

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY BOUWENS,

Plaintiff-Appellee,

v

JO ANN BOUWENS,

Defendant-Appellant.

UNPUBLISHED

July 31, 1998

No. 208184

Calhoun Circuit Court

LC No. 96-002436

Before: White, P.J., and Hood and Gage, JJ.

PER CURIAM.

Defendant appeals by right the trial court's November 24, 1997 order granting plaintiff primary physical custody of the parties' minor son. We affirm.

Plaintiff and defendant married on October 20, 1993. Plaintiff filed for divorce on July 16, 1996. The parties had one minor child who was born on June 20, 1994. On September 24, 1996, the trial court granted defendant temporary custody of the child. However, the trial court subsequently found that although an established custodial environment with defendant had existed since September 1996, clear and convincing evidence had been presented at trial that it served the child's best interests to award plaintiff primary physical custody.

All custody disputes are to be resolved in the child's best interests. MCL 722.25(1); MSA 25.312(5)(1). MCL 722.23(3); MSA 25.312(3) defines the child's best interests according to the following factors:

(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.

In evaluating these factors, the trial court found that factors (a), (f), (g), (h) and (i) either weighed equally in favor of both parties or did not apply. The trial court found that factors (b), (c), (d), (e), (j) and (k) favored plaintiff.

Defendant contends that plaintiff failed to present clear and convincing evidence to justify a change in the child's established custodial environment. In reviewing factor (d), the trial court noted that since September 1996 the child had lived with defendant in an established custodial environment. A court may not change the established custodial environment of a child unless clear and convincing evidence is presented that a change would serve the child's best interests. *Ireland v Smith*, 214 Mich App 235, 241; 542 NW2d 344 (1995), aff'd 451 Mich 457 (1996); MCL 722.27(1)(c); MSA 25.312(7)(1)(c). The trial court concluded that factor (d) did not favor defendant because the evidence had clearly and convincingly established "that the desirability of maintaining continuity is outweighed by the evidence that the best interests of the child are met by the plaintiff having primary physical custody."

Our review of the trial testimony reveals that it supports the court's ruling. Because the trial court saw the witnesses and heard the testimony, this Court gives great weight to its findings of fact, and will

accept those findings unless they are clearly erroneous. *Harper v Harper*, 199 Mich App 409, 410; 502 NW2d 731 (1993). We will affirm all custody orders and judgments unless the trial court made findings of fact against the great weight of the evidence, committed a palpable abuse of discretion, or made a clear legal error on a major issue. *Id.* at 411.

The record reveals that defendant has displayed some serious lapses of judgment that posed a threat to the child. *Id.* at 417. For example, after her separation from plaintiff, defendant chose to live with a man who was on probation for committing a crime unascertained by defendant. Plaintiff also presented some evidence that defendant and this man grew marijuana. At the time of trial, defendant had become involved with a different man whose former spouse testified that he has a reputation for abuse and violence against women and children. Several witnesses testified that defendant herself had assaulted and screamed at plaintiff in front of the child. Testimony also indicated that defendant had several times refused to abide by the trial court's initial custody order.

Clear and convincing evidence was presented at the custody hearing to support the trial court's finding that it is in the best interests of the child for plaintiff to have primary physical custody.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Hilda R. Gage