STATE OF MICHIGAN

COURT OF APPEALS

JENNIFER A. SCHAIBLE,

Plaintiff-Appellant,

v

DENNIS A. ANGERBRANDT II,

Defendant-Appellee.

UNPUBLISHED
November 19, 2020

No. 350228
St. Clair Circuit Court
Family Division
LC No. 15-001876-DC

Before: O'BRIEN, P.J., and BECKERING and CAMERON, JJ.

PER CURIAM.

Plaintiff appeals as of right an amended order modifying a previous custody order to grant defendant sole physical and legal custody of their child. We affirm.

I. BACKGROUND

The parties shared joint legal and physical custody of the child since 2016, with plaintiff exercising parenting time on weekdays and defendant exercising parenting time on weekends. The dispute underlying the parties' custody dispute arose from the four-year-old child's claims regarding each party between July 2018 and March 2019, which resulted in several investigations by Children's Protective Services (CPS) and various law enforcement agencies. The vast majority of the investigations involved statements the child made about defendant putting his finger or fingers in the child's anus. During this time frame, the child underwent four rectal examinations and one toxicology screening, participated in two formal forensic interviews at the Child's Advocacy Center, was questioned by several CPS workers, and had to change counselors twice. Despite the repeated investigations, CPS never substantiated any of the allegations against defendant and no criminal charges were filed. However, Brook Schmidt, the CPS caseworker who

investigated most of the complaints, found by a preponderance of the evidence that plaintiff was responsible for maltreatment and causing the child mental injury.[1]

In March 2019, plaintiff filed a motion seeking various forms of relief, including full custody of the child. Defendant opposed the motion and likewise sought full custody. The trial court reviewed a CPS report regarding the history of complaints and findings concerning plaintiff and noted its concern about the child having been scheduled to attend yet another forensic interview because of an investigation pending in Macomb County. The trial court found a change of circumstances and proper cause to consider modifying the existing custody arrangement and scheduled the matter for hearing.[2] In the interim, the trial court granted defendant extended parenting time, with the child remaining in his care. Plaintiff's regular parenting time was suspended pending the evidentiary hearing, but she was given supervised parenting time twice a week. Following a lengthy series of hearings, the trial court determined that it was in the child's best interest to grant defendant sole legal and physical custody. Plaintiff was granted parenting time in accordance with the standard Friend of the Court parenting-time schedule.

On appeal, plaintiff moved to remand for further factual development, arguing that several subpoenaed witnesses did not appear at the evidentiary hearings, while others were barred from providing full testimony. This Court granted plaintiff's motion, *Schaible v Angerbrandt*, unpublished order of the Court of Appeals, entered January 10, 2020 (Docket No. 350228), and additional hearings were held over two days. Taking the supplemental testimony into consideration, the trial court amended its earlier finding regarding best-interest factor (g),[3] but did not alter its decision to grant defendant sole legal and physical custody.

II. CHILD CUSTODY MODIFICATION

On appeal, plaintiff first argues that the factual findings underlying the trial court's proper cause and best interests rulings were against the great weight of the evidence and that the trial court erred by granting defendant sole legal and physical custody. We disagree.

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[1] Plaintiff successfully challenged Schmidt's determinations regarding mental injury and maltreatment and her name was expunged from the CPS central registry.

[2] In its oral ruling at the March 2019 motion hearing, the trial court referred only to proper cause, but its later written order indicated that it found both proper cause and a change of circumstances. "[A] court speaks through its written orders and judgments, not through its oral pronouncements." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009).

[3] Best-interest factor (g) addresses the "mental and physical health of the parties involved." MCL 722.23(g). The trial court initially found that factor (g) favored defendant slightly, but determined during the remand proceedings that factor (g) favored both parties equally. Considering the trial court's subsequent treatment of this factor, it is unnecessary to assess plaintiff's argument that the trial court's original finding was against the great weight of the evidence. It is clear that the trial court's finding regarding this factor was not dispositive, as the court affirmed its decision granting defendant sole legal and physical custody even after determining that the respective physical and mental health of the parties were equally weighted.

A. STANDARDS OF REVIEW

In matters involving child custody, " 'all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.' " *Yachcik v Yachcik*, 319 Mich App 24, 31; 900 NW2d 113 (2017), quoting MCL 722.28. "This Court reviews a trial court's determination regarding whether a party has demonstrated proper cause or a change of circumstances under the great weight of the evidence standard." *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). Under the great weight of the evidence standard, we will not interfere with the trial court's factual findings "unless the facts clearly preponderate in the opposite direction." *Shade v Wright*, 291 Mich App 17, 21; 805 NW2d 1 (2010). Discretionary rulings, including a trial court's decision to change custody, are reviewed for an abuse of discretion. *Lieberman v Orr*, 319 Mich App 68, 77; 900 NW2d 130 (2017). "[A]n abuse of discretion exists when the result 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." *Yachcik*, 319 Mich App at 31 (quotation marks and citation omitted). Clear legal error occurs when the trial court "incorrectly chooses, interprets, or applies the law." *Sulaica v Rometty*, 308 Mich App 568, 577; 866 NW2d 838 (2014).

B. PROPER CAUSE AND CHANGE OF CIRCUMSTANCES

"As set forth in MCL 722.27(1)(c), when seeking to modify a custody or a parenting-time order, the moving party must first establish proper cause or a change of circumstances before the court may proceed to an analysis of whether the requested modification is in the child's best interests." *Lieberman*, 319 Mich App at 81. In *Vodvarka v Grasmeyer*, 259 Mich App 499; 675 NW2d 847 (2003), this Court explained the threshold requirements a party seeking a change of custody must satisfy:

> [T]o establish "proper cause" necessary to revisit a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court. The appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being. When a movant has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors.
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> [I]n order to establish a "change of circumstances," a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed. Again, not just any change will suffice, for over time there will always be some changes in a child's environment, behavior, and well-being. Instead, the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child. This too will be a determination made on the basis of

> the facts of each case, with the relevance of the facts presented being gauged by the statutory best interest factors. [*Id*. at 512-514.]

The trial court found proper cause and a change of circumstances in this case on the basis of plaintiff's continued attempts to press CPS complaints regarding defendant's alleged sexual abuse, which resulted in the child being forced to participate in several investigations, forensic interviews, and rectal examinations. Plaintiff argues that the trial court erred in this regard because there was no evidence that she coached the child to accuse defendant of sexual abuse and she was not primarily responsible for the multiple investigations and examinations.

Plaintiff directs this Court's attention to *Hessburg v Hessburg*, unpublished per curiam opinion of the Court of Appeals, issued September 15, 2011 (Docket No. 299942). As an unpublished opinion, *Hessburg* is not binding under the rule of stare decisis.[4] *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). Nor is it particularly instructive in this instance, despite its focus on unsubstantiated claims of sexual abuse. The defendant in *Hessburg* sought a change of custody, reasoning that modification was appropriate because of "another in a series of groundless allegations . . . that defendant had sexually abused one of the children." *Hessburg*, unpub op at 1. In supplemental briefing, the defendant insisted that the underlying accusations arose because the plaintiff was coaching or making suggestive statements to the children. *Id*. at 2. The trial court found that the defendant failed to establish proper cause or a change of circumstances, and this Court affirmed. *Id*. at 1. In doing so, this Court emphasized that the evidence did not suggest the plaintiff intentionally planted false allegations in the children's minds or attempted to alienate them from the defendant. *Id*. at 4-5.

Plaintiff's reliance on *Hessburg* is unpersuasive. This Court's analysis of the coaching issue was necessary because the defendant maintained that there was evidence of coaching. *Id*. at 2. Here, defendant opposed plaintiff's motion and sought full physical custody because of the harmful effect the continued investigations were having on the child. His response to plaintiff's motion made no mention of coaching and his attorney made only a passing reference to the possibility of coaching at oral argument before the trial court. The trial court did not find that plaintiff was coaching the child, and plaintiff has not established that such a finding was necessary.

The instant case is also factually distinguishable from *Hessburg*, as this Court's opinion included little discussion regarding the timing and nature of the sexual abuse allegations. Instead, *Hessburg* refers only to an allegation from the youngest daughter in September 2008, "pre-2008 claims of sexual abuse," and an unproven allegation from the eldest daughter at some unknown time.[5] At minimum, there was a nine-month lapse in the claims of sexual assault in *Hessburg*. Here, in less than an eight-month period, the child was involved in four CPS investigations regarding defendant's alleged sexual abuse, and he underwent four invasive physical examinations

[4] We discuss *Hessburg* only to respond to plaintiff's express reliance on the unpublished opinion.

[5] It is unclear whether the "pre-2008 claims of sexual abuse" and the earlier allegations made by the eldest daughter are one and the same.

in a short six-week period. The constant, overlapping nature of the allegations in this case is a far cry from the sporadic, albeit repeated, allegations at issue in *Hessburg*.

Plaintiff also argues that the trial court's finding was erroneous because she was not primarily responsible for the investigations and related physical examinations. Plaintiff notes that many other individuals—namely, medical professionals, police officers, the child's teacher, and a Families First worker—made complaints to CPS and that most of the rectal examinations were performed as a matter of protocol, rather than at plaintiff's request. Plaintiff's position ignores the simple reality that the child was in a situation that had a material effect on his wellbeing, regardless of whether plaintiff was "at fault" for pursuing the matter. A change of custody does not require one or both parties to be responsible for the circumstances leading to a custody hearing. Rather, the court may reassess the best-interest factors to consider modifying custody if there is proper cause or a change of circumstances that has a significant effect on the child's wellbeing. *Vodvarka*, 259 Mich App at 512-514.

It is evident from the history of this case that the ongoing allegations of sexual abuse were affecting the child's life on a day-to-day basis, with no foreseeable end in sight. The trial court did not err by finding proper cause and a change of circumstances on this basis. Because of the repeated complaints, the child was subjected to several rectal examinations and was constantly required to answer sensitive questions from CPS investigators, forensic interviewers, medical personnel, and counselors. By the time of the March 2019 motion hearing, there was a noticeable change in the child's demeanor. Accordingly, the trial court did not err by finding proper cause and a change of circumstances of sufficient significance to consider modifying the child's custody.

C. BEST-INTEREST FACTORS

The trial court found that the child had an established custodial environment with both parents, and plaintiff does not challenge this finding on appeal. Accordingly, a change of custody could only be granted if the trial court found clear and convincing evidence that the change was in the child's best interests. *Griffin v Griffin*, 323 Mich App 110, 119; 916 NW2d 292 (2018). A trial court's analysis of a child's best interests is guided by the statutory factors set forth in MCL 722.23. *Id*.

The trial court found most of the statutory factors to be inapplicable or equally weighted, but determined that the following factors favored granting defendant custody:

> (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.
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> (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
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> (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. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.
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> (*l*) Any other factor considered by the court to be relevant to a particular child custody dispute. [MCL 722.23.]

Plaintiff challenges the trial court's findings regarding each of these factors.

The trial court found both parties had an equal capacity and disposition to give the child love affection and educational support and that religious affiliation was not at issue. Nonetheless, it opined that factor (b) favored defendant because plaintiff had questionable capacity to provide the child with guidance. In support of this conclusion, the trial court noted concerns regarding Clayton Martin (plaintiff's fiancé) and Dennis Schaible (plaintiff's father), who had both "exhibited improper behavior in matters concerning [the child.]" In particular, there was evidence that Clayton encouraged the child to lie to a CPS investigator, while Mr. Schaible "engaged in systematic attempts to intimidate nearly everyone involved with the initial and subsequent investigations . . . ." The court further explained:

> Plaintiff, [Clayton], and Mr. Schaible seemed hell-bent on "proving" abuse by Defendant-father, despite evidence and expert opinions to the contrary and, in the process, subjected [the child] to four rectal examinations, a drug screen, and numerous forensic interviews, embroiling him in their efforts to the point where he repeatedly mouthed words in an effort to end yet another forensic interview. The fact that Plaintiff-mother allowed herself to be influenced by [Clayton] and Mr. Schaible and then actively engaged in efforts that reinforced their influence causes the Court to question her ability to provide [the child] with proper guidance.

Plaintiff argues that that the trial court's conclusion about Clayton encouraging the child to lie was contrary to the great weight of evidence because the trial court placed undue weight on testimony from CPS worker Aimee Lorencz regarding this matter, particularly in light of evidence, and the trial court's belief, that the child lied about other matters.[6] Plaintiff's argument is without merit. Plaintiff essentially asks this Court to reject the trial court's assessment regarding the credibility of the child's admission as conveyed to Lorencz, contrary to the well-settled rule that

[6] When the child met with Lorencz, he said that Clayton told him "to lie about finger in the butt," and that Clayton and plaintiff argued about the lie. The child also told Lorencz nothing was going on with plaintiff, defendant, or Clayton that made him unhappy or scared and denied that anyone touched his private parts.

this Court must defer to a trial court's credibility determinations. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008).

Although she disputes that Mr. Schaible attempted to intimidate anybody involved in the investigations, plaintiff also argues that Mr. Schaible's actions outside of the child's presence have no bearing on her ability to provide the child with guidance. Plaintiff fails to appreciate that the trial court's concerns regarding Mr. Schaible's actions extended to her because the court believed Mr. Schaible influenced plaintiff's decisions. For instance, Mr. Schaible called Dr. John Zmiejko—the child's pediatrician and the physician who performed two of the sexual abuse examinations in this case—several times to seek information and attended a meeting Dr. Zmiejko had with plaintiff. During the meeting, plaintiff and her parents disagreed with Dr. Zmiejko's belief that no sexual abuse had occurred and asked for a referral for a second opinion. The child's teacher also testified about a meeting attended by both plaintiff and Mr. Schaible to address plaintiff's dissatisfaction with the way the teacher reported the child's disclosures to CPS. The teacher explained that Mr. Schaible spoke to others about her background and qualifications and seemed to be accusing her of not doing her job properly. Schmidt similarly testified that when plaintiff and Mr. Schaible met with her to sign a release, Mr. Schaible was unpleasant, interrogated her, attempted to intimidate her, and questioned all of her decisions. In March 2019, the trial court admonished plaintiff after she admitted sewing a digital watch with GPS capabilities into the child's jacket, but later testimony demonstrates Mr. Schaible was actually responsible for placing the watch in the jacket. The trial court did not err by finding that Mr. Schaible's questionable actions influenced plaintiff, as it appears that many of these actions were taken with plaintiff's knowledge and participation. To the extent that Mr. Schaible engaged in other questionable conduct, the trial court did not err by inferring that plaintiff was likely aware of and in agreement with Mr. Schaible's activities, which went hand-in-hand with plaintiff's own persistent claims that the child was being abused by defendant.

Furthermore, this Court has previously approved a trial court's consideration of similar issues under factor (b). See *Wright v Wright*, 279 Mich App 291, 300-301; 761 NW2d 443 (2008) (agreeing that factor (b) favored the defendant when the plaintiff filed numerous complaints regarding the defendant and appeared focused on winning the custody dispute, while the defendant did not attempt to exaggerate wrongdoing). Whether plaintiff was unduly influenced by her fiancé and father or was acting of her own accord, the fact remains that her unending focus on proving defendant was sexually abusing the child, despite evidence to the contrary, hindered her ability to provide the child with guidance during a troubling time. The child's continued statements were undoubtedly alarming, but plaintiff's refusal to accept the possibility that defendant was not abusing the child severely limited her ability help the child address the reasons for his continued assertions. The trial court did not err by finding that factor (b) favored defendant.

The trial court determined that factor (d) favored defendant because the child's behavior had improved during the time he resided solely with defendant. Plaintiff takes issue with the trial court's finding because Dr. Zmiejko attributed the child's improved behavior to being removed from the parties' conflict, rather than the child's specific placement in defendant's care. While plaintiff is correct that Dr. Zmiejko opined the same result would have been likely if the child was placed with the maternal grandparents, that is not what actually occurred. As the trial court observed, both Dr. Zmiejko and Lorencz interacted with the child before and after the temporary change in parenting time, and both witnesses noted obvious improvement in the child's behavior

and demeanor following the court's order. While the child's nearly full-time placement in defendant's care had been ongoing for only a short four-month period, the trial court did not err by finding it in the child's best interests to remain in an environment in which he was noticeably happier, calmer, and better behaved. That the child may have exhibited similar improvements with plaintiff's parents does not undermine the desirability of maintaining continuity in defendant's care.

Next, plaintiff challenges the trial court's finding that factor (j) favored defendant. The trial court determined that plaintiff was unwilling to encourage a close relationship between the child and defendant, citing plaintiff's "insistence that Defendant-father has abused [the child], even when faced with a wealth of evidence indicating no such abuse occurred[,] as well as her request that she be awarded 'full' custody on the basis of that belief . . . ." Plaintiff argues on appeal that the trial court erred because MCL 722.23(j) expressly prohibits consideration of any reasonable action taken to protect a child from sexual abuse. Plaintiff maintains that her responses to the child's repeated allegations were reasonable, as evidenced by testimony from other witnesses who shared plaintiff's concerns.

The trial court did not address the statutory exception embodied in MCL 722.23(j), but we can easily infer that the trial court did not view plaintiff's repeated complaints to CPS and various law enforcement officials as reasonable in light of the "wealth of evidence indicating no such abuse occurred[.]" We agree with plaintiff's contention that she should not be faulted for taking the child to McLaren Hospital in August 2018 when the child first told her that defendant used his fingers to push feces back inside the child's anus. It does not appear that anyone disputes that it was important to take the child's first statement seriously and report it to the appropriate authorities. Nonetheless, considering the unique circumstances of this case as they unfolded, we are not persuaded that the trial court's finding was against the great weight of evidence.

When plaintiff took the child to Lake Huron Medical Center for another examination less than six weeks later, the circumstances were different and the reasonableness of her response was less certain. Even though plaintiff had recently learned that the child's first allegation was found to be unsubstantiated, she took the child to an emergency department again. Given their recent experience at McLaren Hospital and plaintiff's knowledge as a registered nurse, plaintiff was surely aware that visiting another emergency department would result in another invasive and traumatic examination. Plaintiff testified that she took the child to Lake Huron Medical Center not only because of what he said, but also because the child's anus looked red, swollen, and dilated. But plaintiff described the same physical signs in connection with the child's first allegation and was aware that neither the examining physician at McLaren Hospital nor Dr. Zmiejko viewed these signs as evidence of abuse. Additionally, plaintiff knew that the child regularly had problems with constipation and had a history of falsely claiming that he had been physically abused.[7] CPS again found the second complaint regarding defendant's alleged sexual abuse to be unsubstantiated.

[7] Defendant called CPS in July 2018 to report that the child said plaintiff cut his nose with a knife while cooking. When the child was interviewed by Schmidt, he said he hurt his nose playing with a toy truck and specifically denied that plaintiff caused the injury. Clayton also testified about an incident in which the child falsely said Clayton bashed the child's head with the refrigerator door.

Later still, plaintiff continued to initiate complaints requiring investigation of defendant's alleged sexual abuse. Although plaintiff did not take the child for further examinations after being warned against doing so, in December 2018 she reported additional allegations of sexual abuse to the Marysville Police Department and St. Clair County Sheriff's Department. In February 2019, plaintiff filed another police report with the New Baltimore Police Department, triggering a parallel investigation in Macomb County. Plaintiff's suggestion that many of the investigations cannot be attributed to her because the complaints were made by hospital staff or police officers is disingenuous when she was often the person who brought the child's allegations to the attention of mandatory reporters. While it is true that additional third parties reported the child's statements as well, it is patently clear that plaintiff played a substantial role in initiating and furthering the investigations. Without discounting the obvious necessity of responding to claims of sexual abuse appropriately, there has to come a point when it is no longer reasonable for a parent to blindly accept a young child's repeated, unsubstantiated statements regarding sexual abuse. The trial court did not err by determining that point had passed by the time it decided to grant defendant sole legal and physical custody. Consequently, the language of MCL 722.23(j) did not bar the trial court from attaching a negative inference to plaintiff's actions in this case.

With respect to factor (*l*), which permits consideration of any other factor "relevant to a particular child custody dispute," the trial court reiterated and added to its stated concerns regarding plaintiff's actions. The court was troubled that plaintiff's first reaction upon hearing the child's initial statement regarding defendant was to call her lawyer. Coupled with plaintiff's subsequent stubborn pursuit of sexual abuse complaints, the trial court opined that plaintiff was motivated, at least in part, by her desire to " 'win' a so-called custody 'battle' over [the child]." The court further noted that, dissatisfied with the outcome of the professional investigations, plaintiff went on to perform her own "investigation," examining the child's bottom and video recording statements made by the child while he lay partially naked on the floor. Plaintiff also engaged in what the court described as "systematic efforts" to control and interfere with the CPS investigations. Additionally, the court opined that the rehearsed nature of the child's statements during forensic interviews suggested that plaintiff may have manipulated him in an effort to prove defendant's abuse, which likely caused harm to the child.

In challenging the trial court's analysis of factor (*l*), plaintiff simply maintains that all of her actions were reasonable because the child continued to disclose sexually abusive conduct. For the reasons set forth above, we disagree. Despite the child's continuous claims of digital penetration by defendant, plaintiff should have recognized that filing complaint after complaint with various agencies, and then interfering with the resulting investigations, was doing more harm than good. The evidence demonstrates that in the fall of 2018 the child had a happy, care-free disposition and was described as particularly articulate for his young age. By early 2019, the child's teacher reported that he was less cheerful, not as talkative, and generally more withdrawn in class. And despite the child's advanced verbal skills, he did not engage in significant narrative during a January 2019 forensic interview. The child was uncommonly antsy during an interview with Lorencz in March 2019 and spontaneously claimed that defendant put his fingers in the child's butt. Upon further questioning, however, the child said he remembered nothing else about the matter and indicated that Clayton told him to say he did not remember. He repeated this behavior at a later forensic interview in Macomb County and appeared as though he thought he would be allowed to leave as soon as he repeated his accusation against defendant. Considering the decline in the child's demeanor during the course of the investigations and subsequent improvement after

he began to reside with defendant on a full-time basis, the trial court's conclusion that the child's best interests required granting defendant sole physical and legal custody was not an abuse of discretion.

III. JUDICIAL BIAS

Next, plaintiff argues that she is entitled to appellate relief because the trial court's conduct during the remand proceedings demonstrated bias and judicial partiality. We disagree.

We review claims of judicial bias de novo. See *In re Susser Estate*, 254 Mich App 232, 236; 657 NW2d 147 (2002). "Due process requires that an unbiased and impartial decision-maker hear and decide a case." *Mitchell v Mitchell*, 296 Mich App 513, 523; 823 NW2d 153 (2012). "A trial judge is presumed to be fair and impartial, and any litigant who would challenge this presumption bears a heavy burden to prove otherwise." *In re Susser Estate*, 254 Mich App at 237. To overcome this presumption, the party claiming judicial bias must demonstrate that the trial court " 'display[ed] a deep-seated favoritism or antagonism that would make fair judgment impossible.' " *Eldred v Ziny*, 246 Mich App 142, 152; 631 NW2d 748 (2001), quoting *Cain v Dep't of Corrections*, 451 Mich 470, 496; 548 NW2d 210 (1996) (alteration in original). A trial court's "rulings against a litigant, even if erroneous, do not themselves constitute bias or prejudice sufficient to establish a denial of due process . . . ." *In re Susser Estate*, 254 Mich App at 237.

As an initial matter, plaintiff contends that we should review her claim of judicial bias under the standard set forth in *People v Stevens*, 498 Mich 162, 164; 869 NW2d 233 (2015), wherein the Court considered "the appropriate standard for determining when a trial judge's conduct in front of a jury has deprived a party of a fair and impartial trial[.]" *Stevens* held that a reviewing court must consider the totality of the circumstances to determine whether the judge's conduct pierced the veil of judicial impartiality, which occurs when "it is reasonably likely that the judge's conduct improperly influenced the jury by creating the appearance of advocacy or partiality against a party." *Id*. at 171. Importantly, the Court's decision was premised on a criminal defendant's right to a fair and impartial *jury* trial and its recognition that even the appearance of impropriety is sufficient to constitute a structural error in that context. *Id*. at 170-171 & n 3. As the trial court, rather than a jury, was the fact-finder in the instant case, we disagree with plaintiff's suggestion that *Stevens* is controlling.[8]

[8] Plaintiff cites three opinions that relied on *Stevens* outside the context of a jury trial: *People v Walker*, 504 Mich 267; 934 NW2d 727 (2019), *In re Fenn*, unpublished per curiam opinion of the Court of Appeals, issued May 21, 2019 (Docket No. 345185), and *In re Leonard*, unpublished per curiam opinion of the Court of Appeals, issued August 30, 2018 (Docket No. 340557). Although *Walker* referenced *Stevens* in connection with sentencing proceedings, it did so only to observe that the trial court's conduct may have deprived the defendant of a fair trial had it occurred during the trial—presumably in the presence of the jury. *Walker*, 504 Mich at 287 n 13. Both *Fenn* and *Leonard* relied on *Stevens* to varying extents in reviewing a trial court's conduct during nonjury proceedings (delinquency proceedings and child protective proceedings, respectively), but neither unpublished opinion has precedential value under MCR 7.215(C)(1). *Cox*, 322 Mich App at 307.

Plaintiff contends that the she was denied due process because the trial court exhibited bias in favor of defendant. According to plaintiff, the trial court acted as defendant's advocate by repeatedly interposing objections during examination of plaintiff's witnesses, questioning witnesses in a manner that went beyond clarification purposes, and making unreasonable and inconsistent evidentiary rulings. We disagree.

With respect to plaintiff's first example of alleged bias, plaintiff cites numerous instances of the trial court objecting to witness testimony or proposed exhibits proffered by plaintiff. The majority of these examples involve the trial court making sua sponte evidentiary rulings or questioning plaintiff's counsel regarding leading questions, hearsay, foundation for evidence, relevance, and the scope of this Court's remand. While it is true that the majority of these examples were unfavorable to plaintiff, repeated adverse rulings are generally insufficient to establish bias. See *In re Susser Estate*, 254 Mich App at 237; see also *In re MKK*, 286 Mich App 546, 566; 781 NW2d 132 (2009) ("Disqualification on the basis of bias or prejudice cannot be established merely by repeated rulings against a litigant, even if the rulings are erroneous."). Moreover, our review of the record demonstrates that defendant, who was unrepresented on remand, asked few questions and offered no exhibits. Even so, the trial court seemingly held defendant to the same high evidentiary standard, intervening when defendant tried to elicit hearsay and overruling defendant's unfounded objections.

Plaintiff takes specific exception to the trial court's questioning of Dr. Steven Miller, one of several forensic psychologists to evaluate plaintiff during this case. According to plaintiff, the trial court's partiality was apparent from the way it "drilled" Dr. Miller regarding his potential bias. Plaintiff's characterization exaggerates the nature the court's questions. After defendant declined cross-examination, the court asked Dr. Miller when he examined plaintiff, who requested the examination, and how often he had worked with plaintiff's attorney in other matters. Under MRE 614(b), the trial court was free to question witnesses. "It is of great importance that the trial court should exercise the right by appropriate questions to produce fuller and more exact testimony, but great care should be exercised that the court does not indicate its own opinion and does not lay undue stress upon particular features of a witness' testimony that might, in the eyes of the jury, tend to impeach him." *Simpson v Burton*, 328 Mich 557, 564; 44 NW2d 178 (1950). The trial court's questions regarding Dr. Miller's relationship with plaintiff's attorney elicited information relevant to the witness's credibility. And given the absence of a jury, it did not risk implying partiality to the fact-finder. To the extent that the court's concern regarding Dr. Miller's credibility can be viewed as indicative of bias, plaintiff has not established actual bias in this

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Additionally, both cases cited *Stevens* without discussion of its application outside of jury proceedings. Other unpublished decisions have also noted the limited applicability of *Stevens*. See, e.g., *Kalynovych v Kalynovych*, unpublished per curiam opinion of the Court of Appeals, issued March 27, 2018 (Docket No. 338758), pp 2-3 n 1; *Dilts v Dilts*, unpublished per curiam opinion of the Court of Appeals, issued September 22, 2016 (Docket No. 332230), p 4 n 3; *In re Cope/Hect*, unpublished per curiam opinion of the Court of Appeals, issued March 15, 2016 (Docket Nos. 328536 and 328537).

regard, as the trial court ultimately relied on Dr. Miller's testimony to reassess best-interest factor (g) and reach a neutral finding that was more favorable to plaintiff.

Next, plaintiff observes that the trial court made inconsistent rulings regarding the admissibility of the child's statements during a forensic interview in Macomb County. During the initial evidentiary hearings, CPS caseworker Erica Okray explained that the child repeatedly said, "My dad does bad things," and, "He puts his fingers up my butt."[9] The trial court permitted this testimony without objection. During the remand proceedings, however, the trial court intervened when plaintiff's counsel asked Detective Kenneth Stevens what the child disclosed during the same interview. The court noted that testimony had already been heard regarding the matter and questioned the purpose for which it was being offered. When plaintiff's counsel confirmed he offered the testimony to prove the truth of the matter asserted under the tender-years exception, the trial court excluded it because MRE 803A applied only to criminal and delinquency proceedings. The trial court was correct regarding the limitations of MRE 803A,[10] and we do not view strict compliance with an evidentiary rule as evidence of bias. See *People v Kean*, 204 Mich App 533, 537; 516 NW2d 128 (1994) ("Although the trial judge may have been strict in applying MCR 6.106(F) a judge's view of the law, even if strongly held, is not grounds for disqualification.").

Moreover, we disagree with plaintiff's characterization of the trial court's ruling as inconsistent with the earlier proceedings because, in our view, Okray's testimony was not offered as inadmissible hearsay. The rule against hearsay applies to "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c) (defining hearsay). Defense counsel had questioned Okray about her investigation of the Macomb County complaint, and Okray repeated the child's statements as she explained why she determined the child's CAC interview did not support the claims against defendant. It appears that Okray's testimony was not offered to prove the truth of the child's out-of-court statement, making the applicability of a hearsay exception immaterial. Plaintiff, on the other hand, tried to introduce the same out-of-court statements as evidence that defendant was actually doing "bad things" and putting his fingers in the child's anus. It was therefore necessary for her to establish an applicable hearsay exception, and her reliance on MRE 803A in the context of a custody dispute was misplaced.

Lastly, plaintiff contends that the trial court's bias is apparent from its refusal to look at photographs showing signs of sexual abuse. As explained in part IV of this opinion, the trial court

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[9] Okray described the forensic interview as "pretty chaotic." She recalled that the child was very energetic, constantly bounced around, lacked focus, and repeated the same thing over and over. Okray did not consider the child's statements reliable enough to constitute a disclosure. She explained: "[A] disclosure for our purposes requires more than just wrote [sic] sentences. He never ever navigated away from that. Any question that was asked he had no follow-up. He had no consistent place. He had no consistent people. No consistent room locations. So he's just repeating things."

[10] The last sentence of MRE 803A states, "This rule applies in criminal and delinquency proceedings only."

did not err by concluding that photographs taken in 2020 were not within the scope of this Court's remand. Plaintiff's motion to remand focused on testimony that could have been, but was not, presented at the initial evidentiary hearing, while the 2020 photographs concerned conditions that did not exist before the trial court's July 2019 decision. Moreover, evidence regarding events that occurred after the trial court's July 2019 decision had no logical relevance to this Court's review of whether the trial court abused its discretion by granting defendant full legal and physical custody. Because plaintiff has not established that the trial court displayed deep-seated favoritism toward defendant or antagonism toward plaintiff, she has not overcome the presumption that the trial court acted as a fair and impartial decision-maker. *Eldred*, 246 Mich App at 152.

IV. 2020 PHOTOGRAPHS AND SCOPE OF REMAND

Plaintiff's final claim of error challenges the trial court's determination that evidence regarding photographs plaintiff took in January 2020 was beyond the scope of this Court's remand order. Plaintiff, however, cites no authority in support of her contention that the trial court erred by refusing to consider the evidence. "An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority." *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015). This Court has no obligation to search for authority on plaintiff's behalf, and her failure to adequately brief this issue constitutes abandonment. *Id*.

Even if we choose to overlook plaintiff's failure to support this claim of error, we are not persuaded that the trial court erred in this regard.[11] "It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." *K & K Const, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544-545; 705 NW2d 365 (2005) (quotation marks and citation omitted). The precise scope of the remand proceedings ordered by this Court is uncertain, as neither plaintiff's motion nor this Court's remand order present a model of clarity.

This Court's jurisdiction stems from plaintiff's appeal of the trial court's July 31, 2019 order granting defendant sole legal and physical custody of the child. See MCR 7.202(6)(a)(*iii*) (including a postjudgment order granting a motion to change custody as a final judgment or order); MCR 7.203(A)(1) (stating that this Court has jurisdiction of an appeal by right from a final judgment or order). Plaintiff's claim of appeal challenged the propriety of the trial court's decision to change the parties' custody arrangement, which necessarily entails review of the evidence before the court when it made the challenged decision. As the trial court observed, matters that arose after its July 31, 2019 decision have no logical relevance to whether the order modifying custody was erroneous at the time it was entered.

[11] A trial court's evidentiary rulings are reviewed for an abuse of discretion, which occurs when the trial court's decision "results in an outcome outside the range of principled outcomes." *Varran v Granneman (On Remand)*, 312 Mich App 591, 621; 880 NW2d 242 (2015). The scope of a trial court's authority on remand is a question of law reviewed de novo. *Hill v City of Warren*, 276 Mich App 299, 305; 740 NW2d 706 (2007).

Plaintiff's suggestion that this Court's remand order opened the door to evidence of later events is unpersuasive. Although certain isolated assertions within plaintiff's motion vaguely refer to events that occurred after the initial evidentiary hearings, the overwhelming focus of plaintiff's motion involves expanding the factual record to include testimony that she was unable to present earlier. In particular, before detailing the anticipated testimony, plaintiff explained:

> 9. During the course of the proceedings, many witnesses were subpoenaed whom did not show at the evidentiary hearing to testify. . . .
>
> 10. Those individuals who were either unable to testify or were kept from testifying fully are as follows including the information they are able to provide and any other offers of proof available are attached as well.

Considering the stated purpose of plaintiff's remand request and the lack of logical relevance regarding later events, the trial court did not err by concluding that the 2020 photographs and related testimony were outside the scope of the remand and, thus, did not abuse its discretion by excluding that evidence.

To summarize, we conclude that the trial court did not err by finding a change of circumstances and proper cause to reconsider the parties' custody arrangement or in its assessment of the statutory best-interest factors, nor did it abuse its discretion by granting defendant sole legal and physical custody of the child. Plaintiff has not overcome the presumption that the trial court acted as a fair and impartial decision-maker. Lastly, the trial court did not err by determining that photographs taken in 2020 and related testimony were beyond the scope of this Court's remand order and did not abuse its discretion by excluding such evidence.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Jane M. Beckering
/s/ Thomas C. Cameron