STATE OF MICHIGAN

COURT OF APPEALS

DIANE L. PARKS,

Plaintiff-Appellee,

v

MICHAEL J. PARKS,

Defendant-Appellant.

UNPUBLISHED
December 11, 1998

No. 205857
Hillsdale Circuit Court
LC No. 94-024552 DM

Before: Griffin, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendant Michael J. Parks appeals as of right an interlocutory order in a divorce case awarding physical custody of the parties' three children to plaintiff. We affirm.

I

Defendant claims that the trial court erred in failing to make an express ruling that an established custodial environment existed with plaintiff. We disagree. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law, *Triple E Produce Corp v Mastronardi Produce, Ltd,* 209 Mich App 165, 176; 530 NW2d 772 (1995), and allow appellate review. *Mumaw v Mumaw*, 124 Mich App 114, 117; 333 NW2d 599 (1983).

The trial court in this case found that the children had been in a reasonably satisfactory and stable custodial environment for several years, and that they had become accustomed to looking to plaintiff for their daily needs since she was granted interim custody. The court then went on to quote the standard of review for cases in which an established custodial environment has been shown. Defendant concedes that the court implicitly ruled that an established custodial environment had been shown; he argues only that the court erred in not expressly making this finding. We cannot agree. The court's findings were sufficiently specific to allow this Court to review the findings. Further, they show that the court was aware of the issues and correctly applied the law.

II

Defendant argues that the trial court erred in concluding that the established custodial environment existed with plaintiff. We disagree.

MCL 722.27(1)(c); MSA 25.312(7)(1)(c) provides, in pertinent part, that

> [T]he court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interests of the child. 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. . . .

Whether an established custodial environment exists is a question of fact. *Ireland v Smith*, 214 Mich App 235, 241; 542 NW2d 344 (1995), aff'd as mod 451 Mich 457 (1996). Moreover, all orders and judgments of the court shall be affirmed 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).

Defendant contends that the issue of whether an established custodial environment exists is only relevant when attempting to change an existing custody order. The means by which an established custodial environment is created is irrelevant. *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995); *Blaskowski v Blaskowski*, 115 Mich App 1, 6; 320 NW2d 268 (1982).

Defendant also argues that no custodial environment had been established because he has contested custody consistently. The uncertainty caused by litigation of child custody issues may be a factor to be considered in determining the permanence of the custodial environment. *Hayes, supra* at 388. However, it is not a controlling factor.

Defendant also contends that the custodial environment was not established because plaintiff moved several times, enrolled the children in different schools, has had a number of child care providers, and has had a number of boyfriends. While the number of residences and schools may be considered, a change of residences and schools is inevitable when moving from one city to another. We cannot say that these changes in the children's environment destroyed an established custodial environment. Further, the acceptability of child care arrangements is an improper factor when considering the permanence of the family unit. See *Fletcher v Fletcher*, 447 Mich 871, 884-885; 526 NW2d 889 (1994). As for defendant's allegations concerning plaintiff's boyfriends, the court found the boyfriends had not played a major role in the children's lives. We cannot conclude that this finding was against the great weight of the evidence.

Defendant raises several other issues concerning plaintiff's health (plaintiff suffers from multiple sclerosis), her alleged dishonesty with defendant, the number of jobs she has held, and plaintiff's discouragement of defendant's involvement with the children. None of these claims is relevant to whether an established custodial environment exists.

Finally, defendant asks that this Court reconsider language contained in *Blaskowski, supra* at 6, that the issue of how the custodial environment was created is irrelevant. We decline to do so. The court's ruling that an established custodial environment existed with plaintiff is not against the great weight of the evidence.

III

In his final argument, defendant contends that the trial court's rulings on six of the twelve factors listed in MCL 722.23; MSA 25.312(3) for determining the best interest of the children were against the great weight of the evidence. Again, we disagree. In child custody disputes, the best interests of the child control. MCL 722.25; MSA 25.312(5); *Harper v Harper*, 199 Mich App 409, 417; 502 NW2d 731 (1993). "The best interests of the child" means the sum total of the twelve factors listed in MCL 722.23; MSA 25.312(3).

Defendant challenges the court's finding that the parties were equal in their capacity and disposition to give the children love, affection and guidance and continuing of the educating and raising of the children in their religion or creed. MCL 722.23(b); MSA 25.312(b). We find defendant's claims meritless. Defendant also insists that it was clear legal error for the court not to expressly mention matters such as the parties' IQ and education, the children's change of schools, and the use of corporal punishment by plaintiff's mother and boyfriend. It is not necessary for a trial court to comment upon every matter in evidence. *Bowers v Bowers*, 198 Mich App 320, 328; 497 NW2d 602 (1993).

Defendant challenges the trial court's finding that the parties were equal in their capacity to provide the children with food, clothing, medical care, and other material needs. MCL 722.23(c); MSA 25.312(3)(c). The trial court noted that plaintiff exercised poor judgment during a period that the children wore tight underclothes and the girls' hair was braided too tight. While we will not disturb this finding, the weight to be given the evidence was for the trier of fact to determine. *Thames v Thames*, 191 Mich App 299, 311; 477 NW2d 496 (1991). Defendant also points to his higher income. Undue emphasis on income under this factor may have a prejudicial effect on the best interests of the children. *Mazurkiewicz v Mazurkiewicz*, 164 Mich App 492, 500; 417 NW2d 542 (1987). We find the trial court's determination regarding this factor was not against the great weight of the evidence.

Defendant next challenges the trial court's ruling that plaintiff had created a satisfactory and stable environment for the children. MCL 722.23(d); MSA 25.312(3)(d). He claims that (1) the trial court did not give an express conclusion as to which party had the advantage, (2) it did not find the amount of time the children had been in a custodial environment, and (3) its findings were incorrect. We disagree with defendant's claims on all theories. The court's conclusion as to which party had the advantage is clear from the text of the order. In addition, defendant's claim that the court did not find the amount of time the children had been in a custodial environment is not supported by the plain

language of the court's finding that the children had been in a stable environment with plaintiff since she was granted interim custody. The findings on these issues were sufficiently definite, *Mumaw, supra* at 117, and are not against the great weight of the evidence.

Defendant challenges the court's finding that the moral fitness of the parties was equal. MCL 722.23(f); MSA 25.312(3)(f). In support of his claim, defendant contends that plaintiff has presented perjured testimony, lied to people, engaged in extramarital affairs, and destroyed some of plaintiff's property. However, the statute requires consideration of a party's fitness as a parent, not as an adult. *Fletcher, supra* at 886-887. We find no error here.

Defendant challenges the trial court's finding in favor of plaintiff on the issue of the home, school, and community record of the child. MCL 722.23(h); MSA 25.312(3)(h). Again, he attempts to raise plaintiff's changes of residence and the number of baby-sitters used. However, this is irrelevant to the issue of the home, school, and community record of the children. Where terms are not defined by statute, this Court must ascribe to the term its plain and ordinary meaning. *Western Michigan University v Michigan*, 455 Mich 531, 539; 565 NW2d 828 (1997). Factor (h) requires the court to examine how the children are functioning in the community, not what may influence their functioning. Defendant has not challenged the finding under this factor on any other grounds. We conclude that the complaints he raises are irrelevant under this factor.

Finally, defendant challenges the court's conclusion that the parties were equal in their willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent. MCL 722.23(j); MSA 25.312(3)(j). Defendant points to plaintiff's allegations that he abused her, plaintiff's move from Hillsdale to Grand Rapids, her discouragement of school officials from sending report cards to defendant, and her contempt of court for withholding visitation. We find none of this evidence to outweigh the evidence of defendant's own conduct.

First, defendant's allegations of what he characterizes as plaintiff's perjured accusations of abuse are unsupported by either citations to the record or citation to authority. As for defendant's claim that plaintiff's move to Grand Rapids shows her unwillingness to foster a relationship between the children and defendant, the record also shows that during the weeks preceding the move, defendant broke into the family home in Hillsdale at least twice. Plaintiff testified that she moved to escape the turmoil caused by these break-ins and the upset they caused. On the issue of plaintiff's contacts with the school to discourage it from sending report cards to defendant, plaintiff admitted to this conduct. This may be probative evidence under factor (j). *Barringer v Barringer*, 191 Mich App 639, 642; 479 NW2d 3 (1991). While we do not condone plaintiff's behavior, we cannot conclude that the court's ruling was against the great weight of the evidence.

As for defendant's claim that plaintiff was found in contempt for not allowing visitation on one occasion, the record also reflects that defendant was found in contempt for failing to return the children after visitation. The court's ruling on this factor was not against the great weight of the evidence.

The court did not err in concluding that custody should remain with plaintiff.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Richard A. Bandstra