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.

The trial court must make specific findings of fact as to each of the statutory factors. *Schubring v Schubring*, 190 Mich App 468, 470; 476 NW2d 434 (1991). Brief, definite, and pertinent findings, without over-elaboration of detail or particularization of fact, will suffice. MCR 2.517; *Fletcher supra*, at 883.

In this case, the trial court's findings of fact were sufficient. In its opinion, the court evaluated each of the statutory factors, referring in detail to the key evidence that influenced its conclusions and noting whether each factor was more, less, or equally favorable to each party. Notably, the court found, among other findings, that the child's environment was not favorable or stable, and that the child preferred to live with her father. Short of having the court set out all of its thought processes and explain why it rejected each and every piece of evidence presented, there is no more the trial court could have done by way of its opinion. The court's opinion was thorough, articulate, and provided a sufficient basis upon which to rule in favor of defendant, as required by MCR 2.517 and *Fletcher, supra* at 883-884. Moreover, as required by *Fletcher, supra* at 884, the record demonstrates that the trial court was aware of and considered all the facts involved in this custody case. The judge listened to testimony, participated in questioning witnesses, and issued a comprehensive five-page opinion and order.

Plaintiff also argues that the trial court's findings of fact were against the great weight of the evidence. Upon a thorough review of the record, we find that the facts as found by the trial court were fully supported, and therefore plaintiff's claim that they were against the great weight of the evidence has no basis.

Plaintiff next claims that, because seven of the eleven factors weighed equally for both parties, the court was prohibited from modifying the custody award. However, a court should never apply a mathematical formulation to determine the best interest of the child or hold that a party cannot satisfy a clear and convincing evidentiary standard where many of the factors weigh equally. *Heid v AAASulewski (After Remand)*, 209 Mich App 587; 532 NW2d 205 (1995).

Finally, we find no merit in plaintiff's argument that the court improperly considered evidence that plaintiff still consumes alcohol and that the minor child no longer wished to live with her mother. Plaintiff claims that evidence on both of these issues was presented by way of inadmissible hearsay. Since there were no objections to this testimony at the hearing, the issue is not properly preserved. *Thames v Thames*, 191 Mich App 299, 303; 477 NW2d 496 (1991). Even if it were, plaintiff herself testified that she continued to use alcohol; such testimony is not hearsay but is a party admission. MRE 801. In addition, the trial court was required to take into account the preference of the child, and therefore it was not improper for the court to consider the child's wishes along with evaluating all of the

other factors. MCL 722.23; MSA 25.312(3). See also *Treutle v Treutle*, 197 Mich App 690, 694; 495 NW2d 836 (1992).

The record supports a finding that the best interests of the child dictated the change in physical custody from plaintiff to defendant. We find no abuse of discretion.

Affirmed.

/s/ Roman S. Gribbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin