STATE OF MICHIGAN

COURT OF APPEALS

PAMELA MARIE WHITE,

Plaintiff-Appellant,

v

KEVIN JAMES WHITE,

Defendant-Appellee.

UNPUBLISHED
November 23, 2010

No. 293976
Macomb Circuit Court
LC No. 2009-000169-DM

Before: STEPHENS, P.J., AND MARKEY AND WILDER, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging a provision in a divorce judgment relating to child custody. The provision prohibited the parties from "entertain[ing] unrelated members of the opposite sex overnight while the children are in their care." We vacate the challenged provision. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In this divorce action, custody of the minor children was a disputed issue. The parties ultimately settled their differences and reached an agreement regarding custody, support, and parenting time. Although not agreed to by the parties, the trial court required that the following provision be included in the divorce judgment:

> Each parent affirms that neither parent shall entertain unrelated members of the opposite sex overnight while the children are in their care.

The court explained that "it's morally important for the children to develop in an environment that's conducive to marriage," and advised the parties that "if you don't want to teach your children morals, I will."

In child custody cases, the trial court's choice, interpretation, or application of the law is reviewed for clear legal error. Its findings of fact are reviewed under the great weight of the evidence standard. Its discretionary rulings, including a determination on the issue of custody, are reviewed for an abuse of discretion. *Foskett v Foskett*, 247 Mich App 1, 4-5; 634 NW2d 363 (2001).

Upon entering a judgment of divorce, the court may enter appropriate orders concerning the care, custody, and support of the parties' minor children. MCL 552.16(1). In a child custody dispute, the court must "establish the rights and duties as to the child's custody, support, and

parenting time in accordance with" the Child Custody Act. MCL 722.24(1). "The Child Custody Act applies directly to original child custody disputes or incidentally to child custody disputes arising from other actions, typically divorce proceedings. The term 'child custody dispute' is generally used broadly throughout the Child Custody Act 'to mean any action or situation involving the placement of a child.'" *Sirovey v Campbell*, 223 Mich App 59, 68; 565 NW2d 857 (1997) (citations omitted). The trial court must "ensure that the resolution of any custody dispute is in the best interests of the child." *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004).

The "trial court is not bound by the parties' stipulations or agreements regarding child custody" but it may accept the parties' agreement and incorporate it in the orders of the court. *Koron v Melendy*, 207 Mich App 188, 191; 523 NW2d 870 (1994). When the parties have agreed to a custody arrangement, the court need not "conduct a hearing or otherwise engage in intensive fact-finding," but it still must "satisfy itself concerning the best interests of the children" because "the deference due parties' negotiated agreements does not diminish the court's obligation to examine the best interest factors and make the child's best interests paramount." *Harvey*, 470 Mich at 192-193.

The moral fitness of the parties is a relevant factor in determining whether a custodial arrangement is in the children's best interests. MCL 722.23(f). However, this factor "relates to a person's fitness as a parent," meaning that the court must consider "the parent-child relationship and the effect that the conduct at issue will have on that relationship." Accordingly, "questionable conduct is relevant . . . only if it is a type of conduct that necessarily has a significant influence on how one will function as a parent." *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994) (emphasis omitted). Morally questionable conduct relevant to parental moral fitness includes "verbal abuse, drinking problems, driving record, physical or sexual abuse of children, and other illegal or offensive behaviors." *Id.* n 6.

Sexual relations outside of marriage, even when adulterous, are not necessarily probative of how a person will interact with or raise a child, *id.* at 887, and unmarried cohabitation, in itself, "is not enough to constitute immorality under the Child Custody Act." *Truitt v Truitt*, 172 Mich App 38, 46; 431 NW2d 454 (1988). Thus, the mere fact that one parent has a person of the opposite sex spend the night while the children are in the home does not itself render him or her morally unfit as a parent. *Id.* While aspects of a parent's lifestyle that can adversely affect the children may signal a lack of moral fitness affecting the parent-child relationship that can warrant action by the court, "[a] parent's lifestyle cannot be the sole factor by which his or her morality is judged." *Snyder v Snyder*, 170 Mich App 801, 806; 429 NW2d 234 (1988).

In this case, there was no showing, nor did the trial court find, that any desire by plaintiff to entertain an unrelated member of the opposite sex overnight affected her fitness as a parent. Instead, the court insisted on the provision because of its own personal views of morality. Because the fact that a parent has an occasional overnight guest of the opposite sex does not render him or her so morally unfit as to warrant a change of custody, *Truitt*, 172 Mich App at 40, 46, or a denial of parenting time, *Snyder*, 170 Mich App at 806, and there was no evidence of any adverse effect on the children here apart from a difference of opinion regarding the morality of such behavior, the trial court erred by adding the provision prohibiting the parties from entertaining unrelated members of the opposite sex overnight while the children were in their care. Accordingly, we vacate that provision in the judgment.

Vacated in part in accordance with this opinion.

/s/ Cynthia Diane Stephens
/s/ Jane E. Markey
/s/ Kurtis T. Wilder