STATE OF MICHIGAN

COURT OF APPEALS

SHARI DIANE SHAND PHILLIPS,

Plaintiff-Appellant,

v

ROBERT LOGG SHAND,

Defendant-Appellee.

UNPUBLISHED
December 11, 2008

No. 284329
Oakland Circuit Court
Family Division
LC No. 1997-552822-DM

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

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant legal and physical custody of the parties' minor child. She argues that the trial court erred in: (i) retaining jurisdiction, when Nebraska was a more convenient forum; (ii) limiting her direct and cross-examination of defendant; (iii) denying her request for psychological evaluations of the parties; and (iv) granting defendant custody. We affirm.

The parties were married in 1993 and had one child together, Carter J. Shand, born April 22, 1996. A consent judgment of divorce was entered in 1998, granting the parties joint legal custody, and plaintiff physical custody, of the child. Plaintiff and the child lived in Marquette, Michigan until July 2003, when plaintiff remarried and they moved to Nebraska to live with her new husband. In July 2003, the trial court entered a stipulation and order stating that there had been a change of circumstances in that plaintiff contemplated remarriage and relocation to Nebraska, and finding that it would be in the best interest of the child to continue to reside primarily with plaintiff. Before the move, the child had been diagnosed with separation anxiety, general anxieties, depression, posttraumatic stress disorder, and bipolar disorder, and had been hospitalized because he was "out of control." After the move, his behavior worsened. He began to exhibit aggressive and sexually inappropriate behavior such as attempting to touch plaintiff and her husband in inappropriate places, exposed himself in their front yard, and fondled and was cruel to one of the family's pet dogs.

As a result of this behavior, plaintiff talked to doctors, who recommended a "sexual risk evaluation." The results of the evaluation, which plaintiff received in spring 2005, indicated that there was a possibility of the child becoming a sexual predator and recommended that the child be placed in a residential treatment program. As a result, the child resided at Boys and Girls Town in Missouri from September 2005 until mid-December 2005. Initial signs of improvement

faded rapidly, and the child was placed in the I Believe in Me Ranch in February 2006. In order to have the child admitted to this institution, plaintiff, apparently for financial reasons, petitioned to make the child a ward of the state of Nebraska. Defendant appeared in court in Nebraska to try to prevent the child from becoming a ward of the state. The child was released from the facility into plaintiff's care in late October 2006. After a few weeks, plaintiff began having problems with the child again and called defendant and told him that the child wanted to come and stay with him. The state of Nebraska agreed with this placement and released him from its jurisdiction. The child went to live with defendant around December 20, 2006, and was still living with him at the time of the custody hearing.

Defendant lives in Berkley, Michigan, with his wife Patricia and three stepdaughters. Before the child came to live with defendant, the Nebraska Department of Human Services conducted a home study and defendant set up an intake appointment for the child with Easter Seals, the organization which now provides his mental health care at minimal cost to defendant. The child regularly sees a psychiatrist and therapist and continues to take most of the same medications as before he moved. Defendant and Patricia testified that the first four months after the child came to live with them in December 2006 were very difficult because the child was unstable and angry and did not want to follow the rules of the house. Defendant said the family worked with him and he started to understand and follow the rules, and that, despite some setbacks, the child's behavior had been gradually improving. Barbara Acheson, the child's therapist from Easter Seals, also testified that the child's overall emotional and psychiatric condition had improved since he began the Easter Seals program in February 2007.

In March 2006, defendant filed a motion for a change of physical custody, which the trial court dismissed without prejudice because, for reasons explained below, the child was under the jurisdiction of the state of Nebraska. Defendant filed a new motion for change of custody in January 2007. On February 28, 2008, after a four-day hearing spanning several months, the court awarded physical and legal custody to defendant. Plaintiff appeals from this order.

Plaintiff's first argument on appeal is that the trial court erred in retaining jurisdiction because a Nebraska court was a more convenient forum. Although it is unpreserved because the trial court did not address it, we address this issue because review is necessary for a proper determination of the case. *Brown v Loveman*, 260 Mich App 576, 599; 680 NW2d 432 (2004).

We find that the trial court properly retained jurisdiction. Under MCL 722.1202(1),[1] because the Michigan trial court entered the initial child custody determination,[2] the judgment of divorce, it has exclusive, continuing jurisdiction until one of two events occurs:

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[1] See also Comment, UCCJEA, § 202: "The continuing jurisdiction of the original decree State is exclusive. It continues until one of two events occurs . . ."

[2] "'Child custody determination' means a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child." MCL 722.1102(c).

> (a) A court of this state determines that neither the child, nor the child and 1 parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.
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> (b) A court of this state or of another state determines that neither the child, nor a parent of the child, nor a person acting as the child's parent presently resides in this state. [MCL 722.1202(1); Comment, UCCJEA, § 202.]

Neither of these events occurred in this case. No court made either determination, defendant continues to live in Michigan, and the child has lived with defendant in Michigan and attended school and received health care here since December 2006. In addition, however, "[a] court of this state that has exclusive, continuing jurisdiction under this section may decline to exercise its jurisdiction if the court determines that it is an inconvenient forum under section 207." MCL 722.1201(2). Plaintiff contends on appeal that, because Nebraska is a more convenient forum, the trial court should have declined jurisdiction.

Under MCL 722.1207(2), "[b]efore determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction." In making that determination, the court "shall allow the parties to submit information and shall consider all relevant factors, including all of the following:"

> (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.
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> (b) The length of time the child has resided outside this state.
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> (c) The distance between the court in this state and the court in the state that would assume jurisdiction.
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> (d) The parties' relative financial circumstances.
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> (e) An agreement by the parties as to which state should assume jurisdiction.
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> (f) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
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> (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
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> (h) The familiarity of the court of each state with the facts and issues of the pending litigation. [MCL 722.1207(2).]

The trial court did not err in denying plaintiff's forum non conveniens motion. Although it is true that some relevant evidence was in Nebraska, the child was living in Michigan with defendant at the time defendant first filed his motion for modification, and was still living here at the time of the hearing. More importantly, the trial court was familiar with the facts and issues in the pending litigation. The parties' lengthy divorce proceedings took place in the trial court and

the trial court made the initial custody determination and later entered an order modifying the original custody order. With the exception of a proceeding brought by plaintiff to make the child a ward of the state of Nebraska, most or all of the proceedings related to the custody of this child have taken place in the trial court. Therefore, the trial court did not err in retaining jurisdiction.

Plaintiff's second argument on appeal is that the trial court abused its discretion in limiting her time for presentation of evidence and cross-examination at the custody hearing. We disagree.

We review issues pertaining to the questioning of witnesses for an abuse of discretion. *Persichini v William Beaumont Hosp*, 238 Mich App 626; 607 NW2d 100 (1999). Under MRE 611(a), a trial court "shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." "The mode and order of admitting proofs and interrogating witnesses rests within the discretion of the trial court," and the court may limit the time for the examination of witnesses. *Hartland Twp v Kucykowicz*, 189 Mich App 591, 595-596; 474 NW2d 306 (1991) (quotation and citation omitted.)

Plaintiff claims the trial court improperly limited her cross-examination of defendant. She cites a portion of the hearing transcript in which the court gave plaintiff's counsel 15 minutes to complete her cross-examination of defendant. The court noted that it had warned her multiple times about the relevance of her cross-examination. This also occurred after counsel spent 15 transcript pages cross-examining defendant in detail about his provision of health insurance for the child as required by the judgment of divorce, a subject to which an entire separate proceeding had been dedicated. Under the circumstances, the court properly limited cross-examination to avoid needless consumption of time. MRE 611(a).

Plaintiff also claims that the court improperly limited her direct examination of defendant. At the beginning of the third day of the hearing, the court informed plaintiff's counsel that she had two hours to complete her presentation of evidence. Just under an hour later, the court stopped her examination of defendant, but gave her another hour the following day to complete it. When the court asked counsel to "wrap it up," she was questioning defendant about the child's progress since coming to live with defendant, an issue about which she had already questioned defendant. Plaintiff had ample time to examine and cross-examine defendant, much of her questioning was of questionable relevance, and plaintiff fails to cite any specific subject about which she did not have time to question defendant. Therefore, the trial court did not abuse its discretion in limiting her time for examination and cross-examination.

Plaintiff's third argument on appeal is that the trial court abused its discretion in denying her request for psychological evaluations of the parties. We disagree.

We review a trial court's discretionary rulings for an abuse of discretion. *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). A trial court has discretion to order psychological evaluations of the parties in a custody dispute under MCL 722.27, which provides, in relevant part:

> (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:
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> * * *
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> (d) Utilize a guardian ad litem or the community resources in behavior sciences and other professions in the investigation and study of custody disputes and consider their recommendations for the resolution of the disputes.
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> (e) Take any other action considered to be necessary in a particular custody dispute.

While it is true that the mental and physical health of the parties is one of the factors the trial court was required to consider in making its custody determination, MCL 722.23(g), there is no indication that the trial court was unable to properly consider this issue in the absence of psychological evaluations of the parties. Plaintiff fails to support her argument that the trial court abused its discretion in refusing to order the parties to submit to psychological evaluations. She fails to articulate what such evaluations would have added to the court's analysis. There was extensive testimony about both defendant's history of alcoholism and plaintiff's diagnosis of bipolar disorder, and it is apparent from the trial court's opinion that it took this testimony into account. Moreover, plaintiff failed to request psychological evaluations until the close of all the evidence.

Plaintiff's fourth argument on appeal is that the trial court erred in changing custody from plaintiff to defendant. We disagree.

Three standards of review apply in custody cases. The trial court's findings of fact are subject to review under the great weight of the evidence standard. We affirm the findings of the trial court concerning the existence of an established custodial environment and with respect to each best interest factor unless the evidence preponderates against those findings. We review a trial court's discretionary rulings, including custody determinations, for an abuse of discretion and questions of law for clear error. A trial court commits clear legal error when it chooses, interprets, or applies the law incorrectly. *Phillips*, *supra* at 20.

A party seeking a change in custody has the burden of establishing, by a preponderance of the evidence, that there is proper cause or a change of circumstances. If the moving party meets that burden, the trial court then determines whether an established custodial environment exists. *Killingbeck v Killingbeck*, 269 Mich App 132, 145; 711 NW2d 759 (2005); MCL 722.27(1)(c). A custodial environment 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." MCL 722.27(1)(c). If the court finds that an established custodial environment exists, it may not enter a custody order changing that environment unless it finds that there is clear and convincing evidence that the change is in the best interest of the child. *Dumm v Brodbeck*, 276 Mich App 460, 462; 740 NW2d 751 (2007); MCL 722.27(1)(c). In making that determination, the court considers the "best interest factors" set forth in MCL 722.23:

(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.]

On appeal, plaintiff contests the trial court's findings with respect to the best interest factors and its determination that it was in the child's best interests to award defendant legal and physical custody of the child. The trial court's findings on the following best interest factors are at issue on appeal.

(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.

The court found that, although plaintiff had historically provided most of the love, affection, and guidance, her psychological problems rendered her unable to adequately address the child's needs. It found that this factor favored defendant because he was able, in a relatively short period of time, to improve the child's educational and social skills and had a greater

capacity to maintain the "boundaries and structure" required for the child to "function at his best." Plaintiff argues that this factor should favor her because she is able to and has provided the child with love and consistently sought treatment for his medical problems, while defendant has failed to provide the care the child needs. In particular, she states that defendant has still not sought treatment for the child from an expert in sexual abuse. However, the parties' capacity and disposition to provide the child with medical care is properly considered under factor (c).

The court's finding on this factor was not against the great weight of the evidence because the testimony supports a finding that defendant is providing the child with more guidance than plaintiff and spends a great deal of time working with the child and his teachers and mental health professionals. Defendant testified that he and Patricia have house rules, which both the child and his stepdaughters must follow, and that, although the first few months were difficult, the family worked with the child and he was starting to understand the rules. Defendant also testified that there is structure and routine in the household. Defendant and Patricia also implemented a system of rewards and punishments, and the child earned points for such things as having a good day at school and helping with chores, which could be used for rewards like having a sleepover, renting a movie, or purchasing an ipod. Defendant testified that once when the child got into trouble at school, and was suspended, defendant came to pick the child up from school. "I explained to him, I said, he can't behave like that. Now you got yourself in big trouble." Defendant, Patricia, and the child's teachers also keep a log that they pass back and forth and use to make notes, which defendant testified he reads everyday. There was no comparable evidence from plaintiff on rules or specific guidance the child received when he was a part of her household. Although there was little testimony about defendant's provision of love and affection, because of the evidence that defendant provides the child with needed guidance, the trial court's finding that this factor favored defendant was not against the great weight of the evidence.

(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.

With respect to this factor, the court first noted that defendant is employed, and plaintiff is disabled and unable to work but receives financial support from her current husband and received child support payments from defendant. It found that this factor weighed in favor of defendant because, despite plaintiff's historical willingness to sacrifice in order to provide for the child's needs, and defendant's historical reluctance to do so, defendant is currently providing the necessary care to enable the child to live in a less restrictive environment—without institutionalizations—and has been able to follow through with the recommendations of the child's clinicians to improve his concentration and behavior.

Plaintiff argues that this factor should favor her because she institutionalized the child on the advice of the child's doctors, and she was vigilant in seeking appropriate medical care for the child, while defendant has failed to recognize that the child "has many sexual deviant psychological issues which remain untreated." She also claims that defendant has failed to reimburse her for his portion of the child's medical expenses that were incurred in Nebraska, and states that he even testified that he was using Easter Seals in order to save money on medical expenses.

The court's finding that this factor favors defendant is not against the great weight of the evidence because there was evidence that defendant has the capacity and disposition to provide the child with mental health care. Before the child came to Michigan, defendant set up an intake appointment with Easter Seals, and arranged for a psychiatrist to take on the child's psychiatric care. The child sees the psychiatrist once a month and Acheson, the therapist from Easter Seals, at defendant's house twice a week. The child was kept on all the same medications he was on in Nebraska. Defendant also testified that the child has talked to Acheson about the sexual abuse he suffered. Plaintiff's counsel asked defendant if Acheson was an "expert in sexual abnormal behavior by children so to speak, sexual acting out issues?" Defendant replied that she was not, as far as he knew. However, given the evidence that the child is receiving regular mental health treatment, defendant's failure to take the child to an expert on sexual abuse or sexual abnormalities does not render the trial court's finding on this factor against the great weight of the evidence, especially in light of the testimony of defendant and Patricia that they have not observed the child engage in any sexually inappropriate behavior.

With respect to defendant's financial ability to provide medical care, there was no indication that the child was lacking medical care he needs because of defendant's finances. Defendant testified that the Easter Seals program is of minimal cost, which is important to him because the child's medications are very expensive. He testified that the child was on the same medications he was on in Nebraska. Plaintiff's claim that defendant has failed to reimburse her for his share of the child's medical expenses does not seem relevant to defendant's current ability to provide care for the child. Moreover, this issue was the subject of separate proceedings. The court entered an order on May 29, 2008, ordering defendant to pay plaintiff $6,415.02 as reimbursement for the child's uninsured medical bills.

d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

The court found that this factor favored defendant because the child's time with him was the most stable environment the child has experienced since he moved to Nebraska in 2003, and defendant succeeded in establishing "rules, procedures, and boundaries" that have enabled the child to progress developmentally, while plaintiff had been unable to do so because of her "cyclical mood disorder." Plaintiff argues that this factor should favor her because, while it is true that the child has made progress while living with defendant, Acheson testified that the child could transport those skills to another home. Plaintiff also states that she has received instruction on parenting skills. Moreover, defendant's home is "wrought with domestic discord"; defendant and Patricia argue about the child while the child is at home. Given the instability and hospitalizations the child experienced while living with plaintiff, the evidence supports the trial court's finding on this factor.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

The court found that this factor slightly favored defendant because, although both parties had experienced problems in their marriages, Patricia testified that she and defendant were "working through their issues." In contrast, it noted that, "when the going got rough Plaintiff felt she had no alternative but to hospitalize Carter and/or have the child made a ward of the state."

Plaintiff argues that this factor favors her because of defendant's history of alcoholism, arrests for drunk driving and driving with a suspended license, and marijuana use, and Patricia's testimony that defendant had been drinking on May 11, 2007, and July 2, 2007, when she called the police as a result of their domestic disputes.[3] She argues that defendant's addictions cause a strain on the family, and plaintiff is able to provide a more stable home.

Our Supreme Court has made clear that the "acceptability of the home is not pertinent" to this factor. *Fletcher v Fletcher*, 447 Mich 871, 885; 526 NW2d 889 (1994). Rather, "the focus of factor (e) is the child's prospects for a stable family environment." *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996), "The stability of a child's home can be undermined in various ways. This might include frequent moves to unfamiliar settings, a succession of persons residing in the home, live-in romantic companions for the custodial parent, or other potential disruptions." *Id*. at 465 n 9. Although the testimony about two domestic disputes between defendant and Patricia were significant enough for Patricia to call the police constitute evidence of disruptions in the child's environment, the court's finding that this factor favored defendant was not against the great weight of the evidence given the months-long residential placements that marked extended disruptions in the child's home environment when he lived with plaintiff.

(g) The mental and physical health of the parties involved.

Although the court noted its belief that defendant still has a drinking problem and its concern about his need to seek treatment, it found that this factor favored defendant because plaintiff's bipolar disorder had negatively affected plaintiff's ability to meet the child's needs. It also found that her inability to address the child's needs increased the risk that he might encounter physical and sexual abuse. Plaintiff argues that the court, at a minimum, should have found that the parties were equal with respect to this factor because plaintiff had been diagnosed with bipolar disorder and defendant had a history of alcohol abuse and marijuana use.

There was evidence that both parties have mental health problems. The testimony established that defendant has a history of alcohol abuse and marijuana use. Although it is not clear to what extent he continues to struggle with alcoholism, the May 11, 2007 argument between Patricia and defendant, as a result of which Patricia called the police, may indicate a continuing problem, as Patricia admitted that defendant "had a few drinks" that night. With respect to plaintiff, the evidence established that she suffers from bipolar disorder, and there were indications that this condition has affected her ability to effectively parent the child. Defense counsel asked plaintiff about notes or a report prepared one of the child's psychologists, apparently in 2001 or 2002. Plaintiff admitted that the psychologist had told her that she was "passive in attempts to set limits for Carter." Counsel also asked whether plaintiff agreed with his opinion that she was "somewhat overwhelmed secondary to some break-through cycling feature moods of [hers] at the time that [she was] caring for Carter." Plaintiff responded that she was at the time of that appointment. She also said she must have stated at an appointment with the psychologist that the child was "more agitated and defiant" when she was in her "depressed

[3] Patricia testified that defendant had been drinking on the night of the May 11, 2007 incident, but never testified that he had been drinking on the night of the July 2, 2007 incident.

phase." Because of this testimony regarding the effects of plaintiff's mental health on her ability to parent the child, the trial court's findings on this factor were not against the great weight of the evidence.

(h) The home, school, and community record of the child.

The court found that this factor favored defendant because the child's reading and writing skills have improved, his behavior has improved so that he is able to attend school full-time, spends only half of the school day in a special education classroom, participates in extracurricular activities, and is forming relationships with people outside the immediate family. In contrast, it found that plaintiff had removed the child from school against the advice of professionals at a time when plaintiff was already overwhelmed with caring for the child, and, as a result, the child developed further difficulties in interacting with others and had few friends in the community.

Plaintiff argues that this factor favors her because the child's home and school record has not significantly improved while he has been in defendant's care, but has actually declined, and notes the child's suspensions from school. However, the evidence supports the court's finding that the child's behavior at home, school, and in the community has improved since he went to live with defendant. Plaintiff and Phillips both testified that the child displayed sexually inappropriate behavior at home and got into trouble for aggressive behavior at school. These behavioral problems escalated to the extent that the child spent three months in 2005 and eight months in 2006 in residential treatment facilities. Although the child still has some behavioral problems at school, his scores on behavior tests administered by Acheson show improvement since February 2007. More importantly, the child has not been institutionalized since going to live with defendant, and, as of November 2007, was attending school full-time.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

Because plaintiff requested that the court interview the child, a request that the court declined, citing the child's emotional difficulties, the court assumed that this factor would favor plaintiff. Defendant contests this finding on appeal. However, because plaintiff requested the interview, it was reasonable for the court to assume this factor would weigh in favor of plaintiff.

(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.

The court found that this factor favored neither party because both had "entrenched positions" and had acted in ways that hindered the continuation of a strong relationship between the child and the other parent. Plaintiff contests this finding, arguing that although plaintiff wanted defendant to be part of the child's life from the time of the parties' separation, defendant was minimally involved in the child's life until recently. She also claims that defendant prevented her from visiting the child when she was in Michigan during July and August 2007. Defendant also contests the court's finding, arguing that he has encouraged the child to have a close relationship with plaintiff.

It is certainly true that defendant did not visit the child often when he was in plaintiff's custody, and Patricia's testimony also suggests that she and defendant did fail to accommodate plaintiff's desire to visit the child when she was in Michigan for a hearing in August 2007. However, the evidence supports the trial court's finding that this factor is neutral. There was little evidence that either party made any sustained effort to facilitate the child's relationship with the other. In fact, there was evidence that the relationship between the parties is contentious and they disagree about the kind of care the child needs. Defendant testified that the parties often communicate over email because their conversations otherwise become too contentious. In any event, the trial court was in a better position to make a determination on this factor because it has had repeated contact with these parties as it has heard and decided multiple motions regarding custody.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

The court found that this factor slightly favored defendant because, although there was testimony that, prior to the parties' marriage, defendant struck plaintiff and chipped her tooth, this conduct was too remote in time and during a period when defendant admits he had a problem with drugs and alcohol. The court also found that the child may have been physically or emotionally assaulted by plaintiff's previous boyfriend and "sexually assaulted while in a placement directed by Plaintiff, because she was unable to care for the child herself."

Plaintiff argues that this factor favors her because she has never engaged in domestic violence and the court should not punish her for anything that may have happened while the child was outside of her care. She claims that defendant, by contrast, has in many instances put the child in a position to witness domestic violence. We agree that it was inappropriate for the court to weigh against plaintiff abuse the child suffered while he was institutionalized. Plaintiff also testified that defendant "came at [her]" on several occasions, and once hit her in the mouth and chipped her tooth, before they were married. However, given the testimony that the child was physically abused by plaintiff's former boyfriend, the trial court's finding that this factor slightly favored defendant was not against the great weight of the evidence.

In addition to contesting the trial court's findings on the best interest factors, plaintiff, citing *Pluta v Pluta*, 165 Mich App 55; 418 NW2d 400 (1987), *Theroux v Doerr*, 137 Mich App 147; 357 NW2d 327 (1984), and *Speers v Speers*, 108 Mich App 543; 310 NW2d 455 (1981), argues that, because she agreed to give defendant, the noncustodial parent, temporary custody, the child should be returned to her on her request. These cases do articulate an exception to the general rule that it is appropriate for the court to consider the desirability of maintaining continuity in considering the best interests of the child where one parent temporarily and voluntarily allows the child to live with the other parent in the best interests of the child. However, they do not mandate an automatic return of custody to the relinquishing parent, but simply prevent weighing continuity against a relinquishing parent. In *Theroux*, *supra* at 150, this Court articulated a policy of encouraging the practice of a parent temporarily and voluntarily relinquishing custody to protect the child's best interests, and stated, "[i]n reinforcing this practice, we will reverse a trial court which, because of its desire to maintain continuity, continues custody with the parent who was a beneficiary of a temporary arrangement." This Court noted that the trial court had "attached neutral weight to each of the other factors." *Id*.

If the trial court's custody determination in this case was premised only on the desirability of maintaining continuity for the child, under the policy articulated in the above cases, we would be compelled to reverse. However, the trial court here considered all the best interest factors and found that 8 of 12 of them weighed in favor of defendant. As discussed, *supra*, the evidence supports the court's findings of fact. In addition, the court properly considered the fact that, at least during the last few years, plaintiff's period of physical custody of the child was disrupted by repeated hospitalizations and residential placements. Therefore, the court did not abuse its discretion in awarding defendant physical and legal custody of the child.

Affirmed.

/s/ Stephen L. Borrello
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher