STATE OF MICHIGAN

COURT OF APPEALS

GAIL STORM, f/k/a GAIL FOLDING,

Plaintiff-Appellee,

v

RICHARD ROBERTS,

Defendant-Appellant.

UNPUBLISHED
August 21, 1998

No. 206279
Jackson Circuit Court
LC No. 84-35507-DS

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant father appeals as of right the trial court's September 8, 1997, opinion and order denying his motion for reconsideration and request for continued primary physical custody of the parties' son. We affirm.

On appeal, defendant first argues that the trial court erred by failing to allow him final argument on the custody issue before deciding whether custody should be changed in the best interest of the child. We disagree. Specifically, defendant contends that pursuant to MCR 2.507, he was entitled to make his closing argument before the trial court ruled on the matter. However, MCR 2.507 is not applicable to the proceedings in this case. Postjudgment motions in domestic relations actions are governed by MCR 2.119. See MCR 3.213. MCR 2.119(E)(3) provides that "[a] court may, in its discretion, dispense with or limit oral arguments on motions, and may require the parties to file briefs in support of and in opposition to a motion." This Court reviews a trial court's decision to limit or dispense with oral argument for an abuse of discretion. *People v Leonard*, 224 Mich App 569, 579; 569 NW2d 663 (1997).

Defendant never specifically requested the right to comment on the evidence. However, at the end of the July 24, 1997, evidentiary hearing, the trial court indicated that the parties could submit written arguments as long as they did so "as soon as possible." Both parties were aware that time was of the essence. The child's school year was to begin in late August, which left only a short period of time for the trial court to resolve the custody dispute before the beginning of school. Although both parties had about three weeks to submit a closing argument and comment on the evidence submitted at

the hearing, neither party took the opportunity to do so. Because both parties declined the opportunity to make final arguments in writing, neither party was unfairly advantaged. Thus, given the circumstances, we hold that the trial court did not abuse its discretion in ruling in the absence of closing arguments.

Defendant next argues that the trial court erred by failing to make a finding in its August 14, 1997, opinion on the issue of whether an established custodial environment existed. This argument is without merit. The trial court clearly stated in its August 14, 1997, opinion that the existence of an established custodial environment necessitated a finding by clear and convincing evidence that any modification of that environment be in the best interests of the child. Moreover, the trial court had previously found in its March 28, 1996, opinion that an established custodial environment existed with defendant.

Finally, defendant argues that the trial court erred in ignoring available evidence and that it made erroneous findings of fact with regard to its consideration of the best interest factors. We disagree.

In determining the best interest of the child, the trial court must consider the twelve factors listed in MCL 722.23; MSA 25.312(3) and explicitly state its findings and conclusions regarding each. *Bowers v Bowers*, 198 Mich App 320, 328; 497 NW2d 602 (1993). The trial court need not comment upon every matter in evidence or every proposition argued. *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994). Pursuant to MCL 722.28; MSA 25.312(8), child custody orders must be affirmed on appeal unless the trial court made findings against the great weight of the evidence, committed a palpable abuse of discretion, or made a clear legal error on a major issue. *Fletcher*, *supra* at 876-877. Thus, findings of fact are reviewed under the "great weight of the evidence" standard. *Id.* at 877-879. This Court should not substitute its judgment on questions of fact unless the evidence clearly preponderates in the opposite direction. *Id.* Discretionary rulings are reviewed under the "palpable abuse of discretion" standard. *Id.* at 879-881. Such an abuse has occurred when the result reached by the trial court was 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.* at 879-880, quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

After reviewing the record in this case, we conclude that the trial court properly addressed each of the statutory factors, and that none of the court's findings were against the great weight of the evidence. We therefore hold that there was no palpable abuse of discretion in the trial court's determination that it is in the best interests of the child for plaintiff to have primary physical custody.

Affirmed.

/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot