STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW M MCNUTT, Plaintiff-Appellee,	UNPUBLISHED December 15, 2015
v	No. 328214 Lapeer Circuit Court, Family Division
MELISSA L MCNUTT, Defendant-Appellant.	LC No. 05-035949-DM

Before: SAWYER, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order granting plaintiff's petition to change custody and limit defendant's parenting time. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The parties went through contentious divorce proceedings in 2005-2006. The trial court eventually granted defendant primary physical custody of the couple's two minor daughters, who were three and four years old at the time of the divorce. Throughout the proceedings, defendant claimed that plaintiff's son by a previous marriage, J, had sexually abused both girls. Despite numerous Child Protective Services (CPS) and law enforcement investigations, these allegations were never substantiated.

Plaintiff and defendant continued to disagree over their daughters' care for several years, and plaintiff filed a motion for a change of custody in 2008 based on defendant's continued sexual-abuse allegations and various other behaviors that served to alienate the girls from him. The motion hearing was adjourned several times to allow the parties to conduct extensive discovery and engage expert witnesses. The trial court eventually denied the motion in 2010, but imposed numerous orders on both parties designed to allow the girls to "mature and function normally" despite the extensive conflict between their parents. The court ordered both parties to refrain from discussing divorce or custody matters in front of the girls and taking the girls to a mental health provider without the prior knowledge and consent of the other parent, and ordered defendant to undergo therapy for at least six months "focused on her prior abuse, abusive relationships, depression and anger management." Finally, the court ordered plaintiff to restrict

J's contact with his half-sisters to situations in which the family was out in public or attending "non-overnight family functions at the home of friends or relatives."[1]

In 2010, defendant filed a parenting-time complaint and motion to enforce the trial court's order, alleging that plaintiff had allowed J to spend time alone with the girls on three occasions. Plaintiff responded that J had been in Traverse City on one of the alleged occasions and with his mother on the other two. The trial court eventually held a hearing on defendant's motion, along with a dispute regarding child support, a year later. The trial court denied defendant's motion and awarded $500 to plaintiff in attorney's fees as a sanction.

Relations between plaintiff and defendant were relatively stable over the next few years, and the girls did well academically and socially. However, the older daughter, EM, began cutting herself and acting withdrawn from plaintiff during his parenting time in 2013. EM's school notified plaintiff and defendant that EM was exhibiting signs of suicidal ideation in 2014. Defendant sent EM to several different therapists without consulting with plaintiff. EM was eventually admitted to an inpatient psychiatric hospital. Several months later, OM, the younger daughter, began showing similar signs of mental difficulty, and she was eventually admitted to the same psychiatric hospital. At one point, both girls raised new sexual-abuse allegations from years before, this time against plaintiff. Both girls reported the new allegations within a week of each other and when they were scheduled to leave the psychiatric hospital and return to school. As before, CPS and law enforcement investigations failed to substantiate the claims, despite forensic interviews and other investigative efforts.

In November of 2014, the girls' lawyer guardian ad litem (LGAL) submitted a report to the trial court stating that defendant had been denying plaintiff parenting time for several months and also stating that, after interviewing the girls' current and past therapists as well as family friends, she had formed the opinion that defendant had "perpetuated the serious anxiety and emotional problems" of EM, that the girls' relationship with defendant was codependent and unhealthy, and that physical custody should be changed to plaintiff. Plaintiff thereafter filed a petition to change custody based on the LGAL's report and recommendation.

The trial court held a hearing on plaintiff's petition December 16, 2014. The LGAL testified consistently with her report, although she noted that defendant had given plaintiff "some" parenting time since November and it had gone "pretty well." EM's former counselor, Cathryn Sharich, testified and opined that defendant was engaged in "parental alienation" of plaintiff. The hearing was adjourned to allow additional discovery to be conducted.

On May 6, 2015, the LGAL filed a second report that indicated that the girls had developed more serious emotional difficulties and anxiety, had been admitted to inpatient mental health treatment, and had very poor school attendance. The LGAL opined that defendant's

[1] Plaintiff appealed the trial court's denial of his motion for change of custody, and this Court affirmed. *McNutt v McNutt*, unpublished opinion per curiam of the Court of Appeals, issued December 2, 2010 (Docket No. 298480).

behavior had created and continued to exacerbate severe emotional distress and anxiety, and after analyzing the custodial best-interest factors of MCL 722.23, recommended an immediate change in physical custody in plaintiff's favor, with defendant allowed "minimal supervised visitation."

The trial court continued the hearing on plaintiff's petition the next day, on May 7, 2015. Dr. David W. Thompson, a children's clinical and forensic psychologist, testified that a review of the girls' records indicated several serious problems. Thompson said that "[i]t appeared, certainly, that [defendant] was making negative comments about [plaintiff]" and that this had made the girls' relationship with plaintiff "much more tenuous and much more strained. It seems to have created anxiety on the part of the girls, particularly lately when you look at their therapy records." Thompson also opined that repeated interviews "very likely influenced [the girls'] statements throughout the course of the case" and that past therapists' and the LGAL's notes all suggested that defendant had been "directly involved" in the girls' therapy sessions. He explained, "And by that, I mean both present and vocal, during therapy sessions; and . . . her presence has impacted how the child responds."

Thompson concluded that the reliability of the girls' statements regarding the sexual-abuse allegations against J was "very questionable" and that ". . . the most significant factor here, has been what appears to be the girls' mother's obsessive pursuit of confirmation that her children were sexually abused." He echoed Sharich's belief that defendant actively searched for professionals who would credit her story, and that she attempted to influence the girls' therapists. Thompson believed that, if things did not change, "the relationship between the girls and their father would continue to deteriorate; and . . . the mental health of the girls would continue to deteriorate." The trial court asked Thompson if defendant was likely to sabotage any appropriate treatment the girls received. He replied, ". . . I think it's reasonable to assume that unless mom makes some sort of significant changes or adjustments in her behavior, it's going to continue again. . . . I guess I would be personally concerned that it's going to have more lasting impact on the children over time."

Plaintiff testified regarding his concerns about his daughter's mental and emotional health, and testified that J (now in college) had agreed to move out of the house if plaintiff obtained primary physical custody of the girls. Defendant testified and denied failing to cooperate with EM's past therapists, and further testified that Sharich had lied about defendant's active role in EM's therapy and defendant's characterizations of plaintiff. Defendant denied coaching the girls regarding the sexual-abuse allegations. Dr. Sara Chase, EM's current counselor, testified that EM suffered from "pervasive" anxiety. Chase denied ever seeing conduct from EM or defendant to indicate parental alienation syndrome. Chase testified that EM had never raised allegations of sexual abuse by J or plaintiff during therapy sessions.

The trial court issued its opinion and order on May 15, 2015. The court first noted that the girls had an established custodial environment with defendant, which required plaintiff to show by clear and convincing evidence that a custodial change was necessary. Citing the girls' "extreme mental and emotional instability" and "unstable, self-destructive behavior[,]" in addition to defendant's conduct, the court found that "there has been a change of circumstance and proper cause in this case to justify both the hearing and . . . some modifications."

The trial court recounted the parties' history and then analyzed the custodial best-interest factors. The court stated that factor (a) (love, affection, and emotional ties) and factor (b) (capacity and disposition to give love, affection, and guidance) favored defendant. Factor (c) (capacity to provide physical needs), however, favored plaintiff because the court found that defendant had not provided "proper medical follow-up, and care, and treatment to these girls, especially . . . if [EM has] been cutting for a long time . . . ." Factor (d) (length of time in stable environment) likewise favored plaintiff because the court did not believe that defendant's home was a "stable and satisfactory environment."

The court weighed factors (e) (permanence as family units), (f) (moral fitness), (g) (mental and physical health of the parents), and (h) (children's home, school, and community record) equally for both parties. In discussing factor (i) (children's reasonable preference), the court stated that, while the girls were of sufficient age to consider their reasonable preference, that preference would be of little significance due to their mental and emotional instability. Accordingly, the court refused to consider their preference.

Factor (j) (willingness and ability to facilitate a close relationship between the children and the other parent) weighed in plaintiff's favor. The court noted no incidences of domestic violence under factor (k).

Finally, the court addressed factor (l) (any other relevant factor), concluding that this factor also weighed in plaintiff's favor:

> . . . I think in this case, the catch-all factor is that the girls are in crisis, exhibiting anxious behavior, extreme insecurity, especially [EM], lack of social skills, unable to communicate, depression, suicidal. That's a factor that I cannot ignore as far as the best interest of the children are concerned. That's extreme.
>
> And along with that factor, the [c]ourt finds that there is overwhelming evidence of manipulation . . . by the children. I think that they, in some cases at least, are lying about their suicidal tendencies, they're lying about further abuse by dad, and they are doing that to get their way. And they are doing that, I believe, because of this strong sense that they have of loyalty to mom; that they have to be loyal to mom, they have to side with mom, and they have to stick up for mom.
>
> Multiple hospitalizations, I think, is – in a psychiatric hospital, is really, really significant.
>
> The school is pretty much on hold as far as their education is concerned.
>
> And all of this weighs in dad's favor, as far as how we go forward from here.

The court adopted the LGAL's opinion and recommendation, granted immediate primary physical custody to plaintiff, and restricted defendant's parenting time to three supervised hours per week. The court also appointed a new counselor, Doctor Allison Curtis, for both girls

because it did not believe that Chase was "making sufficient progress toward healing these relationships between the girls and their parents."

This appeal followed. Following the filing of defendant's claim of appeal, plaintiff moved this court to expand the appellate record to include recent unsolicited correspondence that his attorney had received from Curtis. This Court granted plaintiff's motion.[2] In the letter to plaintiff's counsel, Curtis wrote the following:

> After careful consideration, I respectfully request to be removed as treating therapist for the McNutt family. Despite my efforts, I no longer believe I can be effective in accomplishing the goals of treatment for the minor children or this family. It is my opinion the therapy has been undermined from the start. For example, [defendant] has continuously questioned my clinical skill, clinical judgment[,] and clinical decisions. This has taken place with the children present and more recently with their input. Additionally, [defendant's] recent request for records and confronting the therapist with how our office handled the records (i.e., providing both parents a copy) took place in front of the children, further damaging any therapeutic relationship or any possibility of trust. At this time, I feel this family will be better served by a more specialized psychologist.

Defendant also moved this Court to expand the appellate record to add records from her supervised parenting time visits. This Court granted defendant's motion.[3] The records of defendant's supervised parenting time from July to September 2015 indicate that defendant interacts appropriately with the girls during parenting times, that she does not allow the girls to denigrate plaintiff, and that, following the August and September parenting time visits, the supervising caseworker does not believe that defendant's parenting time visits need to be supervised.

II. BEST-INTEREST FACTORS

Defendant contends that the trial court's factual findings regarding the custodial best-interest factors in MCL 722.23 were against the great weight of the evidence because the judge relied on documentation and testimony from 2010 and earlier, and that, broadly speaking, he failed to credit or consider various evidence in making a best-interest determination. We disagree.

We review child custody orders under three different standards. *Brausch v Brausch*, 283 Mich App 339, 347; 770 NW2d 77 (2009). This Court will affirm a custody order unless the trial court's findings of fact were against the great weight of the evidence, the court made a clear

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[2] *McNutt v McNutt*, unpublished order of the Court of Appeals, entered October 1, 2015 (Docket No. 328214).

[3] *McNutt v McNutt*, unpublished order of the Court of Appeals, issued November 25, 2015 (Docket No. 328214).

legal error, or the court abused its discretion. MCL 722.28; *McIntosh v McIntosh*, 282 Mich App 471, 474-475; 768 NW2d 325 (2009). A court's factual findings are against the great weight of the evidence if "the facts clearly preponderate in the opposite direction." *Shade v Wright*, 291 Mich App 17, 21; 805 NW2d 1 (2010). "This Court defers to the trial court's determinations of credibility[,]" *McIntosh*, 282 Mich App at 474, and in general, the trial court's custody decision "is entitled to the utmost level of deference[,]" *Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 336 (2008).

As a threshold issue, the party seeking modification of a child custody order must establish proper cause or a change in circumstances since the entry of the last custody order "sufficient to warrant reconsideration of the custody decision." *Gerstenschlager v Gerstenschlager*, 292 Mich App 654, 657; 808 NW2d 811 (2011); see also MCL 722.27(1)(c). If the moving party shows by a preponderance of the evidence proper cause or a change in circumstances, the trial court must then determine whether the proposed change in custody would modify the child's established custodial environment. *Pierron v Pierron (Pierron II)*, 486 Mich 81, 92; 782 NW2d 480 (2010). If the proposed change would result in a change to the established custodial environment of the child, the burden is on the moving party to establish by clear and convincing evidence that the change is in the child's best interests. *Id*.

Once the trial court has made these threshold determinations, it must resolve the custody dispute in the child's best interest by weighing the 12 statutory factors outlined in MCL 722.23. *Eldred v Ziny*, 246 Mich App 142, 148, 150; 631 NW2d 748 (2001). Although the court must consider whether each of the factors applies to the instant case, if a factor does not apply, the trial court need not address it further. *Pierron II*, 486 Mich at 92. In making the best-interest determination, the trial court need not adhere to a mathematical calculation and "may assign differing weights to the various best-interest factors." *Berger*, 277 Mich App at 712. The court is also not required to consider "every piece of evidence entered and argument raised by the parties" in making its best-interest determination. *MacIntyre v MacIntyre* (*On Remand*), 267 Mich App 449, 452; 705 NW2d 144 (2005).

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.
>
> (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.

The trial court in this case found proper cause and a change in circumstances sufficient to justify a hearing and modification of the existing custodial arrangement. Specifically, the court noted the girls' sharply declining mental health and emotional stability, as well as defendant's continuing efforts to exclude or alienate plaintiff.

We conclude that the trial court correctly found proper cause and a change in circumstances.[4] Since the court's previous custody order in 2010, EM had been hospitalized for self-harm and suicidal ideation numerous times, and OM had begun to exhibit similar problems that were not in existence when the court issued its previous order. The girls' scholastic performance had also precipitously declined, and they had raised entirely new (and unsubstantiated) sexual-abuse allegations against plaintiff, rather than their half-brother. These troubling facts provided proper cause and a change in circumstances, and they warranted the court's reconsideration of the custodial arrangement. *Gerstenschlager*, 292 Mich App at 657.

[4] We note that defendant on appeal appears to conflate this threshold question with the court's best-interest determination. Further, we could find that she has abandoned the issue of proper cause because she failed to list it in her statement of questions presented or provide legal authority on it. See MCL 7.212(C)(7); *Lee v Smith*, ___ Mich App ___, ___; ___ NW2d ___ (2015); slip op at 4 n 3 ("[d]efendant provides no explanation or authority for this argument. Accordingly, we consider it abandoned on appeal.").

The trial court also explicitly found that the girls had an established custodial environment with defendant, a finding that neither party contests on appeal. Plaintiff was thus obligated to prove by clear and convincing evidence that a custodial change was in the girls' best interests. *Pierron II*, 486 Mich at 92.

The trial court found that factors (c), (d), (j), and (l) weighed in plaintiff's favor; (a) and (b) weighed in defendant's favor; and (e), (f), (g), (h), (i), and (k) weighed equally or were inapplicable. On appeal, defendant contests only the court's determinations under factors (c), (d), (i), (j), and (l), and we will accordingly confine our analysis to those factors alone.

A. MCL 722.23(c)

Factor (c) considers 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." MCL 722.23(c). "Factor [c] does not contemplate which party earns more money; it is intended to evaluate the parties' capacity and disposition to provide for the children's material and medical needs. Thus, this factor looks to the future . . . ." *Berger*, 277 Mich App at 712.

The trial court noted that, while plaintiff had continued to serve as the family's main provider even after the divorce, both parties possessed the *capacity* to provide for the girls' material needs. The judge, however, opined that defendant lacked the *disposition* to provide proper medical care to the girls, particularly in view of defendant's consistent failure to follow up with therapists and her failure to address EM's self-harming behaviors.

The trial court did not err in finding that factor (c) weighed in plaintiff's favor. Chase testified that defendant was appropriate and diligent regarding EM's therapy, but at least four other witnesses—including two of EM's former therapists—all contradicted that testimony. The trial court was entitled to judge the credibility of each of these individuals. *McIntosh*, 282 Mich App at 474. The record demonstrates that defendant was chiefly concerned not with the girls' mental health, but with finding mental-health professionals who would credit her accounts of sexual abuse and accede to her "highly unusual" behavior in therapy. Her disposition to provide the girls with proper mental-health care in the future thus appears negligible. See *Berger*, 277 Mich App at 712. The letter from Curtis merely buttresses this conclusion and establishes that defendant continues to hinder the girls' treatment even after losing primary physical custody. Additionally, while the judge did not address this point, the record also established that plaintiff had steady employment, while defendant had four employers since 2010 and was unemployed at the time of the hearings. Accordingly, the court's finding that factor (c) favored plaintiff was not against the great weight of the evidence. *Shade*, 291 Mich App at 21.

B. MCL 722.23(d)

Factor (d) contemplates the "length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(d). Analysis of the factor involves a two-step evaluation: (1) the stability and suitability of the child's current environment and the length of time the child has been in the environment, and (2) the desirability of keeping the child in the environment. See *Berger*, 277 Mich App at 709.

In discussing factor (d), the trial court noted that the girls had an established custodial environment with defendant, but he continued,

> However, has it been a stable and satisfactory environment? That's the question. And certainly these recent hearings have raised doubt about whether or not there is a stable and satisfactory environment in mom's home, something that we would say should be continued and maintained. And I don't think that's true. Something's wrong in that environment. And these girls are not – are not behaving with any kind of normalcy and are in crisis.

While the trial court failed to cite specific evidence in its comments, the record supports its general assertion that something was amiss in defendant's home. Defendant's conduct in frequently changing the girls' mental-health providers, her insistence on revisiting the unsubstantiated sexual-abuse allegations, and her denial of any culpability in the girls' mental and emotional issues, helped foster an unstable, unsatisfactory home environment, as evidenced by the girls' rapid and alarming decline. Further, based on testimony from numerous service providers and the girls' LGAL—not to mention the concrete evidence that the girls' problems were intensifying with the passage of time—the court reasonably concluded that it was undesirable to allow EM and OM to remain in that environment. Accordingly, the court's finding that factor (d) favored plaintiff was not against the great weight of the evidence. *Shade*, 291 Mich App at 21.

C. MCL 722.23(i)

Factor (i) involves the "reasonable preference of the child, if the court considers the child to be of sufficient age to express preference." MCL 722.23(i). This Court has previously held that a child of six is presumed old enough to express a preference under factor (i). *Bowers v Bowers*, 190 Mich App 51, 56; 475 NW2d 394 (1991). Further, this Court has noted that "we think it clear that by including the word 'reasonable' in the language of MCL 722.23(i), the Legislature simply intended to exclude those preferences that are arbitrary or inherently indefensible." *Pierron v Pierron (Pierron I)*, 282 Mich App 222, 259; 765 NW2d 345 (2009), aff'd by *Pierron II*, 486 Mich at 81.

This Court's recent holding in *Maier v Maier*, ___ Mich App ___, ___; ___ NW2d ___ (2015), under similar factual circumstances, is instructive. In *Maier*, the trial court failed to consider the preference of a nine-year-old child who experienced symptoms of anxiety, had undergone numerous evaluations and counseling sessions, and had been exposed to "inaccurate and inappropriate information." *Id*. at ___; slip op at 3-4. Additionally, the record "contained evidence of four unsubstantiated CPS complaints, testimony from therapists who opined that the minor was being coached[,] and . . . [testimony] that plaintiff voiced concerns and criticisms of defendant in the child's presence." *Id*. at ___; slip op at 4. The trial court held that, although the child "was of sufficient age to be able to form and express a preference, his fragile emotional state, coupled with significant efforts to influence his preference, rendered him unable at the time to form a reasonable preference." *Id*. This Court acknowledged the general proposition that a trial court must consider the reasonable preference of a minor of sufficient age, but affirmed the trial court's finding under factor (i) because the record demonstrated that the child was unable to form a *reasonable* preference. *Id*. at ___; slip op at 3-4 ("Just as adults may lack the capacity to

give competent testimony based upon infirmity, disability or other circumstances, so may a child's presumed capacity be compromised by circumstances peculiar to that child's life.").

The reasoning from *Maier* applies to this case as well. The trial judge noted that EM and OM were of sufficient age to express a preference under factor (i), but noted that their preference would be insignificant to his best-interest determination "based upon the upheaval in these girls' lives, and the point where they're at as far as their mental and emotional stability is concerned." As in *Maier*, the girls in this case had been diagnosed with mental issues, had undergone numerous evaluations and counseling sessions throughout their lives, and had reportedly been subjected to inaccurate and inappropriate information from defendant regarding plaintiff and their half-brother. The girls had also been part of several years' worth of unsubstantiated CPS investigations, and numerous mental-health professionals opined that defendant was actively attempting to alienate the girls from plaintiff. Thus, as with the child in *Maier*, the record in this case suggested that the girls would be unable to express a *reasonable* preference because of circumstances that were peculiar to their lives. *Maier*, ___ Mich App at ___; slip op at 4. Ample evidence existed to support the trial court's implicit finding in this regard, and, therefore, the court's finding under factor (i) was not against the great weight of the evidence. *Shade*, 291 Mich App at 21.

D. MCL 722.23(j)

Factor (j) concerns 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." MCL 722.23(j). In discussing this factor, the trial court stated,

> It's the cooperation factor. And that's been huge in this case, just huge.
>
> > Dad has gone along with the program pretty much. He did – he did make some waves back in 2010 asking for some changes, but pretty much he's been going along with whatever mom does.
> >
> > And what mom has done in this [c]ourt's opinion, as I've said several times now, is done everything she can, in my opinion, to destroy the relationship between these girls and their father. And I hope it's not irreparable.

The record supports the court's determination under factor (j). On appeal, defendant asserts that the court should have found that the factor weighed equally because plaintiff had sometimes failed to cooperate with her and cooperation was "a two-way street." Indeed, the evidence suggests that plaintiff may have denigrated defendant in front of the children or lacked a certain diligence in returning defendant's telephone calls. But plaintiff's occasional lack of cooperation pales beside defendant's pattern of making medical decisions for the girls without consulting him, attempting to exclude him from their mental-health treatment, engaging in parental alienation, characterizing plaintiff as a vicious, violent stalker, moving to a different city without notifying him until the move was complete, denying parenting time for months without good cause, and continuing to raise or support the sexual-abuse allegations against plaintiff and his son. The evidence in the record favors plaintiff, and consequently, the court's findings under factor (j) were not against the great weight of the evidence. *Shade*, 291 Mich App at 21.

E. MCL 222.23(l)

Factor (l) is a "catch-all" provision covering "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." MCL 722.23(l); *McIntosh*, 282 Mich App at 482. This Court has previously held that matters as varied as one parent's ill treatment of the other, *Diez v Davey*, 307 Mich App 366, 394; 861 NW2d 323 (2014), and a parent's inability or unwillingness to understand how his inappropriate behavior was affecting the child, *McIntosh*, 282 Mich App at 482-483, are proper matters for a court's consideration under factor (l).

The record supported the trial court's determination under factor (l). It is clear from the hearing transcript that the court raised several specific concerns under (l): the girls' current mental states, their numerous admissions to inpatient psychiatric care, their tendency to engage in manipulative behavior to get what they wanted or to exhibit their loyalty to defendant, and their poor attendance at school and the possibility that they may have to repeat grades in the future. Contrary to defendant's contentions on appeal, the other best-interest factors did not directly address these concerns. The court discussed defendant's failure to provide adequate mental-health treatment for the girls under factor (c), but that factor, as noted, deals explicitly with the *parent's* capacity to provide for the children, not the children's potential mental issues resulting from the parent's failure to do so. MCL 722.23(c). The girls' multiple admissions to a psychiatric provider were arguably symptomatic of defendant's failure to provide a safe and stable environment under factor (d), but the court did not address the psychiatric hospitalizations under any factor apart from (l)—and, in any event, (d) focuses on the environment that the parent provides, not the myriad consequences of the child's presence in the environment. MCL 722.23(d). The court also did not address the girls' manipulative behavior under any other factor than (l). And finally, while the court's brief observation regarding the girls' education may, at first blush, appear to apply to factor (h), that factor focuses on the child's *past* record, not his or her current status or future prospects. MCL 722.23(h).

In addition, the record supported the court's determination under factor (l). Even defendant admitted that the girls were "in crisis" in terms of their mental health and that they had both been admitted to a psychiatric hospital numerous times. The record also demonstrated that both girls threatened suicide and raised sexual-abuse allegations against plaintiff in an effort to stay out of school or avoid returning to plaintiff's care. The LGAL also testified that the girls were having difficulty reintegrating into school, and that the school might keep them from moving to the next grade level. Thus, the court properly raised each concern under factor (l), and its finding that the factor weighed in plaintiff's favor was not against the great weight of the evidence. *Shade*, 291 Mich App at 21.

III. CUSTODY AND PARENTING TIME

Defendant contends that the trial court abused its discretion by granting plaintiff primary physical custody and restricting her parenting time, because the decision was based on the court's erroneous findings under the best-interest factors in MCL 722.23, there was no proof that she caused the girls' problems or failed to treat them adequately, the court made erroneous credibility determinations, the court was biased and arbitrary, and the court's ultimate decision was unsupported by the facts. We disagree.

We review "discretionary rulings, including a trial court's custody and parenting-time decisions, for an abuse of discretion." *Mitchell v Mitchell*, 296 Mich App 513, 522; 823 NW2d 153 (2012). "An abuse of discretion with regard to a custody issue occurs when the trial court's 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*. (citation and quotation marks omitted).

As noted, the child's best interests govern a trial court's decisions regarding custody and parenting time. *Shade*, 291 Mich App at 31; see MCL 722.274(1). The best-interest factors in MCL 722.23 and the parenting-time factors in MCL 722.27a(6) are both relevant to a trial court's parenting-time decisions, though the court has discretion regarding whether to consider the parenting-time factors. MCL 722.27a(6) ("The court *may* consider the following factors when determining the frequency, duration, and type of parenting time to be granted . . .") (emphasis added); *Shade*, 291 Mich App at 31. MCL 722.27a(3) provides that "[a] child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health." Further, a presumption exists that it is "in the best interests of a child for the child to have a strong relationship with both of his or her parents." MCL 722.27a(1).

The court's custody and parenting-time decisions did not constitute abuses of discretion. As discussed at length earlier in this opinion, the trial court acknowledged and applied the best-interest factors under MCL 722.23 in finding that a change in physical custody—from defendant to plaintiff—was in the best interests of EM and OM. Moreover, none of the court's findings regarding the best-interest factors was against the great weight of the evidence. The court did not discuss the parenting-time factors from MCL 722.27a(6) on the record, but consideration of those factors is discretionary, not mandatory. MCL 722.27a(6).

Defendant argues that the court lacked evidence to conclude that she was responsible for the girls' mental-health problems, but, as discussed earlier, there was copious evidence and testimony from multiple service providers, the LGAL, and plaintiff himself to demonstrate that defendant helped to create and reinforce the girls' anxiety, belief in the sexual-abuse allegations, and strained relationship with plaintiff. Defendant argues on appeal that the court should have lent more credence to her assertions and Chase's testimony, but we will not disturb a trial court's credibility determinations on appeal. *McIntosh*, 282 Mich App at 474. The trial court was in the best position to judge the veracity of the parties, particularly considering that plaintiff and defendant had been appearing before him for the better part of a decade. Based on its evaluation of the best-interest factors, the court's custody decision was not "palpably and grossly violative of facts and logic." *Mitchell*, 296 Mich App at 522.

Regarding parenting time, the court explicitly limited defendant's time with the girls to three supervised hours per week "to prevent any further denigration of the relationship between the girls and their father that may be caused by mom." Plaintiff presented clear and convincing evidence that parenting time with defendant posed a continuing danger to the girls' mental and emotional health, MCL 722.27a(3), and strong measures were required to ensure that her continued attempts to exclude and alienate plaintiff from his daughters' lives did not destroy the girls' presumptive interest in a strong relationship with him, MCL 722.27a(1). Further, the trial court noted that defendant's parenting time could be expanded upon agreement of the parties or a

counselor's recommendation. We note that the records of supervised visits submitted by defendant indicate that the supervised parenting time visits have been going well and that the caseworker sees no need for further supervision. Nothing in this opinion precludes the parties from agreeing to unsupervised visits or defendant from seeking expansion of parenting time before the trial court. Accordingly, we do not find that the trial court's parenting-time determination was arbitrary, biased, or "palpably and grossly violative of facts and logic." *Mitchell*, 296 Mich App at 522.

Affirmed.

/s/ David H. Sawyer
/s/ Jane M. Beckering
/s/ Mark T. Boonstra