

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYRA MOORE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

and

KEITH MOORE,

Respondent-Appellee,

v

MELICIA SAMUELS,

Respondent-Appellant.

UNPUBLISHED

November 13, 2008

No. 285047

Wayne Circuit Court

Family Division

LC No. 06-462304-NA

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Respondent mother Melicia Samuels appeals as of right the trial court order vesting sole physical custody of the minor child in respondent father Keith Moore, pursuant to MCL 722.27(c). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondents shared joint physical and legal custody of the minor child. The child resided primarily with respondent mother in a home shared with a stepfather and three half-siblings. The child was removed in a child protective proceeding precipitated by the stepfather's inappropriate physical discipline of one of the half-siblings and placed with respondent father. The crux of the child protective proceeding was the domestic violence, anger, and inappropriate discipline in respondent mother's home. After one year of child protective proceedings, during which time respondent mother and the stepfather were compliant with all requirements of their parent agency agreements, except anger management and domestic violence classes, the trial court granted respondent father's motion requesting the minor child's sole physical custody. Legal custody remained joint between the parents.

Respondent mother contends on appeal that, in modifying the prior custody order, the trial court failed to inform the parties of, consider, or decide the issue of joint custody in

violation of MCL 722.26a.¹ Whether the trial court adequately set forth findings of fact as required by statute is a question of law that is reviewed de novo on appeal. *Burba v Burba (After Remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000). At the time of the custody hearing the parties already enjoyed joint custody and had for the past ten years. It was not necessary for the trial court to re-advise them of that option. The trial court heard respondent mother's request to continue joint custody, and the entire hearing was devoted to consideration of whether continuing joint physical custody or vesting physical custody solely in respondent father was in the child's best interests. The evidence showed respondent mother and the stepfather had not completed services sufficient to permit them to resume the child's physical custody, and their verbal altercation during a child protective hearing one month before the custody hearing demonstrated that the issues of anger management and domestic violence had not been resolved. The trial court adequately addressed the minor child's best interests by evaluating each of the 12 factors in MCL 722.23(a) to (l), and considering whether the parents would be able to cooperate and generally agree concerning important decisions affecting her welfare. The trial court did not violate MCL 722.26a.

Respondent mother also argues on appeal that the trial court's decision on the 12 best interests factors in MCL 722.23² was against the great weight of the evidence because she and

¹ MCL 722.26a provides, in part:

(1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in section 3.

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

² MCL 722.23 provides:

As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(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.

(continued...)

the stepfather were scheduled to complete anger management and domestic violence classes in the near future, and therefore nearly all factors weighed evenly in favor of both parents and in favor of joint custody. This Court reviews the trial court's findings of fact to determine whether they were against the great weight of the evidence. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004).

The trial court weighed factors (a), (c), and (j) evenly between the parents. It weighed factor (b) in respondent mother's favor and declined to elaborate under factor (l). It weighed the remaining factors in respondent father's favor. Contrary to respondent mother's assertion, a finding of equal weight for factors such as (d) and (e), rendering respondent mother's home an equally stable, suitable family unit, and as permanent a home as respondent father's home, could be made only after conditions of domestic violence and anger management had been rectified. Similarly, factors (g) and (k) could not be considered equal until the stepfather became able to better manage his anger, and domestic violence was no longer a threat in the home. The trial court considered Tyra's youth in weighing her preference, but noted her recent desire to remain with respondent father.

(...continued)

(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.

A custody order must be “affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.” MCL 722.28; *Mixon v. Dixon*, 237 Mich App 159, 162; 602 NW2d 406 (1999). The evidence showed the trial court’s decision was not against the great weight of evidence.

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis