STATE OF MICHIGAN

COURT OF APPEALS

LYNDIA S. RHADIGAN, Plaintiff-Appellant,	UNPUBLISHED July 26, 2016
v	No. 330306 Ionia Circuit Court
JOSHUA J. RHADIGAN, Defendant-Appellee.	LC No. 2014-030588-DM

Before: STEPHENS, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

In this divorce action, plaintiff Lyndia S. Rhadigan appeals as of right the divorce judgment entered on November 2, 2015. She challenges the trial court's parenting time order, its imputation of her income for purposes of child support, and its decision not to order counseling for the minor child or defendant, Joshua J. Rhadigan. We affirm.

"[A]ll orders and judgments of the circuit court shall be affirmed on appeal unless the trial court made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 877; 526 NW2d 889 (1994). We further review child support orders, the modification of such orders, and a trial court's decision whether to impute income to a party for an abuse of discretion. *Peterson v Peterson*, 272 Mich App 511, 515; 727 NW2d 393 (2006); *Loutts v Loutts*, 298 Mich App 21, 25-26; 826 NW2d 152 (2012).

First, with respect to plaintiff's argument regarding parenting time, decisions regarding parenting time are governed by the Child Custody Act, MCL 722.21, *et seq*. *Berger v Berger*, 277 Mich App 700, 716; 747 NW2d 336 (2008). MCL 722.27a provides, in relevant part:

> (1) Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.
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> (2) If the parents of a child agree on parenting time terms, the court shall order the parenting time terms unless the court determines on the record by clear and

> convincing evidence that the parenting time terms are not in the best interests of the child.

Thus, "[t]he child's best interests govern a court's decision regarding parenting time." *Shade v Wright*, 291 Mich App 17, 31; 805 NW2d 1 (2010). "Both the statutory best interest factors in the Child Custody Act, MCL 722.23, and the factors listed in the parenting time statute, MCL 722.27a(6), are relevant to parenting time decisions." *Id.*

Here, it does not appear that the trial court fully addressed the best-interest factors or the factors in the parenting time statute when making its decision regarding parenting time.[1] It is nevertheless evident from the trial court's findings and statements on the record that it was focused on the minor child's best interests when determining the parenting time arrangement. See *Shade*, 291 Mich App at 32 ("While the trial court did not explicitly address the factors in MCL 722.27a(6) in modifying defendant's parenting time, it was clear from the trial court's statements on the record that the trial court was considering the minor child's best interests in modifying defendant's parenting time.").

Here, the parties agreed to a split parenting time schedule in conciliation, with each parenting exercising parenting time on two weekdays and alternate weekends. The trial court determined that the parties should maintain this schedule in the summer months, but the trial court found that it was in the child's best interests to have a "routine," "regular," and "consistent" schedule when she started kindergarten in the fall. The trial court further reasoned that a "school schedule" for parenting time, with defendant exercising parenting time from Monday after work until Friday morning and one weekend per month, and plaintiff exercising parenting time the first three full weekends of each month from Friday at noon until Monday at 5:00 p.m., would "work nicely" because plaintiff intended to continue her education in a physician's assistant (PA) program in Detroit.

The record supports the trial court's findings. The evidence established that the child's schedule during the week was generally consistent when she was in defendant's care. However, when in plaintiff's care, the child's schedule varied. Plaintiff intended to complete her PA program, which previously required her to travel to Detroit at least two days a week. Although plaintiff testified that she did not intend to stay overnight in the Detroit area, she had, in the past, spent a minimum of two nights out of town when she had classes, leaving defendant to care for

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[1] The trial court instead appears to have fully addressed the best-interest factors with respect to *custody*, and it determined that there was not clear and convincing evidence to modify the current custodial arrangement. Thus, both parties maintained joint legal and physical custody of the minor child. On appeal, plaintiff challenges a number of the trial court's findings with respect to the best-interest factors, but she challenges these findings only in relation to the parenting time decision. Because the trial court's findings under the best-interest factors were not relevant to its parenting time decision, plaintiff's argument is unavailing in this regard. Nevertheless, we have reviewed the trial court's findings under the best-interest factors challenged by plaintiff and conclude that the trial court's findings were not against the great weight of the evidence based on the record before us. See *Fletcher*, 447 Mich at 877-879.

the child during the week. Accordingly, clear and convincing evidence was presented for the trial court to find that the parenting time schedule agreed upon by the parents was not in the child's best interests and to modify the schedule accordingly. See MCL 722.27a(2). Thus, the trial court did not commit a palpable abuse of discretion in making its parenting-time decision. See *Berger*, 277 Mich App at 705.

Next, plaintiff argues that the trial court abused its discretion when it decided to impute income to plaintiff in the child-support order. We disagree. When determining child support, the first step "is to ascertain each parent's net income by considering all sources of income." *Stallworth v Stallworth*, 275 Mich App 282, 284; 738 NW2d 264 (2007). This is generally done by ascertaining "the actual resources of each parent." MCL 552.519(3)(a)(*vi*). However, "longstanding Michigan caselaw permits a court to impute income to a parent on the basis of the parent's unexercised ability to pay when supported by adequate fact-finding that the parent has an actual ability and likelihood of earning the imputed income." *Id.* at 284-285. Stated differently, "when a party voluntarily reduces or eliminates income, and the trial court concludes that the party has the ability to earn an income and pay child support, the court does not err in entering a support order based upon the unexercised ability to earn." *Olson v Olson*, 189 Mich App 620, 622; 473 NW2d 772 (1991).

When determining whether to impute income, the trial court must consider certain criteria set forth in the Michigan Child Support Formula (MCSF), including "employment experience, educational level, physical and mental disabilities, whether the parties' children reside in the individual's home, availability of employment, wage rates, special skills and training, and whether the individual can actually earn the imputed income." *Stallworth*, 275 Mich App at 286. See also 2013 MCSF 2.01(G)(2).

Here, the evidence established that plaintiff had a bachelor's degree in general studies and a master's degree in exercise science, which she was not utilizing. Although plaintiff had been employed for more than five years as an exercise physiologist, earning approximately $22 per hour, she voluntarily left her job in August 2012 to attend the PA program in Detroit. Plaintiff attended PA school until May 2014, when she took a "leave" from the program. Plaintiff was unemployed after taking her leave, but she eventually began working at her family's farm and trucking business for 40 hours a week making $8.15 an hour. Plaintiff testified that she applied to different positions in personal training and exercise physiology, but the positions for which she applied were not accommodating to her schedule because of her therapy sessions, court dates, and the parenting time arrangement. In total, plaintiff only applied to five or six positions between May 2014 and August 2015. Plaintiff testified that exercise physiologists make approximately $14 or $15 an hour as their starting pay.

In light of this testimony, the trial court imputed income to plaintiff at $14 an hour, noting that this was $8 less than the income plaintiff had previously earned. The trial court considered plaintiff's employment experience and her educational level, and it determined that plaintiff had a "significant ability to earn if she [chose] to do so." The trial court stated that it was not satisfied that plaintiff had made a "concerted effort" to find employment in the area because she had family members willing to help her out financially. The trial court also found that, although plaintiff claimed that the positions to which she applied did not accommodate her

schedule, plaintiff was being "really selective" in regard to the employment opportunities she was willing to accept.

Given that the record evidence supports the trial court's findings, we find no abuse of discretion in the trial court's imputation of plaintiff's income. The record established that plaintiff had "an actual ability and likelihood of earning the imputed income," *Stallworth*, 275 Mich at 284-285, as she was qualified for employment, but was being extremely selective in the places she was willing to work. Contrary to plaintiff's argument on appeal, it is evident from her own testimony that jobs were available in the local geographical area, but she was not willing to adjust her personal schedule to accommodate the employment opportunities. The trial court, therefore, did not abuse its discretion in finding that plaintiff had an unexercised ability to earn and by imputing income to her in the child-support order.

Plaintiff also argues that the trial court erred by retroactively applying the imputed income in the child-support order. Because plaintiff did not cite any supporting legal authority for this position, we find her argument to be abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999) ("[W]here a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned.").

Finally, plaintiff argues that the trial court abused its discretion by not requiring counseling for the minor child and by declining to order anger management counseling and a substance abuse evaluation for defendant. Again, we find plaintiff's arguments to be abandoned because she does not cite supporting legal authority for her claims on appeal.[2] See *id.* In any event, plaintiff's arguments regarding counseling largely ask this Court to make its own determination regarding defendant's credibility. However, we give deference to the trial court's credibility determinations and will not second-guess the trial court's evaluation of credibility on appeal. *Stallworth*, 275 Mich App at 286; *Berger*, 277 Mich App at 705. Therefore, plaintiff's arguments regarding counseling are unavailing.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher

[2] In support of these arguments, plaintiff only cites this Court's analysis of the Child Custody best-interest factors in *MacIntyre v MacIntyre*, 267 Mich App 449; 705 NW2d 144 (2005). Plaintiff claims that *MacIntyre* shows the importance of therapy for a minor child and the impact of a party's display of volatile anger in front of a minor child on a custody decision. See *id.* at 455, 457. However, *MacIntyre* did not involve a request for counseling and is, therefore, entirely irrelevant to plaintiff's claims on appeal that the trial court committed error by failing to order counseling for the minor child and defendant.