STATE OF MICHIGAN

COURT OF APPEALS

STEVEN COLEMAN,

Plaintiff-Appellee,

v

MARY BETH COLEMAN,

Defendant-Appellant.

UNPUBLISHED
May 26, 1998

No. 204779
Kent Circuit Court
LC No. 94-002434 DM

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right from an order amending the parties' judgment of divorce to change physical custody of the parties' four minor children from defendant to plaintiff. We affirm.

To expedite the resolution of a child custody dispute by prompt and final adjudication, we affirm all orders and judgments of the lower court on appeal unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue. MCL 722.28; MSA 25.312(8), *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). For three reasons, defendant asserts that the lower court should have found that the children had established a custodial environment with her, rather than finding that no custodial environment had been established with either party. Whether an established custodial environment exists is a question of fact. *Hayes v Hayes*, 209 Mich App 385, 387-388; 532 NW2d 190 (1995).

First, defendant argues that the trial court based its finding solely on the lack of an exclusive relationship with either party without conducting sufficient fact-finding. We disagree. In pertinent part, MCL 722.27(1)(c); MSA 25.312(7)(1)(c) states the following:

> The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

Here, the court referenced the statute and explicitly stated that it considered the evidence in the case as not establishing a custodial environment within the meaning of the statute. For example, the trial court stated that "the children do look to both parents" and "do not look exclusively to either one," the trial court stressed that it considered the evidence and testimony, and the trial court talked to the children to determine whether an established custodial environment existed. Accordingly, the court appropriately considered the statutory criteria as set forth in MCL 722.27(1)(c); MSA 25.312(7)(1)(c). Further, the trial court's fact-finding on this issue was sufficient. Where a court considers the best interest of a child, the court must state specific findings and conclusions regarding each factor, and the failure to do so constitutes error requiring reversal. *Daniels v Daniels*, 165 Mich App 726, 730; 418 NW2d 924 (1988). In contrast, there is no such requirement in the statute or the cases regarding the criteria to be considered here in determining an established custodial environment.

Second, defendant argues the trial court failed to consider certain factual evidence in determining that no established custodial environment existed. Specifically, defendant refers to the evidence she presented that the children had resided with her the previous two years, that she had been their primary caretaker, that the children had substantial ties to the community in which they lived, and that the original divorce decree granted plaintiff liberal visitation rights. The trial court stated that it considered all the evidence and testimony and nonetheless found that no custodial environment existed within the meaning of the statute. Therefore, we disagree with defendant's argument.

Last, defendant argues that the trial court failed to give due weight to plaintiff's initial relinquishment of custody of the children. However, the trial court did not commit error in failing to judge plaintiff's relinquishment in the light defendant advocated because a custody order alone does not establish a custodial environment. *Bowers v Bowers*, 198 Mich App 320, 325; 497 NW2d 602 (1993). Therefore, contrary to defendant's three arguments, we hold that the court's finding that no custodial environment existed with either party is not a finding of fact against the great weight of the evidence.

Next, defendant asserts four legal errors that the trial court committed in its consideration of the best interest factors.[1] First, defendant argues that the trial court did not state a finding as to factor (k). However, a court need not comment on every matter in evidence or declare acceptance or rejection of every proposition argued. See, e.g., *Fletcher, supra* at 883-884. Here, there was no evidence presented to show domestic violence between the parties. Therefore, any error that did occur lies only in the court's failure to state that no evidence was presented on this factor. This error is harmless because the court is only bound to make "[b]rief, definite, and pertinent findings and conclusions on the *contested* matters" before it. MCR 2.517(A)(2) (emphasis added).

Second, defendant argues that the trial court failed to make clear and specific findings regarding factors (d) and (e) inasmuch as the court combined its discussion of the two factors. We disagree. Although a court must state specific findings and conclusions regarding each factor, *Daniels, supra* at 730, the court apparently combined its analysis of the two because it considered the same factual findings as applicable to both factors. On these facts, defendant's argument does not establish error requiring reversal because the court stated several findings of fact in its discussion that sufficiently addressed both factors. For example, with regard to factor (e) and the court's concerns about whether

the family unit will remain intact, the court made findings of fact about plaintiff's new marriage to a woman accepted by the children and defendant's relationship with a man known to have a problem with alcohol. See, e.g., *Smith v Ireland*, 451 Mich 457, 465, n 9; 547 NW2d 686 (1996). Similarly, with regard to factor (d) and the stability of the environments, the court made findings of fact about the fighting among the children and the parties' accessibility to the children. Therefore, the record is clear that the court addressed the stability of the children's environment as required by factor (d), as well as the permanence of the family unit as required by factor (e).

Third, defendant argues that the trial court placed undue weight on plaintiff's higher earning capacity in evaluating factor (c). We disagree. Although the trial court stated that plaintiff has more capacity to provide because of his higher-paying job, the record does not convince us that the trial court placed undue reliance on this evidence. Rather, the trial court primarily emphasized that the flexibility of plaintiff's self-employment allowed him to be more available to the children than defendant's position at a fast-food restaurant did. Plaintiff's job and his income was only one of several facts weighed in evaluating factor (c).

Last, defendant argues that in evaluating factors (c) and (f), the trial court committed clear legal error by ignoring the immorality of plaintiff's failure to pay child support. We disagree. Defendant's assertion that the court failed to consider plaintiff's failure to pay child support under factor (c) is simply inaccurate. In his evaluation of the evidence under both factors, the trial judge specifically and repeatedly stated that it was upset by plaintiff's failure to pay his child support. Moreover, in light of the examples of morally questionable conduct that our Supreme Court delineated in *Fletcher*, *supra* at 887, n 6, we cannot conclude that plaintiff's failure to pay child support is of the same class of conduct. The failure to pay child support does not irreparably taint plaintiff's moral fitness as a parent.[2] Therefore, the trial court did not commit clear legal error in its consideration of the best interest factors.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.

[1] MCL 722.23; MSA 25.312(3) provides:

> 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.

[2] Regardless of plaintiff's motive for withholding child support from defendant, we, like the trial court in this case, express our disdain for plaintiff's decision.