STATE OF MICHIGAN

COURT OF APPEALS

JAMIE M. MATZ, Plaintiff-Appellee,	UNPUBLISHED January 18, 2011
v	No. 298424 Saginaw Circuit Court
MICHAEL J. MATZ, Defendant-Appellant.	LC No. 07-063529-DM

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's orders granting physical custody of the parties' three children to plaintiff and denying his motion for reconsideration. Because we conclude there were no errors warranting relief, we affirm.

In custody cases, this Court will affirm the trial court's findings of fact unless they are against the great weight of the evidence, meaning that the evidence clearly preponderates in the opposite direction. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004). This Court reviews questions of law for clear legal error, which occurs when the trial court incorrectly chooses, interprets, or applies the law. *McIntosh v McIntosh*, 282 Mich App 471, 475; 768 NW2d 325 (2009). We review discretionary rulings, such as custody determinations, for an abuse of discretion. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). A trial court abuses its discretion on a custody matter when its decision is "so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id.*

A court may not change an established custodial environment unless a party presents clear and convincing evidence that the change is in the best interests of the affected children. MCL 722.27(1)(c). A custodial environment exists 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." *Id.* The existence of a custodial environment is a question of fact. *Berger*, 277 Mich App at 706.

The trial court in this case found an established custodial environment with plaintiff, based on the facts that the children looked primarily to her even before the divorce and have been living with her since 2007. Defendant's appellate brief does not appear to challenge the trial court's conclusion and does not explain how the finding was against the great weight of the evidence. Because the children had been living primarily with plaintiff for nearly two years at the time of the trial court's decision, and because plaintiff was their primary caretaker even prior to that point, it cannot be said that the trial court clearly erred in finding an established custodial environment with plaintiff. Given this finding, the trial court could not grant defendant custody unless he demonstrated by clear and convincing evidence that the children's best interests would be served by changing the custodial environment.

Michigan law requires that the best interests of the children be determined using certain statutory factors. See MCL 722.23. The trial court must consider these factors and state its findings and conclusions with regard to each factor. *Thompson*, 261 Mich App at 363. Defendant challenges the trial court's findings on three factors. The court found that factor (d), which addresses the length of time the children have lived in a stable, satisfactory environment, and factor (i), which addresses the reasonable preference of the children, favored plaintiff. The court further found that factor (j), the willingness and ability of each party to support a relationship between the children and the other parent, did not favor either party. Defendant contends the trial court should have found each of these factors in his favor because plaintiff has pursued a deliberate strategy to turn the children against him.

The record, however, fully supports the trial court's findings. Although it is clear that plaintiff has contributed, knowingly or unknowingly, to the children's negative view of defendant, it also shows that she has attempted to improve her behavior and that defendant himself is also at fault. Plaintiff testified that she has apologized to the children for her role in the collapse of the family. She also testified that she reprimands the children when she hears them speak negatively about defendant, and that she has encouraged them to give defendant a chance. It is undisputed that plaintiff has invited defendant to accompany the rest of the family on several occasions, such as to go see a movie. Defendant has refused all such overtures.

In addition, defendant himself has contributed to the hostilities. There is evidence that defendant has made disparaging remarks about plaintiff in front of the children. The record is also replete with references to defendant's bullying behavior, which was testified to by plaintiff, plaintiff's mother, the parties' next door neighbor, and the parties' former pastor. Defendant disputes much of the testimony against him, but we must defer to the trial court on issues of credibility. *McIntosh*, 282 Mich App at 474. There is ample evidence in the record to support the trial court's findings on all of the statutory best interest factors. Given the facts as the trial court found them, it cannot be said that the court abused its discretion by granting sole physical custody to plaintiff.

Defendant also contends the trial court erred by not holding a hearing on his motion for reconsideration or at least explaining why it denied the motion without a hearing. He claims that *Mixon v Mixon*, 237 Mich App 159; 602 NW2d 406 (1999), mandates that the trial court either hold a hearing or state its reasoning for denying the motion. Defendant misreads *Mixon*. The *Mixon* Court held that the trial court was required to state its reasoning on the record for denying a request for physical custody, but in the context of the trial court's initial judgment, not a

motion for reconsideration. *Id.* at 162-163. *Mixon* separately dealt with a post-judgment motion, but did not suggest that a trial court must state its reasoning for a decision on such a motion. *Id.* at 163-164. The other cases cited by defendant likewise hold only that a trial court must make explicit findings regarding the statutory best interest factors when making its original custody determination, and not that it must repeat this procedure when faced with a motion for reconsideration. See *Parent v Parent*, 282 Mich App 152, 155-156; 762 NW2d 553 (2009); *Rittershaus v Rittershaus*, 273 Mich App 462, 475; 730 NW2d 262 (2007).

Under MCR 2.517(A)(4), "[f]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule." No rule requires a court to state its reasons for denying a motion for reconsideration brought under MCR 2.119(F). Moreover, MCR 2.119(F)(2) states that no oral argument will be had on a motion for reconsideration unless the court otherwise directs. Therefore, the trial court did not abuse its discretion by denying defendant's motion without first granting a hearing or explaining its reasoning.

There were no errors warranting relief.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause