STATE OF MICHIGAN

COURT OF APPEALS

CHRISTA NICOLE KIRBY, Plaintiff-Appellant,	UNPUBLISHED February 5, 2008
v	No. 278731 Wayne Circuit Court Family Division
BRIAN JOSEPH VANCE, Defendant-Appellee.	LC No. 06-625940-DC

Before: Kelly, P.J., and Meter and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right an order regarding paternity, custody, parenting time, and child support. We affirm.

I. Basic Facts and Proceedings

The parties are the parents of Rylee Ella Vance, born May 2, 2006. Although never married, the parties were engaged and resided together for three months after the birth of their daughter. After separating, plaintiff filed a complaint requesting sole legal and physical custody and an order requiring defendant to pay child support and granting defendant limited parenting time. She also sought to have the Rylee's last name changed to Kirby. The trial court entered an ex parte interim order granting plaintiff sole legal and physical custody, ordered defendant to pay child support, and granted defendant ten hours of parenting time, but no overnight parenting time. Defendant filed objections to the ex parte order, claiming that he should be awarded sole legal and physical custody and requesting an evidentiary hearing.

At a hearing before a Friend of the Court referee to address defendant's objections, the parties decided to refer all issues to arbitration. The trial court entered a stipulated order to that effect.

At the arbitration hearing, the arbitrator interviewed[1] the parties separately per the parties' agreement. In addition to her own testimony, plaintiff presented the testimony of her father. After their testimony was concluded, it was discovered that the arbitrator had forgotten to tape record the testimony of plaintiff and her father. It is uncontested that plaintiff, after being informed of the error, declined to have the testimony re-taped and agreed to the use of the arbitrator's notes instead. Thereafter, defendant presented the testimony of his mother, father, and a neighbor.

The arbitrator found that after attending high school together, the parties became engaged after discovering plaintiff was pregnant. During this time, plaintiff was praising defendant's ability as a father. By the time of Rylee's birth, the parties were living with plaintiff's parents. Plaintiff, age 19, graduated high school, attended one year at Schoolcraft college, and had anticipated completing her degree in cosmetology studies in June or July 2007 at which time she planned to work in a salon. Plaintiff has no independent source of income, is supported by her parents, and is in good physical and mental health.

The arbitrator found that defendant, age 20, graduated high school, has completed one college course, obtained a real estate license, and is employed as a "temp" at General Motors (GM) earning $30,000 a year. Defendant also works as a realtor, earning a nominal amount. Defendant is in good physical and mental health and has resided with his parents since July 2006. Although defendant has regular parenting time, plaintiff claimed that defendant lacked interest in expanding parenting time. Defendant contended that plaintiff denied him expanded parenting time.

After making her factual findings, the arbitrator found that no established custodial environment existed based on defendant's frequent parenting time. The parties agreed on joint legal custody. Additionally, after making her findings with respect to the best interest factors, the arbitrator concluded that an order of joint legal and physical custody was in Rylee's best interests conditioned upon defendant attending parenting classes and joint meetings with Rylee's health care provider. Regarding child support, the arbitrator found that defendant should continue his $250 monthly payment as well as 90 percent of Rylee's uninsured medical expenses. Regarding Rylee's last name, the arbitrator found that insufficient evidence was presented to support a name change. The arbitrator also awarded parenting time.

Two days after the report was issued, plaintiff sent the arbitrator an error and omissions letter in which she claimed that: the award of joint custody and overnight parenting time to defendant was improper given defendant's anger management problems, lack of previous overnight visits, and poor parenting skills; defendant's parenting time schedule required clarification due to his schedule; and an established custodial environment existed with plaintiff. Of particular note, plaintiff did not challenge the *factual findings* of the arbitrator; rather she challenged the *legal conclusions* of the arbitrator stemming from the factual findings. The arbitrator responded that the facts and law supported her conclusion that there was no established

[1] The parties agreed to provide their testimony separately and waived their right to cross-examination.

custodial environment, the parenting time was appropriate because neither party has a "leg up" regarding parenting skills and defendant's parents are willing to assist defendant.

Plaintiff filed a motion for de novo review of the arbitration report and award and for an evidentiary hearing on custody and parenting time. Plaintiff claimed that the arbitrator refused to correct errors in her findings regarding custody and parenting time. In addition, for the first time, she alleged that the arbitrator's failure to tape the testimony of plaintiff and her witness at the hearing and permitting defendant to produce three "surprise" witnesses resulted in an unfair arbitration hearing. Plaintiff argued, alternatively, that even if the arbitrator acted properly, the court was required to conduct an evidentiary hearing for an independent review of the best interest factors because the arbitration proceedings were not recorded and there was no transcript. Plaintiff further contended that the arbitrator exceeded her authority in failing to record the arbitration proceeding in accordance with MCL 600.5077(2), and that even if the award is not vacated, the court must conduct an evidentiary hearing for an independent review of the best interest factors.

At the hearing on plaintiff's motion to vacate the arbitration award, the court found that although the arbitrator made a mistake in failing to tape portions of the arbitration proceedings, the mistake was not fatal given plaintiff's approval of the notes at the hearing and plaintiff's failure to establish any grounds sufficient to overturn the arbitration award. The court also noted that after conducting an independent review of the arbitrator's notes and making its own findings regarding each of the best interest factors, it was adopting the arbitrator's findings. The court entered an order denying plaintiff's motion for a de novo review and evidentiary hearing, adopting the arbitration award in its entirety, granting the parties joint legal and physical custody, and awarding parenting time.

This appeal followed.

II. Vacating the Arbitration Award

Plaintiff first argues that the trial court erred in failing to vacate the arbitration award because the arbitrator exceeded her authority. We disagree. This Court reviews a trial court's decision of whether to vacate an arbitration award de novo. *Bayati v Bayati*, 264 Mich App 595, 597-598; 691 NW2d 812 (2004). Under MCL 600.5071, parties to an action for custody, child support, or parenting time may stipulate to binding arbitration regarding these matters. *Harvey v Harvey*, 257 Mich App 278, 285; 668 NW2d 187 (2003). Generally, a trial court must enforce a statutory arbitration award ruling. MCL 600.5079(1). However, a trial court must vacate an arbitration award where the arbitrator exceeds his or her powers or acts in a manner that substantially prejudices a party's rights. MCL 600.5081(2)(c) and (d); MCR 3.602(J)(1)(c) and (d); *Harvey*, *supra* at 288. "Arbitrators exceed their powers whenever they act beyond the material terms of the contract from which they draw their authority or in contravention of controlling law." *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005).

A. MCL 600.5077(2)

Plaintiff contends the arbitrator exceeded her authority by failing to tape the testimony she presented at the arbitration hearing in accordance with MCL 600.5077(2) and the arbitration

agreement.[2] However, plaintiff has waived this claim. In *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000), our Supreme Court held:

> Waiver has been defined as "the 'intentional relinquishment or abandonment of a known right.'" . . . "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." [Citations omitted.]

The concept of waiver as explained in *Carter* apply equally to civil cases. See *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 69; 642 NW2d 663 (2002). Plaintiff concedes that she made no objection, agreed not to have her testimony re-taped, and agreed to rely on the arbitrator's notes. Instead of making a timely objection, plaintiff waited until the award was issued, decided she was dissatisfied with the award, and moved to set it aside. As we recently stated in *Valentine v Valentine*, ___ Mich App ___; ___ NW2d ___ (Docket No. 270793, issued September 13, 2007), slip op at 2:

> On numerous occasions, this Court has denied a party the right to raise an appellate challenge when the party harbored an error as an "appellate parachute." See e.g., *In re Gazella*, 264 Mich App 668, 679; 692 NW2d 708 (2005); *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002); *Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997); *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989). We do so again.

Here, the parties agreed to have the hearing taped in lieu of using a court reporter, but the arbitrator forgot to tape plaintiff's case in chief in its entirety. Nevertheless, the arbitrator did take notes of the entire proceeding, and plaintiff agreed to this process. In reviewing the arbitration proceeding, the trial court found that although the arbitrator forgot to tape plaintiff's case at the arbitration hearing, this mistake was not a "fatal flaw" because the arbitrator disclosed the mistake to the parties, who decided to proceed with the hearing without having it re-taped. We agree with the trial court. Plaintiff not only failed to object at the arbitration hearing, but indicated at the hearing that the arbitrator's notes were sufficient. On appeal, plaintiff again confirms that "[a]lthough [plaintiff] and her counsel knew that her testimony had not been recorded, both suspected that the error would be harmless. . . ." Thus, plaintiff waived this issue.

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[2] MCL 600.5077(2) provides: "A record shall be made of that portion of [an arbitration] hearing that concerns child support, custody, or parenting time in the same manner required by the Michigan court rules for the record of a witness's testimony in a deposition." With respect to this requirement, MCR 2.306(C)(2) requires that a witness's deposition testimony be recorded. This testimony may be recorded stenographically or by other means pursuant to a stipulation by the parties. MCR 2.306(C)(2)(a) and (C)(3).

The arbitrator made a record of plaintiff's case by taking notes. Plaintiff stipulated that this record was satisfactory when she elected not to re-tape her testimony. "A party cannot stipulate a matter and then argue on appeal that the resultant action was error." *Chapdelaine v Schocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001); see also *In re Gazella*, 264 Mich App 668, 679; 692 NW2d 708 (2005). Further, it is worth noting that after the arbitrator issued the award, plaintiff wrote a letter indicating errors in arbitration. This letter did not mention the failure to tape her testimony at the hearing.

B. MCL 600.5076(1)

Plaintiff next asserts the trial court erred in failing to vacate the arbitration award because the arbitrator failed to follow MCL 600.5076(1). Again, plaintiff has waived this issue.

MCL 600.5076(1) provides:

> As soon as practicable after the appointment of the arbitrator, the parties and attorneys shall meet with the arbitrator to consider all of the following:
>
> (a) Scope of the issues submitted.
>
> (b) Date, time, and place of the hearing.
>
> (c) Witnesses, including experts, who may testify.
>
> (d) Schedule for exchange of expert reports or summary of expert testimony.
>
> (e) Subject to subsection (2), exhibits, documents, or other information each party considers applicable and material to the case and a schedule for production or exchange of the information. If a party knew or reasonably should have known about the existence of information the party is required to produce, that party waives objection to producing that information if the party does not object before the hearing.
>
> (f) Disclosure required under section 5075.[3]

"By this provision, the Legislature clearly expressed its intent that the arbitrator and the parties would meet and prepare thoroughly for a full and fair hearing." *Miller v Miller*, 264 Mich App 497, 505-506; 691 NW2d 788 (2004), rev'd on other grounds 474 Mich 27 (2005).

Although the arbitrator did not meet with the parties before the actual date of the arbitration, approximately six weeks before the arbitration, the arbitrator sent the parties' attorneys for a letter that provided in relevant part:

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[3] Section 5075, MCL 600.5075, pertains to disqualification of the arbitrator. It requires the arbitrator to disclose any circumstance that may affect his or her impartiality.

> This letter will confirm that the Binding Arbitration Hearing in the entitled matter has been scheduled for Monday, February 12, 2007 at 1:00 p.m. in my office.
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> * * *
>
> I use an informal hearing format, including the submission of pre hearing summaries. I DO NOT require witnesses, other than your clients, at the hearing. I require that each side submit a Summary at least four (4) days in advance of the Mediation, containing: 1) an outline of the issues; 2) a complete list of assets and values; 3) a complete list of debts with current balances; 4) positions on spousal support; and 5) any other information relevant to the issues; 6) if child support, custody or parenting time are issues, your position on each; 7) your proposed equitable resolution of all issues. Any appraisals of assets should be attached as exhibits. You may briefly include any compelling legal authority.
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> * * *
>
> [S]hould you have any questions, please contact my office. [Emphasis omitted.]

Plaintiff did not object to the failure to comply with MCL 600.5076(1). Instead, she acquiesced in the process employed by the arbitrator. "Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). Plaintiff had ample time to raise this issue before the arbitration hearing and chose not to do so.

In addition, even if the failure to follow MCL 600.5076(1) was error, any error was harmless. Although plaintiff argues that she was prejudiced because defendant presented three "surprise" witnesses, she completely fails to explain how anything other than the act of presenting these witnesses prejudiced her. It is not this Court's responsibility to fashion plaintiff's arguments or search for evidence to support her claims. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998). Moreover, plaintiff does not indicate any witnesses she was precluded from presenting as a consequence of the arbitrator's letter. Indeed, the letter on its face does not preclude the presentation of witnesses. Further, plaintiff referenced neither this claim nor her "surprise" witness claim in her letter of errors and omissions regarding the arbitration award.

C. Financial Disclosure Statements

Plaintiff also contends that the arbitrator exceeded her authority by failing to order each party to submit financial disclosure statements. MCL 600.5076(2). We note that plaintiff failed to assert her claim on these grounds below, and an issue appealed on different grounds than those asserted below is unpreserved. *Harbour v Correctional Medical Services, Inc*, 266 Mich App 452, 468; 702 NW2d 671 (2005). We review unpreserved issues for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

MCL 600.5076(2) requires the arbitrator to order documents material to the arbitration including financial disclosure statements. In making her findings regarding child support, the only financial document the arbitrator cited was defendant's 2006 and 2007 tax returns. Notwithstanding, plaintiff has failed to show how this error affected her substantial rights. Although plaintiff asserts she was prejudiced because it is impossible to determine whether the child support ordered was accurate or whether the amount comports with the Michigan Child Support Guidelines, she fails to explain how defendant's tax returns precluded this determination. Indeed, defendant had graduated high school just two years before this action commenced. As such, defendant's tax returns were an accurate portrayal of his financial situation. Further, having recently graduated high school herself, plaintiff had studied cosmetology studies for one year and had yet to find full-time employment. Cognizant of this, the arbitrator noted that the child support award should be revisited when plaintiff completed her licensing exam and found full-time employment. We find no error requiring reversal.

III. Evidentiary Hearing

Plaintiff next argues that the trial court abused its discretion in reviewing the arbitration award without conducting an evidentiary hearing. We disagree. This Court reviews a trial court's choice, interpretation, and application of custody law for clear error. *Foskett v Foskett*, 247 Mich App 1, 4-5; 634 NW2d 363 (2001).

MCL 600.5080(2) requires a trial court to review arbitration awards in custody cases. In reviewing the award, "as long as the circuit court is able to 'determine independently what custodial placement is in the best interests of the children . . . an evidentiary hearing is not required in all cases." *MacIntyre v MacIntyre*, 472 Mich 882, 882; 693 NW2d 822 (2005), quoting *Harvey v Harvey*, 470 Mich 186, 187; 680 NW2d 835 (2004).

Here, the trial court indicated that it used the arbitrator's hearing notes to conduct an independent review of the best interest factors. This independent review was proper and an evidentiary hearing was not required. Specifically, the trial court noted that its review of the notes enabled it to make separate findings regarding each of the best interest factors, which the court compared to the arbitrator's findings. In light of this, we conclude that an evidentiary hearing was unnecessary because the court was "able to 'determine independently what custodial placement is in the best interests of the children[.]'" *MacIntyre*, *supra* at 882, quoting *Harvey*, *supra* at 187.

Plaintiff contends that our Supreme Court's holding in *MacIntyre* was a "case specific ruling" with limited application because the Court based its ruling on the trial court's "extensive" findings on the best interest factors as evidenced by the trial court's disagreement with the arbitrator's findings on two of the factors. See *MacIntyre v MacIntyre* (*On Remand*), 267 Mich App 449, 450-451; 705 NW2d 144 (2005). However, our Supreme Court made no reference limiting the application of its holding in *MacIntyre* to cases in which the trial court's findings on the best interest factors were "extensive."

Plaintiff further claims that the arbitrator's notes on which the court relied for its independent review were "clearly biased." However, other than pointing out that the arbitrator composed these notes, plaintiff points to no specific finding or action that evidenced bias. It is not this Court's responsibility to fashion plaintiff's arguments or search for evidence to support

her claims. *Mudge*, *supra* at 105. Moreover, it is worth noting that plaintiff made no mention of bias in her letter to the arbitrator concerning errors and omissions. Consequently, these arguments fail.

IV. Established Custodial Environment

Plaintiff next claims that an established custodial environment existed and, consequently, the court erred by failing to determine whether the change in custody was in Rylee's best interests by clear and convincing evidence. We disagree. MCL 722.28 provides that child custody orders and judgments shall be affirmed on appeal unless the trial court 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." *Fletcher v Fletcher*, 447 Mich 871, 877-881; 526 NW2d 889 (1994). A finding of fact is against the great weight of the evidence if the evidence "'clearly preponderates in the opposite direction.'" *Id.* at 879, quoting *Murchie v Standard Oil Co*, 355 Mich 550, 558; 94 NW2d 799 (1959). This Court reviews the trial court's discretionary rulings, including custody decisions, for an abuse of discretion. *Fletcher*, *supra* at 879-881. This Court reviews a trial court's choice, interpretation, and application of custody law for clear error. *Foskett*, *supra* at 4-5.

> 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. [MCL 722.27(1)(c); *Brown v Loveman*, 260 Mich App 576, 595; 680 NW2d 432 (2004).]

"An established custodial environment is one of significant duration 'in which the relationship between the custodian and child is marked by qualities of security, stability and permanence.'" *Mogle v Scriver*, 241 Mich App 192, 197; 614 NW2d 696 (2000), quoting *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981).

> While clear and convincing evidence must be presented to change custody if an established custodial environment exists, if no custodial environment exists, the trial court may modify a custody order if the petitioning party can convince the court by a preponderance of evidence that it should grant a custody change. [*Hayes v Hayes*, 209 Mich App 385, 387; 532 NW2d 190 (1995).]

Plaintiff claims that the arbitrator's findings are sufficient to prove that an established custodial environment existed with plaintiff. However, a review of the evidence does not support plaintiff's contention. First, it can hardly be said that any environment has existed for an appreciable time or significant duration – indeed, Rylee was less than one year old at the time of the hearing. Moreover, as of the time of the hearing, defendant had resided with plaintiff and Rylee for nearly a third of the Rylee's life. Second, regarding the necessities of life, although Rylee may be "accustomed" to plaintiff, it is plaintiff's father who provides Rylee's medical insurance coverage and plaintiff is completely supported by her parents. Finally, with respect to permanency and the inclination of the custodian, although defendant no longer lives with plaintiff, he continues to see Rylee regularly and there was evidence that defendant wanted his time with Rylee expanded. On these facts, we conclude that the finding of no established

custodial environment was not a palpable abuse of discretion, against the great weight of the evidence or a clear legal error. Consequently, the trial court properly applied the preponderance of the evidence standard in entering the custody order.

VII. Best Interest Factors

Last, plaintiff contends that we must remand this case for an evidentiary hearing because no record exists for us to review the arbitrator's findings regarding the best interest factors, which are against the great weight of the evidence. At the outset, we note that plaintiff fails to specify any particular best interest factor she is challenging or explain how the findings are against the great weight of the evidence. It is not this Court's responsibility "discover and rationalize the basis for [plaintiff's] claims, or unravel and elaborate for [plaintiff her] arguments . . . ." *Mudge*, *supra* at 105. Consequently, remand for an evidentiary hearing is unnecessary.[4] Moreover, even if we were to vacate the award, the proper remedy is not an evidentiary hearing, but rather a new arbitration. Indeed, MCR 3.607 provides for the re-creation of records, and plaintiff failed to avail herself of this option.

The trial court, after it conducted an independent review of the record, adopted the best interest findings of the arbitrator. After reviewing the record, we conclude that the findings were not against the great weight of the evidence.

MCL 722.23(a) requires the trial court to consider "love, affection, and other emotional ties existing between the parties involved and the child." The arbitrator found[5] the parties equal with respect to this factor and noted that although Rylee's bond with her mother is "assumedly greater," both parties love Rylee, who responds to their love and affection. These findings are consistent with the record, which indicates that both parents support Rylee. Indeed, although Rylee lives with plaintiff, who loves and cares for her, defendant wants more time with Rylee to "bond" with her and was described as a "wonderful" father.

MCL 722.23(b) provides that a trial court must consider 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." In finding that factor (b) favored neither party, the arbitrator noted that each party demonstrates the capacity and disposition to provide Rylee with love, affection, and guidance, and that neither party appears to be involved in religious practice. These findings are not against the great weight of the evidence

MCL 722.23(c) instructs the trial court to consider the "capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care

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[4] Although the arbitrator's notes were not provided in the lower court record, both parties provided identical copies of these notes on appeal. Because the trial court expressly relied upon the arbitrator's notes in making its findings, this is not an impermissible expansion of the record in violation of MCR 7.210(A)(1).

[5] Plaintiff generally challenges the arbitrator's best interest findings, which the trial court adopted.

recognized and permitted under the laws of this state in place of medical care, and other material needs." In finding that this factor favored neither party, the arbitrator indicated that both parties live with their parents, but are able to care for Rylee's needs with the help of their families. Plaintiff is pursuing training and licensure in cosmetology and defendant has a temporary job at GM and holds a real estate license. Similarly, the record indicates that the parties live with their parents, who help to support Rylee. The findings for factor (c) are not against the great weight of the evidence.

MCL 722.23(d) instructs the trial court to consider the "length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." The arbitrator found that this factor favored neither party and noted that each party lives with his or her respective parents, whose homes and environments are "more than suitable." The record indicates that defendant's parents undertake a fair amount of work in caring for Rylee, and both parties' parents actively support the parties and Rylee. The findings for this factor are not against the great weight of the evidence.

MCL 722.23(e) focuses on the "permanence, as a family unit, of the existing or proposed custodial home or homes." Factor (e) concerns the permanence of the custodial home, as opposed to its acceptability. *Ireland v Smith*, 451 Mich 457, 464; 547 NW2d 686 (1996); *Fletcher*, *supra* at 884-885. The arbitrator found the parties equal on factor (e) and cited her findings for factor (d) in support of this conclusion. Given that Rylee is living with plaintiff at her parent's house and both parties and both parties' parents are involved, this finding is not against the great weight of the evidence.

MCL 722.23(f) requires the trial court to consider the "moral fitness of the parties involved." Factor (f) relates to a person's fitness as a parent. *Fletcher*, *supra* at 886-887. Although not an exhaustive list, types of morally questionable conduct relevant to factor (f) include: "verbal abuse, drinking problems, driving record, physical or sexual abuse of children, and other illegal or offensive behaviors." *Id*. at 887 n 6. The arbitrator found the parties equal with respect to his factor, noting that each party had issues with underage drinking. In addition, both parties accused the other of still "partying" and drinking. Therefore, these findings are not against the great weight of the evidence.

MCL 722.23(g) focuses on the mental and physical health of the parties. The arbitrator found that factor (g) favored plaintiff. In making its findings, the arbitrator noted that, although each party is in good physical and mental health, it was plaintiff who sought out and participated in counseling. Even though defendant participated in alcoholics anonymous and completed his probation for a driving under the influence conviction, he has not focused on his parenting skills or addressed his anger management issues. These findings are consistent with the record. Indeed, plaintiff accused defendant of not addressing his anger management issues and of ignoring basic parenting responsibilities. Both parties are in good physical health. Thus, the findings for factor (g) are not against the great weight of the evidence.

MCL 722.23(h) concerns the "home, school, and community record of the child." The arbitrator found that this factor was inapplicable due to Rylee's age. Given that Rylee was less than one year old at the date of the hearing, this finding is not against the great weight of the evidence.

MCL 722.23(i) requires consideration of the "reasonable preference of the child, if the court considers the child to be of sufficient age to express preference." Given Rylee's age, the arbitrator's finding that this factor was inapplicable is not against the great weight of the evidence.

MCL 722.23(j) concerns 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." The arbitrator found that factor (j) favored neither party because although both parties complained about parenting time, the testimony did not establish that plaintiff denied defendant parenting time or that defendant was unable to care for Rylee's needs. The record indicates that although plaintiff alleged that defendant was unable to care for Rylee, other testimony was offered that defendant not only cared for Rylee, but also was a "wonderful" father. Similarly, although defendant claimed he was denied parenting time, the record details defendant's parenting time schedule and parental care for Rylee. Consequently, the arbitrator's findings are not against the great weight of the evidence on this factor.

MCL 722.23(k) instructs the trial court to consider "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." The arbitrator found this factor inapplicable. The record discloses no evidence of any domestic violence. Therefore, this finding is not against the great weight of the evidence.

MCL 722.23(l) requires the trial court to consider any other factor it deems relevant to the custody dispute. The arbitrator explained that plaintiff's parents provided "notable" financial and emotional support and that defendant's parents were available and willing to assist when needed. The arbitrator elaborated that plaintiff is Rylee's primary care provider and is particularly attuned to Rylee's medical needs (Rylee has acid and kidney reflux) and practical care. Although defendant is not neglectful of Rylee's needs, it is incumbent upon him to increase his awareness of these needs. The record confirms that both parties' parents are supportive. Further, the record indicates that although defendant cares for Rylee, plaintiff primarily deals with Rylee's medical issues and defendant is sometimes unaware of problems. Thus, the arbitrator's findings are not against the great weight of the evidence regarding this factor.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter