STATE OF MICHIGAN

COURT OF APPEALS

VERNON J. GAGNE,

Plaintiff-Appellant,

v

ANGIE J. ORDWAY,

Defendant-Appellee.

UNPUBLISHED
August 16, 2002

No. 235425
Saginaw Circuit Court
LC No. 99-022107-DP

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right an order awarding custody of the parties' now four-year-old son Casey to defendant in this custody dispute. Since Casey's birth, the parties have shared joint legal custody with defendant exercising sole physical custody and plaintiff exercising significant parenting time. We affirm.

I. Standard of Review

In child custody cases, we apply three different standards of review. The clear legal error standard applies where the trial court errs in its choice, interpretation or application of the existing law. *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001); *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000). Findings of fact are reviewed pursuant to the great weight of the evidence standard. This Court will sustain the trial court's factual findings unless "[t]he evidence clearly preponderates in the opposite direction." *Foskett, supra* at 5. Discretionary rulings are reviewed for an abuse of discretion, including a trial court's determination on the issue of custody. *Id.* An abuse of discretion obtains when the result 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. *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 406 (1999).

II. Established Custodial Environment

Plaintiff first argues that the trial erred in finding that an established custodial environment existed with defendant. We disagree.

MCL 722(1)(c) provides in relevant part:

> The 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 interest 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.

Ever mindful that our Legislature's intent underlying the Child Custody Act was to "[m]inimize the prospect of unwarranted and disruptive change of custody orders and to erect a barrier against removal of a child from an `established custodial environment' *except in the most compelling cases,"* whether a custodial environment has been established is an intense factual inquiry. *Foskett, supra* at 6 (emphasis in original.) See also *Ireland v Smith*, 214 Mich App 235; 542 NW2d 344 (1995).

Upon review of the record, we agree with the circuit court's finding that a custodial environment existed with defendant. It is undisputed that since Casey's birth, defendant has exercised sole physical custody. See *Phillips v Jordan,* 241 Mich App 17, 26; 614 NW2d 183 (2000). Clearly, for four years, "an appreciable time," Casey could not help but "naturally look to [defendant] . . . for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c); see also *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981); *Mogle v Scriver*, 241 Mich App 192 197; 614 NW2d 696 (2000). While the physical environment in which Casey currently resides may not be perfect, defendant testified that her family has settled permanently in their current home. *Id*. Defendant's current environment includes her husband, Casey's half-brother, with another half-sibling on the way. While Casey's inclination toward living with defendant permanently was a disputed issue presented during trial, the resolution of this issue presented a credibility determination which lies within the trial court's province and for which this court grants deference. *Mogle, supra* at 201. On the record here before us, we find that the trial court did not abuse its discretion in determining that the custodial environment existed with defendant. *Fletcher*, *supra* at 879-880, 900; *Phillips*, *supra* at 26.

III. Best Interest Factors

The purpose of the Child Custody Act of 1970, MCL 722.21 *et seq*., is to promote the best interests of children. MCL 722.26(1); *Frame v Nehls*, 452 Mich 171, 176; 550 NW2d 739 (1996). When a party seeks to change the established custodial environment, the party must show that the change serves the child's best interests by clear and convincing evidence. MCL 722.27(1)(c); *Phillips,* supra at 21. In considering a change of custody, the trial court examines the following statutory custody 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. [MCL 722.23.]

Generally speaking, the trial judge must consider each of the twelve statutory custody factors and expressly state its findings and conclusions on each factor or the decision may be reversed. *McCain v McCain*, 229 Mich App 123, 124; 580 NW2d 485 (1998); *Daniels v Daniels*, 165 Mich App 726, 730; 418 NW2d 924 (1988). However, the trial court is not required to specifically rule on every piece of evidence or address every single argument. *Fletcher v Fletcher*, 447 Mich 871, 883; 526 NW2d 889 (1994); *LaFleche, supra* at 700.

Here, the circuit court properly made specific factual findings and weighed evidence from both parties on each of the statutory custody factors. MCR 2.517(A)(1); *McCain, supra* at 124. The court found the parties equal on factors (a), (b), (f), (g), (i), and (k), and found in favor of defendant on the rest – (c) through (e), (h), (j), and (l).

A. MCL 722.23(a)-(c)

Plaintiff first contests the trial court's findings on factors (a) through (c) because the child was burned four times while with defendant, and defendant may not be able to support the child should she divorce her current husband.

With regard to factor (a), the trial court's holding that the parties were equal was not an abuse of discretion. *Fletcher, supra* at 879-880. Witness testimony established that each party has love, affection, and other emotional ties with Casey. The trial court was able to assess the witnesses' credibility concerning plaintiff's abuse claim, and ultimately agreed with the Family Independence Agency that the allegations of abuse were unsubstantiated. *Mogle, supra* at 201. The same is true of the evidence presented on factor (b). The trial court correctly found that because defendant is now a "stay-at-home" mom, she has more time for Casey. Moreover, the fact that only plaintiff provides Casey with religious training does not entitle him to prevail on this factor. With regard to factor (c), it was also within the province of the trial court to determine that defendant paid more attention to Casey's medical needs. *Id.* Although plaintiff said he would like to be involved with Casey's speech therapy, the trial court noted that plaintiff never acknowledged a developmental problem in Casey's speech.

Finally, the trial court cannot predict the future concerning the parties' economic stability. Upon review of the record, each party had an adequate household income. However, because plaintiff generally works full-time, if he had full custody, plaintiff would only have evenings to spend with Casey, thus requiring daycare services. On the other hand, because defendant is a "stay-at-home" mom, defendant may remain at home and does not require regular daycare assistance. See *Phillips, supra* at 25-26. We therefore find that the trial court did not abuse its discretion in finding that the parties were equal on factors (a) and (b), and that factor (c) weighted in favor of defendant.

B. MCL 722.23(d), (e), and (j).

Plaintiff also contends that he should have prevailed on factors (d), (e), and (j) because defendant moved and changed relationships frequently, and did not communicate fully with him. We find no error.

Although plaintiff alleged that defendant changed relationships and homes frequently since Case's birth, defendant testified that the home that she now shares with her husband and has shared over the past two years is permanent. In fact, defendant testified that she and her husband were planning to build an addition onto their home. Moreover, the circuit court emphasized that defendant is in a marriage relationship and that her family includes Casey's half-brother, with another half-sibling on the way. Again, contrary to plaintiff's argument, just as defendant's marital status could change in the future, so could plaintiff's.

Finally, the trial court did not believe plaintiff's allegations that Casey was uncomfortable at defendant's home and that defendant's home was unsuitable for Casey. The

trial court then considered plaintiff's arguments as evidence that plaintiff is unwilling to facilitate a relationship between defendant and Casey. Determinations regarding credibility are within the trial court's province. *Mogle, supra* at 201. A review of the record demonstrates that the trial court did not err in its determination on factors (d), (e), or (j). See *Baker, supra* at 579-580.

IV. Conclusion

As the trial court noted, the parties were equally situated on many of the child custody factors. Plaintiff did not demonstrate by the requisite clear and convincing evidence that good cause or the child's best interests require changing Casey's present custodial environment in and through defendant's home. *Id*.; see also *Foskett, supra* at 5. Therefore, the trial court's decision was not an abuse of its discretionary authority. *Fletcher, supra* at 879-880.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski