

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHRYN KAYKO,

Plaintiff/Cross Defendant-  
Appellant,

v

JOSHUA GOVITZ,

Defendant/Cross Plaintiff-Appellee.

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UNPUBLISHED  
March 15, 2016

No. 328939  
Gladwin Circuit Court  
Family Division  
LC No. 14-007676-DM

Before: GLEICHER, P.J., and MURPHY and OWENS, JJ.

PER CURIAM.

Following a brief marriage, plaintiff Kathryn Kayko filed for divorce from her husband, defendant Joshua Govitz. The proceedings centered on a heated dispute over custody of the parties' young son, KKG. The court ultimately awarded the parties joint legal custody, with physical custody given to Govitz. Kayko challenges this decision, as well as the evidentiary support for the court's underlying best-interest determinations. Because the record supports the court's findings and ultimate decision, we affirm.

I. BACKGROUND

Kayko and Govitz began dating in March 2012 and married on July 15, 2013. On March 9, 2014, Kayko gave birth to KKG. From KKG's birth until November 14, 2014, Kayko and Govitz resided together. Govitz's son from a previous marriage, KMG, also lived with them. The parties shared the duties of caring for their son. Given Govitz's longer work hours, Kayko was the child's primary caregiver.

The parties' relationship was rocky at best. Govitz alleged that Kayko sporadically binged on alcohol and rebuked his attempts to help her overcome addiction. Kayko accused Govitz of being controlling and abusive, and of suffering from his own addictions to alcohol and gambling.

In October 2012, Kayko was hospitalized in a psychiatric facility after a suicide attempt. Govitz described that Kayko "went on a bender" and he gathered friends and family to convince her to enter a rehabilitation center. He alleged that Kayko was very upset and stated her intent to

“go out with a bang.” As Kayko continued to drink, Govitz took KMG into his bedroom to sleep. Kayko then locked herself in the bathroom and took several Trazodone, which had been prescribed to combat anxiety. Kayko told the circuit court that she had been fighting with Govitz and locked herself in the bathroom to avoid him. She claimed she took the Trazodone to help her fall asleep. In her contemporaneous medical records, however, Kayko admitted that she attempted to commit suicide. Her blood alcohol content (BAC) was 0.20 at that time.

In August 2013, Govitz was charged with domestic violence against Kayko. Govitz described that he was angry when he arrived home and found Kayko drinking after she had promised to quit. He alleged that Kayko “pummel[ed] [him] in the face multiple times” and he responded by “head butt[ing]” her. Kayko denied assaulting Govitz that day. She claimed that Govitz arrived home in a rage, head butted her and almost broke her nose, and threw her into the coffee table. Govitz was convicted of domestic violence for this incident. Kayko and Govitz subsequently attended approximately seven marriage counseling sessions and decided to remain together.

On October 26, 2014, police were again summoned to the Kayko-Govitz home. That evening, Govitz visited a local bar with friends, while Kayko remained home to drink with a girlfriend. When young KKG fell asleep, Kayko placed him on her bed, surrounded by pillows. At some point, Kayko became so intoxicated that she fell asleep on the couch. Nathan Jance, who was living in the parties’ basement, arrived home from the bar and found Kayko. Believing Kayko was too intoxicated to care for her child, Jance telephoned Govitz and asked him to come home. Jance then assisted Kayko to her bed. When Govitz returned, he found Kayko asleep in the bed with KKG. Govitz attempted to wake Kayko to discuss her decision to become intoxicated while caring for their child. Kayko responded by lashing out at Govitz and kicked him in the face. Govitz called 911. Gladwin police officer Buddy Boylen arrived on the scene and also tried to awaken Kayko. Kayko was so intoxicated that this took several minutes. Kayko’s body was covering the infant’s arm, so the officer removed him from the bed for safety reasons. Ultimately, the officer asked Kayko, Govitz, and Jance to submit to breathalyzer tests. Kayko’s BAC was 0.199, Govitz’s was 0.09, and Jance’s was 0.17. Kayko was charged with domestic violence and child abuse and she pleaded guilty to domestic violence in exchange for dismissal of the other charge.

Kayko indicated that following the October 26 incident, she was afraid of Govitz. On November 13, she had been out with her friend Rachel Hund. Too nervous to go home, she asked Govitz if she could spend the night at Hund’s house, but he would not allow it. When Kayko returned home, she and Govitz fought, and Kayko left anyway. The next day, Kayko filed for divorce. Govitz then left the marital home and stayed with his parents.

Govitz alleged that Kayko refused him access to KKG after she filed for divorce. Despite that a Friend of the Court (FOC) hearing regarding custody and parenting time was scheduled for mid-December, Govitz filed an ex parte motion for temporary custody. The circuit court initially granted this motion and Govitz had sole custody of the child for 10 days. During that time, KKG developed a respiratory infection and Kayko accused Govitz of failing to give the child adequate breathing treatments. The court withdrew the temporary order on December 3, and returned KKG to his mother’s primary care.

On December 16 and 17, 2014, an FOC referee conducted a hearing on Govitz's motion for temporary custody. Govitz presented evidence that Kayko had a long-standing history of alcoholism. He and other witnesses testified that Kayko did not drink on a daily basis. However, she sporadically drank to excess for a day or two. Govitz claimed that Kayko repeatedly promised to get help but did not follow through. Govitz admitted that Kayko remained sober throughout her pregnancy, but contended that she continued to smoke heavily. He also presented medical records supporting Kayko's history of alcoholism.

Kayko denied that she had an alcohol problem. She admitted that she sometimes drank to the point of intoxication, but denied that she ever did so while caring for her child. Kayko's mother testified as well and denied that her daughter had a problem with alcohol. This testimony conflicted with a December 2012 medical report wherein Kayko reported that her mother would not let her move into her home "because of her alcoholism" and had encouraged her to enter a rehabilitation program. Kayko described Govitz's alcohol and gambling addictions. She also presented Govitz's ex-wife as a witness to corroborate her tales of Govitz's abusive and controlling behavior.

The parties also presented evidence regarding KKG's health needs and their incomes and housing situations. The parties agreed that KKG was born prematurely and remained in the hospital for 34 days. He suffered from "Reactive Airways Disease," and sometimes required breathing treatments to alleviate wheezing symptoms.

Kayko testified that she works part-time as a waitress and bartender at a local bar, earning approximately \$11,000 annually. By the close of the proceedings, she had enrolled in community college. At the initial FOC hearing, Kayko stated her intent to remain in the marital home, which came with a \$700 monthly rent bill. She eventually moved in with her mother, however, in a three or four-bedroom home. KKG had his own room in that home, and slept in a proper crib. Govitz worked as a door-to-door salesman for a cable company. He earned approximately \$50,000 in this commission-based position in 2013, and \$95,000 in 2014. During the proceedings, he rented a three-bedroom home that he shared with Jance. Govitz claimed that KKG shared a bedroom with his older brother. He later stated that KKG slept in his bedroom in a pack-and-play. The third bedroom was occupied by Jance, whose girlfriend often stayed the night. Jance's young daughter also stayed in the home on alternating weekends and for six weeks in the summer.

Following the FOC hearing, the circuit court accepted the referee's recommendation that the parties be awarded joint legal custody with sole physical custody being awarded to Kayko. Initially, Govitz had only short parenting time sessions. Following the child's first birthday, however, the court ordered overnight visitation as well.

In the meantime, Govitz objected to the FOC recommendation and requested a de novo hearing on the issue of custody. Govitz noted that he had sole physical custody of his older son from his previous marriage and had experience in raising an infant alone. He further relied upon evidence of Kayko's serious alcohol problem that led to the domestic violence incident on October 26, 2014. Kayko retorted that she was currently in counseling to address her issues and had been sober since the incident the previous fall.

The court conducted a de novo hearing and heard testimony from both parties, as well as Govitz's ex-wife. The court considered the parties' medical and counseling records. On May 11, 2015, the court issued its opinion granting joint legal custody to the parties, but transferring physical custody to Govitz. The court awarded Kayko generous parenting time from Sunday at 5:00 p.m. through Wednesday at 5:00 p.m.

The court first determined that KKG had an established custodial environment with both parents. The court considered the various best-interest factors found in MCL 722.23 of the Child Custody Act. In relation to factors (a) (love, affection and emotional ties between parent and child), (b) (parental capacity and disposition to give love, affection, and guidance and to raise the child in his or her religion), (d) (length of time the child has lived in a stable and satisfactory environment), (e) (permanence as a family unit), (f) (moral fitness of the parents), and (j) (willingness and ability to foster child's relationship with other parent), the court merely stated, "The Court finds the parties equal as to this factor." In relation to factors (h) (child's home, school and community record) and (i) (preference of the child), the court found that the child was too young for either to be relevant.

The court made brief findings in relation to the other factors. The court found that factor (c) (capacity and disposition to provide food, clothing, medical care, and other material needs) favored Govitz because he "has consistent, stable employment. The Father has stable housing for himself and his children." The court also found that factor (g) (parents' mental and physical health) favored Govitz. In this regard, the court stated:

The Mother has an addiction to alcohol. The Mother was found by Gladwin City Police incapacitated by alcohol in bed with the child that led to criminal charges, later dismissed. The Mother has been treated for alcohol addiction in the past, but refuses to acknowledge her addiction. The Mother has attempted suicide by overdosing with prescription medication and has been hospitalized for observation in the Midland Hospital. The Mother has been prescribed Antabuse in an effort to control her alcoholism. These incidences have happened in the recent past.

The court also favored Govitz under factor (k) (domestic violence). The court noted that Kayko "is currently on probation for domestic violence in which the Father is the victim and the child was present." Under factor (l), the catch-all factor, the court indicated that it took into consideration that Govitz's older child lived with him and the brothers shared a "relationship."

Kayko quickly filed a motion for reconsideration but withdrew it after learning that the court would take additional evidence on the custody issue at the bench trial in the divorce action. At the trial, Kayko presented testimony from KKG's pediatrician regarding his respiratory condition. The pediatrician asserted that Kayko was generally the parent who brought KKG to his appointments. The nurse practitioner who was Kayko's primary healthcare provider testified on her behalf. She indicated that Kayko had acknowledged her alcohol problem since 2012 and had worked toward recovery. Govitz's therapist testified regarding the progress he had made in counseling to overcome his addictive personality and impulsiveness. Kayko presented her counseling records from Shelterhouse. The parties and Jance also presented testimony at the trial.

Thereafter, the court issued a new custody order that, for the most part, was identical to the first. Pertaining to the parties' mental and physical health, the court added:

The Court heard testimony from Sheila Gordon, Licensed Counselor, indicating the Father had participated in ongoing counseling for a substantial period of time and had benefited from the counseling. The Mother had been referred by District Court to Ms. Gordon for counseling and, after signing up, did not appear.

The Mother has a history of alcohol abuse that has resulted in involvement with the criminal court. She has a history of denying her abuse of alcohol and being dishonest with her primary caregiver, who testified before the Court. The Mother has not been truthful with the Court in her testimony regarding her treatment for alcohol abuse. The Mother is on probation for a domestic violence [sic] against the Father in which alcohol was involved. As found previously, the Mother has attempted suicide using prescription medication. The Court finds that the Mother has an addiction to alcohol that she has not honestly addressed or resolved.

The court subsequently entered a judgment of divorce providing for joint legal custody with Govitz retaining physical custody. The court continued to award Kayko parenting time from Sunday evening through Wednesday evening.

This appeal followed.

## II. ANALYSIS

### A. GUIDING LEGAL PRINCIPLES

Three different standards govern our review of a circuit court's decision in a child-custody dispute. We review findings of fact to determine if they are against the great weight of the evidence, we review discretionary decisions for an abuse of discretion, and we review questions of law for clear error. *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). A clear legal error occurs when the circuit court "incorrectly chooses, interprets, or applies the law . . . ." *Id.* at 881. [*Kubicki v Sharpe*, 306 Mich App 525, 538; 858 NW2d 57 (2014).]

All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010).

"The Child Custody Act 'applies to all circuit court child custody disputes and actions, whether original or incidental to other actions.' " *Pierron*, 486 Mich at 85, quoting MCL 722.26(1). When a court is faced with a custody dispute under the act, it must first determine the child's established custodial environment. *Butler v Simmons-Butler*, 308 Mich App 195, 202; 863 NW2d 677 (2014). As "the best interests of the child control," MCL 722.25(1), the court

must then consider the best-interest factors of MCL 722.23. The statute provides that “the sum total” of the various enumerated factors coincide with the child’s best interests. Those factors are:

(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.]

In reviewing the circuit court’s factual findings under the best-interest factors, this Court “should not substitute its judgment . . . unless the factual determination clearly preponderates in the opposite direction.” *Pierron*, 486 Mich at 85 (quotation marks and citation omitted). We must also defer to the circuit court’s assessment of witness credibility. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011).

## B. ARTICULATION OF FINDINGS

Kayko first challenges the sufficiency of the court's articulation of its findings regarding factors (a), (b), (d), (e), (f), and (j). Generally, a trial court must state its factual findings and conclusions under each best-interest factor. *Rittershaus v Rittershaus*, 273 Mich App 462, 475; 730 NW2d 262 (2007). "These findings and conclusions need not include consideration of every piece of evidence entered and argument raised by the parties." *Id.* (quotation marks and citation omitted). " 'However, the record must be sufficient for this Court to determine whether the evidence clearly preponderates against the trial court's findings.' " *Id.*, quoting *MacIntyre v MacIntyre*, 267 Mich App 449, 452; 705 NW2d 144 (2005). If the court opts to merely state its conclusion with regard to a particular factor, it must be "independently supported or otherwise corroborated by the evidence on the record and thus amenable to appellate review." *Foskett v Foskett*, 247 Mich App 1, 13; 634 NW2d 363 (2001). Yet, when the court decides not to articulate the facts supporting its determinations, it creates a void in the record. Absent any fact-specific findings, meaningful appellate review is nearly impossible.

Kayko contends that such a void was created in this case. Kayko specifically challenges the factual support for finding the parties equal with relation to factors (a) and (d), and complains that the lack of factual findings on the record precludes review.<sup>1</sup> We do not agree. As discussed below, adequate evidence was presented from which we can review the court's rulings on those two factors. However, we advise the circuit court that such generalized rulings are unhelpful to the parties and the appellate courts and do not conform to best practices.

## C. BEST-INTEREST FINDINGS

### 1. FACTOR (A)

Kayko first challenges the circuit court's ruling that both parents were equal in relation to factor (a): "The love and affection and other emotional ties existing between the parties and the child." MCL 722.23(a). This finding was not against the great weight of evidence. Both parties testified that the other was a good parent and loved their son. Jance, who has lived with both parties, testified that both appeared to share the duties of child rearing. Although Kayko presented Hund as a witness at the FOC hearing to testify about the strong bond between mother and child and lack of bond between father and baby, Hund apparently switched sides. Even at the FOC hearing, Hund testified that Kayko was often untruthful. By the time of the divorce trial, Hund had entered a romantic relationship with Govitz and was not called to testify. Kayko did report that KKG had suffered some separation anxiety as a result of the new custody arrangement. The child's pediatrician testified that such anxiety is "a normal, developmental thing that we see with kids."

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<sup>1</sup> Kayko lists factor (j) in the heading of her challenge to the court's best-interest determination. She raises no argument in relation to that factor in her brief. Kayko therefore abandoned her challenge on that ground. See *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008).

Ultimately, although Kayko worked fewer hours and therefore had more opportunity to tend to the child on a daily basis, this did not negate that Govitz equally loved his son and could care for him. Accordingly, the evidence did not preponderate against the court's ruling.

## 2. FACTOR (C)

Kayko next challenges the circuit court's ruling that factor (c) favored Govitz. This factor provides for consideration of "[t]he 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). As noted, the circuit court based its ruling on Govitz's "consistent, stable employment" and "stable housing."

Kayko contends that the court's one-sided analysis establishes that the court ignored conflicting evidence. In *Fletcher*, 447 Mich at 883, our Supreme Court indicated that a trial court does not commit clear legal error by "provid[ing] only a one-sided account of the facts when considering" the best-interest factors. "While . . . the most effective appellate review obviously would result from a more thorough account of the court's balancing," the failure to conduct such record analysis does not necessarily merit relief. *Id.*

Kayko also challenges the court's consideration of the parties' housing situation under this factor, claiming that such evidence should have been considered under factor (d) alone. The best-interest factors of MCL 722.23 "have some natural overlap." *Fletcher v Fletcher*, 229 Mich App 19, 25; 581 NW2d 11 (1998). See also *Carson v Carson*, 156 Mich App 291, 299-300; 401 NW2d 632 (1986). And surely one material need of every child is a home to live in.

In relation to the court's factual resolution of this issue, we decline to hold it against the great weight of the evidence. In *Berger*, 277 Mich App at 712, this Court provided the following guidance regarding this best-interest factor:

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, not to which party earned more money at the time of the trial, or which party historically has been the family's main source of income.

This does not mean, however, that evidence of a party's financial means, either past, present or future, are irrelevant.

Kayko worked part-time as a waitress and bartender earning \$11,000 annually. On the eve of the bench trial, she made the sage decision to cease working in an establishment that serves alcohol and took a job at a local diner. She presented no evidence of her potential salary or hours at that restaurant. Kayko also testified that she had just enrolled in community college classes to improve her earning capacity. However, 33-year-old Kayko had not historically shown financial independence. Until 2010, Kayko resided with her grandmother in Harper Woods. When she moved to Gladwin, she first lived with her mother. During that time, Kayko's mother managed her finances and paid Kayko's bills on her behalf. Kayko then moved

in with Govitz and allowed him to control the finances. Kayko lived independently only briefly after she and Govitz separated. Given this evidence, it is too early to predict whether Kayko will be able to provide for her child's needs in the future.

The evidence also established that Govitz lived independently both before his relationship with Kayko and after, except for a brief sojourn in his parent's home when he left the marital residence. He had stable employment earning a significant commission-based salary and provided health insurance for his son.

In relation to KKG's medical needs, Kayko did establish through the pediatrician's testimony that she was the parent with primary responsibility to schedule and take KKG to his appointments. The pediatrician did record that Govitz had attended some of the child's scheduled appointments. Accordingly, his absence at others was likely due to his work schedule. Kayko testified that Govitz had neglected KKG's medical needs by failing to give him necessary breathing treatments every four hours while KKG was in Govitz's sole care in November 2014. Kayko contended that she proved this omission by counting the breathing treatment cartridges in the box when Govitz returned KKG to her care. Govitz contradicted Kayko's testimony regarding the number of cartridges in the box when he collected KKG and his luggage from Kayko's mother's home. He insisted that he gave the child the treatments as prescribed.

And the evidence established that both parents provided for the child's other needs, both while they lived together and after they separated. Kayko testified that she alone fed KKG and provided his food. Jance and Govitz contradicted that testimony, however.

There was evidence favoring both parents in relation to factor (c). The circuit court weighed the credibility of the witnesses before it and ruled that this factor favored Govitz. As the evidence does not clearly preponderate against this ruling, we may not substitute our judgment.

### 3. FACTOR (D)

Despite its consideration of the parties' housing situation in determining that factor (c) favored Govitz, the circuit court found the parties equal in relation to factor (d), "[t]he length of time the child has lived in a stable and satisfactory environment and the desirability of the maintaining continuity." MCL 722.23(d).

Neither parent was living in an optimum home at the time of the bench trial. Kayko was living with her mother in a larger home where KKG had his own bedroom and a proper crib. However, Kayko had reported to her healthcare provider in the past that her mother had evicted her due to her alcoholism. Accordingly, there was no guarantee that Kayko could remain in that home and the evidence established that she could not afford a home on her own. Govitz was living in a three-bedroom home essentially with another couple and three young children of both genders. The home therefore was not large enough to provide sleeping quarters for everyone, and KKG was sleeping in a pack-and-play. However, Govitz's salary meant he could afford to pay his rent alone. Given this record, we discern no ground to find that the court's ruling preponderated against the evidence.

#### 4. FACTOR (G)

Kayko takes issue with the court finding that factor (g)—“The mental and physical health of the parties involved,” MCL 722.23(g)—favored Govitz. However, the record supports this ruling.

Both parties came into their relationship with significant problems. Govitz had addictions to gambling and alcohol. He was controlling and abusive. Kayko had a long-standing serious addiction to alcohol, suffered from anxiety, and attempted suicide on one occasion. The court’s decision focused on whether the parties had accepted their shortcomings and whether they attempted to rectify these conditions.

Overall, the record established that Kayko was in denial of her problems and did not seek satisfactory assistance. Kayko did not admit to the court that she was an alcoholic until the bench trial. She claimed to be unaware that her sporadic drinking binges amounted to alcoholism because she believed the term described a daily drinker. Record evidence contradicted Kayko’s denials, however. In approximately 2010, Kayko began taking Antabuse, a medication that makes one physically ill when consuming alcohol. Her healthcare provider again prescribed this drug in November 2012, but Kayko later admitted that she did not take it. Yet, Kayko denied in court that she had ever used Antabuse. Kayko’s apparent attempt to minimize her alcohol problem to the court not only calls into question her credibility, but also her insight into her problem. Additionally, in approximately 2005, Kayko was convicted of driving under the influence, and was arrested for drunken and disorderly conduct in 2011. In 2012, she attempted suicide while extremely intoxicated. Extreme intoxication also fueled her assault of Govitz on October 26, 2014.

Kayko refused to admit in court that she attempted to commit suicide in 2012. She insisted that she took multiple pills from her Trazodone prescription simply in an attempt to fall asleep. However, contemporaneous medical records indicated that Kayko admitted that she tried to commit suicide because she was overwhelmed by financial and relationship problems.

Kayko presented a letter from her counselor at Shelterhouse regarding the treatment she had pursued during the proceedings. The letter noted that Kayko had been charged with domestic violence against Govitz “due to reactive violence in the home” and as a result, she was “completing therapy and a 26 week behavioral curriculum suggested and assigned by the prosecutor’s office and the courts . . . .” Kayko had actively participated in two sessions weekly and had made great progress in domestic violence counseling. On June 4, 2015, Kayko submitted to a substance abuse screening and assessment and was diagnosed with “mild alcohol use disorder.” The evaluator recommended outpatient counseling focusing on her substance abuse. However, Kayko had not sought counseling services to overcome her alcohol addiction. Accordingly, although she self-reported at the bench trial that she had not consumed alcohol since October 26, 2014, this claim could not be substantiated.

Govitz, on the other hand, admitted that he had a gambling and alcohol addiction and that he had been controlling in relationships. He also admitted that he physically assaulted Kayko in August 2013. To overcome his gambling addiction, Govitz moved his base office from Mt. Pleasant to Bay City so he would not be tempted to go to the casino. He left his bowling league

and recreational softball team as these social activities were triggers to drink alcohol. During the proceedings, he attended counseling to address his addictive behaviors, as well as his impulse control. His counselor testified at the bench trial that Govitz had made significant progress.

Overall, given Govitz's active efforts to overcome his shortcomings and Kayko's denial of her alcoholism, we cannot find that the circuit court's ruling was against the great weight of the evidence. As Kayko progresses in treatment for alcoholism and establishes a pattern of sobriety, she may certainly petition the court for a change of custody or increased parenting time.

#### 5. FACTOR (K)

The circuit court found that factor (k) favored Govitz. This factor measures "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." MCL 722.23(k). While the evidence was close on this finding, we discern no ground to substitute our judgment for that of the circuit court.

Both parties have been convicted of committing domestic violence against the other. The evidence clearly reveals that Govitz's assault of Kayko in August 2013 was more serious than Kayko's attack of Govitz in October 2014. Following Govitz's conviction, he participated in therapeutic services as a condition of probation and his conviction was ultimately cleared. He and Kayko also participated in marriage counseling at that time. Following Kayko's conviction, she also attending domestic violence counseling. Her counselor reported perfect attendance and active participation on Kayko's part. However, when Kayko assaulted Govitz, she was extremely intoxicated. Given her BAC of 0.199, Kayko was nearly comatose and lashed out physically when Govitz attempted to wake her. Accordingly, the alcohol, not Kayko, was in control when she resorted to violence and her alcoholism, rather than her violent tendencies, was the core concern under this factor. Yet, Kayko had not yet begun to address her problem with alcohol at the time of the bench trial. Again, as Kayko progresses in treatment, the scales may shift in relation to this factor and Kayko could petition the court for a change in custody or increased parenting time. But at this time, the circuit court's decision did not preponderate against the evidence.

#### 6. FACTOR (L)

Finally, Kayko challenges the circuit court's consideration that KKG lived with his half-brother in Govitz's home as weighing in favor of awarding Govitz custody. The court relied on this fact under the catch-all factor (l): "Any other factors considered by the Court to be relevant to a particular child custody dispute." MCL 722.23(l).

The circuit court found that Govitz lives with his son from a prior marriage, who had developed a relationship with KKG. Kayko argues that this finding implies that "a one year old is better off with his half-brother than with his mother." The court made no such implication. The circuit court merely noted a positive influence in Govitz's household, i.e., the sibling relationship. The court drew no comparison, favorable or not, between that relationship and Kayko's relationship with her child.

Given the circuit court's reliance on record evidence in supporting its findings under the best-interest factors of MCL 722.23, we discern no abuse of the court's discretion in granting physical custody to Govitz. Ultimately, Kayko has custody of KKG three days each week, and Govitz four. The judgment is therefore very nearly equal and the court did not unnecessarily interfere with Kayko's relationship with her son.

We affirm.

/s/ Elizabeth L. Gleicher

/s/ William B. Murphy

/s/ Donald S. Owens