

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

SANDRA ANN TINKER,

Plaintiff-Appellee,

v

BROOK ANTHONY TINKER,

Defendant-Appellant.

---

UNPUBLISHED

March 12, 2009

No. 283063

Kent Circuit Court

LC No. 06-005334-DM

Before: Sawyer, P.J., and Zahra, and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's judgment of divorce. Defendant specifically challenges the trial court's grant of primary physical custody of the parties' four-year-old daughter, the trial court's award of child support, and the trial court's division of the marital estate as inequitable. We affirm.

The trial court must make its custody determination based on the child's best interests according to the factors set forth under 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.

There is no statutory requirement that the Michigan custody and parenting time manual be specifically referenced in a custody determination, thus defendant's argument on this ground lacks merit. Further, the trial court followed proper procedure because it considered other custody arrangements and stated the reasons for its ultimate decision, MCL 722.26a(1), which was based on the best interest factors.

The trial court found that an established custodial environment existed with plaintiff, with whom Aubree had been living for the nineteen months before trial. Defendant was therefore required to present clear and convincing evidence that a change in custody was in Aubree's best interest. MCL 722.27(c). He did not do so. The trial court found that several factors favored neither party and the rest, factors (b), (c), (d), (g), and (k) favored plaintiff.

Defendant argues on appeal that the best interest factors should have favored him because plaintiff's environment was unstable.<sup>1</sup> However, the record refutes this. The evidence reflected that plaintiff's older son from a previous marriage only moved out of her house in order to move closer to school and finish his senior year at the same high school. The record also reflected that plaintiff attended to household chores, bathed Aubree, prepared her meals, and was the primary parent involved in her medical care both during the marriage and after the separation. Further, Aubree had a close relationship with plaintiff's son and her grandparents; she lived close to her future school, and had friends in the neighborhood. The record also showed that plaintiff was capable of fostering a close relationship between defendant and Aubree. Initially, plaintiff was very accommodating in allowing defendant to see Aubree. She became less flexible only after defendant refused to return Aubree on one occasion, and called her repeatedly, prompting her to obtain a personal protection order. However, plaintiff accommodated defendant's attendance at Aubree's vacation Bible school event, she switched weekends with him so Aubree could be in

---

<sup>1</sup> Defendant's citation to MCL 600.5072(2) to support this argument is misplaced. That statute applies to court-ordered arbitration in domestic relations cases.

his sister's wedding, and stipulated to the dismissal of the PPO in exchange for the imposition of a civil injunction that set a designated time for defendant's telephone calls.

Conversely, defendant could not remember the name of Aubree's doctor and took her to her appointments infrequently. Although defendant took steps after the parties' separation to take on a more active parenting role, there was testimony regarding defendant's tendency to drink alcohol, and his prescription for anti-depressive medication, which he used intermittently and ceased taking without consulting his doctor. Moreover, defendant failed to provide his medical records, thus the trial court and the friend of the court had limited information upon which to assess defendant's mental and physical fitness. The trial court's finding that the child lived in a stable and satisfactory environment was not against the great weight of the evidence.<sup>2</sup>

Further, the evidence offered at trial did not support that defendant was the minor child's primary caregiver. In fact, the trial court's finding that defendant only contributed minimally to the child's care was not against the clear weight of the evidence. We decline to give weight to defendant's claim that plaintiff inappropriately left the child alone in the bathtub. Defendant fails to recognize testimony that plaintiff did household chores while the child bathed and plaintiff checked on the child. Defendant was not entitled to primary or shared physical custody based on his allegation.

Finally, we reject defendant's claim that plaintiff is unable to encourage a healthy relationship between him and the child. Plaintiff accommodated defendant on numerous occasions of record, dismissed a PPO, and is required to provide defendant with information to enable joint decision regarding education.

We conclude that the trial court's determination that the best interest factors weighed in plaintiff's favor was not against the great weight of the evidence. Its decision to award plaintiff primary physical custody was not an abuse of discretion.<sup>3</sup>

Defendant next argues that the trial court's child support award impoverished him and forced him to accept state aid, and that the trial court erred in its application of Michigan's child support formula because it did not hold a hearing to determine whether cause existed warranting an order of support. Neither argument has merit. This Court reviews for clear error the trial court's factual findings regarding its child support award. *Stallworth v Stallworth*, 275 Mich App 282, 284; 738 NW2d 264 (2007). The record reflects that defendant's child support

---

<sup>2</sup> Defendant claims that plaintiff used illegal substances. There was no evidence to support this assertion.

<sup>3</sup> In making his argument, defendant cites several cases stating that the right to parent is a fundamental right. While this is a proposition with which we do not argue, defendant failed to provide further explanation or analysis as to how these cited cases apply to the present case, or how his parental rights have been infringed upon. Therefore, any constitutional issue is abandoned because a party cannot "leave it to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

payment was modified downward when he lost his job and collected unemployment, and thereafter obtained a lower-paying position. Further, defendant was not relying wholly on state assistance; he was utilizing assistance for food while generating income. The trial court did not err.<sup>4</sup>

Finally, defendant challenges the trial court's division of the marital assets and debts as inequitable. Factual findings concerning the division of marital property in a divorce case are reviewed by this Court for clear error. *Sparks v Sparks*, 440 Mich 141, 149-150; 485 NW2d 893 (1992). This Court determines "whether the dispositional ruling was fair and equitable in light of those facts." *Id.* at 152. The trial court's decision should be affirmed unless "this Court is left with the definite and firm conviction that the division was inequitable." *Id.*

We conclude that the trial court's division of the marital property was fair and equitable. The trial court properly considered the factors set forth in *Sparks, supra* at 159-160:

(1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity.

Defendant purchased the residence before the parties married. However, the parties, in pooling their incomes during the marriage, both contributed to paying for the mortgage, maintenance, and the improvements to the home. Plaintiff was thus entitled to a portion of the increase in the value of the residence during the marriage. *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). Further, "where the trial court's valuation of an asset is within the range established by the proofs, no clear error is present." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Deference must be given to the trial court credibility determination. *Beason v Beason*, 435 Mich 791, 800-804; 460 NW2d 207 (1990). The trial court found that there was \$53,000 in equity, which finding was supported by the evidence. There was no clear error.<sup>5</sup>

Additionally, an exact division of the marital property is not required. *Id.* Rather, it need only be equitable and roughly congruent. *Jansen, supra* at 171. We conclude that the trial court's division of marital property in the present case was equitable. Thus, defendant is not

---

<sup>4</sup> Defendant cites many provisions of the support and parenting time enforcement act and the family support act, some of which are inapplicable here because they apply to children who are 18 years of age, but he failed to provide further analysis or reasoning as to why those provisions support his argument. Thus, his claims associated with those acts are abandoned on appeal. *Wilson, supra* at 243. Finally, no authority exists to support that in an ongoing divorce action involving minor children, a hearing to establish "cause" for child support is necessary.

<sup>5</sup> Defendant fails on appeal to identify any other assets that he believes were wrongly considered as marital assets, and he fails to cite controlling authority as to why any other specific assets should not be considered as marital asset. Therefore, he has abandoned those issues on appeal. *Wilson, supra* at 243.

entitled to relief. Defendant received \$43,000 of the equity in the marital home. Plaintiff received \$10,000. Defendant also received a 1984 Ford truck, a Camaro worth \$9,300, a tractor, a snow blower, his retirement savings, and a GMC Canyon (although it was repossessed according to the testimony). Plaintiff received a GEO Tracker, worth \$3,800, the Harley Davidson motorcycle, her retirement savings, any other personal bills, and a \$5,000 contribution from defendant towards attorney fees. We conclude there exists no reason to disturb this distribution on appeal.<sup>6</sup>

Affirmed.

/s/ David H. Sawyer  
/s/ Brian K. Zahra  
/s/ Douglas B. Shapiro

---

<sup>6</sup> Defendant also requests a cease and desist order directing that all obligations of support be removed under Title VI necessity, but he fails to provide further explanation, authority or analysis, and therefore this issue is abandoned on appeal. *Wilson, supra* at 243. Defendant also asserts that a change of circumstances occurred after the time of the original temporary order, and he requests full custody of Aubree under MCL 722.27(1)(c). This is a new issue, not presented to or decided by the trial court, and thus not preserved for review. *Fast Air, supra* at 549.