STATE OF MICHIGAN

COURT OF APPEALS

EDWARD L. FLORES,

Plaintiff-Appellant,

v

KIMBERLY SUE CHRISMAN,

Defendant-Appellee.

UNPUBLISHED
February 11, 1997

No. 195665
Lenawee Circuit Court
LC No. 95-016967

Before: Young, P.J., and O'Connell and W.J. Nykamp,* JJ.

PER CURIAM.

Plaintiff appeals by right the filiation and support order granting defendant sole custody of their minor child. We affirm.

Plaintiff first argues that the trial court's findings of fact as to the best interest factors listed in MCL 722.23; MSA 25.312(3), were against the great weight of the evidence. We disagree.

When reviewing a custody order, this Court must first determine whether the trial court's findings of fact were against the great weight of the evidence. A trial court's findings as to each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. *Fletcher v Fletcher*, 447 Mich 871, 876-877 (Brickley, J), 900 (Griffin, J); 526 NW2d 889 (1994); *Ireland v Smith*, 214 Mich App 235, 242; 542 NW2d 344 (1995); aff'd 451 Mich 457; 547 NW2d 686 (1996). Custody disputes are to be resolved in the child's best interest, as measured by the factors set forth in MCL 722.23; MSA 25.312(3). *Deel v Deel*, 113 Mich App 556, 559; 317 NW2d 685 (1982). The factors to be considered are:

> (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,

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

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.

A review of the record indicates that the trial court considered and explicitly stated its findings and conclusions regarding each factor. *Overall v Overall*, 203 Mich App 450, 455-456; 512 NW2d 851 (1994). Further, a review of the trial court's findings does not evidence that they were against the great weight of the evidence. *Ireland*, *supra* at 242. As such, plaintiff's claim that the trial court's findings were against the great weight of the evidence is without merit

Next plaintiff contends that the trial court abused its discretion when it failed to grant the parties joint legal custody of the child. We disagree.

The trial court's decision regarding the award of custody is reviewed for an abuse of discretion. *Fletcher, supra* at 879-880, 900. A trial court abuses its discretion when the result it reaches is so "grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment or the exercise of passion or bias." *Id*. Again, custody disputes are to be resolved in the child's best interest, as measured by the factors set forth in MCL 722.23; MSA 25.312(3). *Deel, supra*, 559. In light of the trial court's findings, this Court is of the opinion that the trial court did not abuse its discretion when it awarded sole legal custody to defendant. Defendant had been the sole custodial parent since the child's birth, had established a custodial environment at her home and continued to care for the child. Plaintiff, on the other hand, had harmed defendant while she was pregnant with the child, pleaded guilty to a domestic abuse charge involving defendant, had not been present at the child's birth and had, in fact, arrived at the hospital intoxicated, failed to provide adequate support for the child while he was living with defendant, failed to provide support since moving out of the house, was living with another woman who had alcohol problems, and had been involved in several domestic disputes with her during the pendency of these proceedings. It was clearly in the child's best interests to remain with defendant. *Deel, supra* at 559. Based on the evidence presented, the trial court's custody decision was not so "grossly violative of fact and logic that it evidence[d] a perversity of will, a defiance of judgment or the exercise of passion or bias." *Fletcher, supra* at 879-880, 900. See also *Impullitti v Impullitti*, 163 Mich App 507, 511-512; 415 NW2d 261 (1987).

With regard to plaintiff's claim that the court seemed to place great weight on the fact that plaintiff and defendant were unable to get along when it decided to award sole custody of the child to defendant, and cooperation between parents is only one factor to be considered when deciding whether to grant joint custody, *Nielson v Nielson*, 163 Mich App 430, 434; 415 NW2d 6 (1987), the record evidences that the trial court did examine all the other factors when making its determination and thus plaintiff's assertion that defendant was awarded sole custody of the child on this basis alone is not borne out by the record. Further, this Court has stated that in order for joint custody to work, parents must be able to agree with each other on basic issues in child rearing, and they must be willing to cooperate with each other in joint decision making. If two equally capable parents whose relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, courts will have no alternative but to determine which parent shall have sole custody of the children. *Fisher v Fisher*, 118 Mich App 227, 232-233; 324 NW2d 582 (1982). See also *Wellman v Wellman*, 203 Mich App 277, 279-280; 512 NW2d 68 (1994). Therefore, the trial court properly considered the fact that plaintiff and defendant were unable to get along when making its determination to award sole custody of the child to defendant. *Fisher, supra* at 232-233.

Plaintiff also argues that the trial court abused its discretion in granting plaintiff only four hours of visitation every other week and on alternate holidays. We disagree.

Visitation orders are to be reviewed de novo by this Court. However, visitation orders will not to be reversed absent a determination that the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion when it issued its visitation order or the court committed clear legal error. *Mauro v Mauro*, 196 Mich App 1, 4; 492 NW2d 758 (1992);

Booth v Booth, 194 Mich App 284, 292; 486 NW2d 116 (1992). It should first be noted that the court's visitation order was an extension of the prior arrangement because it allowed plaintiff unsupervised visits with the child not only every other Sunday but alternate holidays as well, as opposed to the prior agreement which only allowed supervised visits with the child at defendant's parents' home for four hours every other Sunday afternoon. In ordering visitation for four hours every other Sunday and for four hours on alternate holidays, the court stated that it had taken into consideration the fact that plaintiff had failed to visit the child on a regular basis since his separation from defendant. This fact was one which the court could properly consider. MCL 722.27a(4)(g); MSA 25.312(7a)(4)(g). The court's order was tempered by the fact that it stated that there was going to be a "get-acquainted period and a trial period to see how it works out," thus allowing for modifications in the future. *Farrell v Farrell*, 133 Mich App 502, 513-514; 351 NW2d 219 (1984). When taking into consideration the fact that the child hardly knew plaintiff, that plaintiff had missed several of his prior scheduled visits with the child and there was a possibility that he would miss further visits, MCL 722.27a(4)(f), (g), (i); MSA 25.312(7a)(4)(f), (g), (i), allowing him only four hours with her every other Sunday afternoon and on alternate holidays was not an abuse of discretion. *Mauro, supra* at 4-5; *Booth, supra* at 293.

Finally, plaintiff contends that the trial court abused its discretion in awarding child support retroactive to his daughter's birth. We disagree.

An award of child support rests in the sound discretion of the trial court. *Morrison v Richerson*, 198 Mich App 202, 211; 497 NW2d 506 (1992). The party appealing the support order has the burden of showing an abuse of discretion. *Thompson v Merritt (Amended Opinion)*, 192 Mich App 412, 416; 481 NW2d 735 (1991). This Court will not reverse the trial court's disposition unless convinced it would have reached a different result in the trial court's place. *Edwards v Edwards*, 192 Mich App 559, 562; 481 NW2d 769 (1992). Under MCL 722.717(2); MSA 25.497(2), a court may order support as part of an order of filiation in a paternity suit. Further, support orders retroactive to a child's birth a permitted. *Thompson, supra* at 422. See also *Edwards, supra* at 564; *Department of Social Servs v Brewer*, 180 Mich App 82, 85-86; 446 NW2d 593 (1989); *Johns v Johns*, 178 Mich App 101, 107-108; 443 NW2d 446 (1989). Here, the court accepted the retroactive support amount recommended by the Friend of the Court when making support retroactive to the child's birth. When taking into consideration the fact that plaintiff only paid twenty-five to eighty dollars a week to defendant during the time he was living with her, while defendant took care of the rest of the household expenses at a time when both parties were earning the same amount, and plaintiff failed to provide support following his separation from defendant, the trial court's award of support retroactive to the child's birth was not an abuse of discretion. *Thompson, supra* at 416.

Affirmed

/s/ Robert P. Young, Jr.
/s/ Peter D. O'Connell
/s/ Wesley J. Nykamp