

STATE OF MICHIGAN
COURT OF APPEALS

SHANNON YOTHER,

Plaintiff-Appellant,

v

BRIAN YOTHER,

Defendant-Appellee.

UNPUBLISHED

March 5, 2002

No. 233133

Jackson Circuit Court

LC No. 00-002821-DM

AFTER REMAND

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

In our prior opinion, we remanded this divorce case to the trial court for a new custody hearing and retained jurisdiction. Specifically, we remanded for the trial court to reconsider the question of joint legal custody and unsupervised parenting time for defendant. On remand, a new custody hearing was held on December 10, 2001, the trial court ordered that plaintiff would have sole physical custody, that the parties would have joint legal custody, and that defendant would have certain unsupervised parenting time. We now affirm.

On appeal, plaintiff argues that the trial court abused its discretion in ordering joint legal custody and in ordering unsupervised parenting time. The standard of review in child custody cases is set forth in MCL 722.28:

To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit 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.

Pursuant to MCL 722.26a(1), the trial court is required to determine whether joint custody is in the best interests of the child by considering the statutory factors set forth in MCL 722.23, determine whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child, and state its reasons on the record for granting or denying the request for joint custody.

With regard to the statutory factors under MCL 722.23, the trial court found that the parties were equal regarding factors a, b, d, e, g, and h. The trial court found that factors c, f, and k favored plaintiff. The trial court also found that factor j favored defendant and that the child

was too young¹ to express a reasonable preference under factor i. With regard to the question whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child, the court acknowledged that this issue was not “necessarily easy . . . to decide.” The court determined that the parties have not communicated well with each other, but that they will be able to cooperate and generally agree concerning important decisions affecting their daughter.

We have carefully reviewed the transcript of the custody hearing held below and conclude that the trial court’s findings of fact with regard to the statutory factors are not against the great weight of the evidence. Indeed, we emphasize that the trial court’s finding with regard to each statutory factor should be affirmed unless the evidence *clearly preponderates in the opposite direction*. *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994). In reviewing the testimony adduced at the hearing, we find that the trial court’s factual findings are supported by the evidence and that the evidence does not clearly preponderate in the direction opposite of that found by the trial court.

Accordingly, the trial court’s decision that there should be joint legal custody is not an abuse of discretion. *Id.*, pp 880-881. At this juncture, it perhaps bears emphasizing as well that this case involves joint legal custody only since defendant is not challenging the award of sole physical custody to plaintiff. In child custody matters, the overwhelmingly predominate factor is the welfare of the child or what is in the child’s best interests. *Harper v Harper*, 199 Mich App 409, 417; NW2d (1993). We cannot conclude that the trial court’s decision that it is in the child’s best interests to have joint legal custody with both her parents constitutes an abuse of discretion. As this Court has stated, “Contested child custody cases are not easy.” *Id.*, p 420. The best-interest-of-the-child test can be subjective and individualized and ultimately turn upon the judgment of a trial judge regarding which of two single-parent custodial arrangements will serve the child’s best interests. *Id.*, pp 420-421. The trial court’s determination that joint legal custody is in the child’s best interests is not an abuse of discretion.

Plaintiff also argues that the trial court abused its discretion in awarding unsupervised parenting time, rather than supervised parenting time. The trial court stated that it is in the child’s best interests to have a strong relationship with her father. Pursuant to the statutory requirement of MCL 722.27a(3), the trial court found that there was not clear and convincing evidence that parenting time with defendant would endanger the child’s physical, mental, or emotional health. The trial court’s finding in this regard is supported by the evidence adduced at the hearing and certainly does not preponderate in the opposite direction. Consequently, we find no basis to reverse the trial court’s decision with regard to parenting time.

The trial court’s order regarding custody is affirmed.

/s/ Hilda R. Gage
/s/ Kathleen Jansen
/s/ Peter D. O’Connell

¹ The child was born on September 30, 1998.