

STATE OF MICHIGAN
COURT OF APPEALS

DA’JOHNAE BUCKHANNON,
Plaintiff-Appellant,

UNPUBLISHED
August 19, 2021

v

PATRICK SINGLETON,
Defendant-Appellee.

No. 354801
Wayne Circuit Court
LC No. 2017-163223-DP¹

Before: CAVANAGH, P.J., and O’BRIEN and REDFORD, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s orders referring this matter from the juvenile division to the domestic relations section of the court, and ultimately granting sole legal and physical custody of plaintiff’s and defendant’s, Patrick Singleton’s, minor son, PAS, to Singleton. On appeal, plaintiff argues the trial court erred procedurally and in granting sole physical and legal custody of PAS to Singleton, after finding an established custodial environment with Singleton, and that the best interest factors favored custody with Singleton. We affirm.

I. FACTS AND PROCEDURAL BACKGROUND

This case arises from a child custody hearing during a concurrent child protective proceeding, involving plaintiff’s five minor children: DAT, JNB, PAS, BJM, and FJM.² Before PAS’s birth, plaintiff was driving while intoxicated, with DAT in the vehicle, when she was in an accident, resulting in DAT suffering a broken leg. DAT and JNB were removed from plaintiff’s care and made temporary court wards while plaintiff completed a court-ordered treatment plan. When PAS was born, the Michigan Department of Health and Human Services (MDHHS) filed a

¹ There are three lower court case numbers: (a) 2015-519526-NA, associated with the neglect proceedings; (b) 2017-163223-DP, pertaining to the domestic relations actions; and (c) 2018-00817-NA for the juvenile division.

² Reference to plaintiff’s other children is provided for context, but custody of the other children is not at issue in this case.

petition to also remove PAS because of DAT's and JNB's removal. In August 2016, plaintiff completed her treatment plan, the children were returned to her care, and the wardship was terminated. The next year, BJM was born with marijuana in her system.

In May 2017, plaintiff filed a paternity complaint against Singleton, arguing Singleton failed to provide support for PAS despite sufficient ability to do so. In answer, Singleton requested that genetic testing be completed to determine whether he was PAS's biological father. The trial court ordered Singleton to provide child support for the care and support of PAS, totaling \$83 per month. The trial court also entered a default judgment of filiation, stating plaintiff "shall have sole legal and physical custody of [PAS] until further order of the Court."

In 2018, plaintiff and her children were in a second car accident when another driver struck plaintiff's vehicle parked on the roadside after having run out of gas. Plaintiff's friend had been driving the vehicle, however, plaintiff was intoxicated at the time of the accident. MDHHS filed a petition to remove the children from plaintiff's care and terminate plaintiff's rights. MDHHS also noted sexual abuse allegations, from February 2018, arising from plaintiff's alleged inappropriate touching of an unrelated minor child on two occasions. A referee hearing was conducted regarding the petition, resulting in an order that each child be placed with their respective father. Thus, PAS was placed in Singleton's care. In July 2018, plaintiff was incarcerated in an unrelated criminal proceeding. In September 2018, the trial court held an adjudication in the child protective proceeding. The trial court found it had jurisdiction grounded on plaintiff's history of substance abuse and plaintiff's 2016 driving-while-intoxicated accident. The trial court held a subsequent hearing regarding the termination of plaintiff's parental rights, concluding that termination was not in the best interests of plaintiff's children, and imposed a treatment plan for plaintiff to regain custody.

In March 2019, Singleton moved to change custody, arguing sole legal custody of PAS should be changed from plaintiff to Singleton because plaintiff "has lost custody." The referee recommended that Singleton's motion be dismissed while the juvenile court case remained open, and because "jurisdiction as to issues of custody and parenting time remain solely with the Wayne County Juvenile Court[.]" In November 2019, Singleton again moved to change custody, arguing sole legal and physical custody of PAS should be changed from plaintiff to Singleton because of the juvenile child protective proceeding that removed PAS from plaintiff's care. Plaintiff objected to Singleton's motion to change custody of PAS, arguing Singleton was unable to provide the structure and parenting time needed to care for PAS. Specifically, plaintiff asserted that Singleton was a registered sex offender, worked every day, and left PAS in the care of a daycare facility and his sister, Kathy Singleton. The trial court held a hearing regarding Singleton's motion for a change of custody, finding a change of custody of PAS in favor of Singleton was appropriate in totality of the best-interest factors. Specifically, the trial court reasoned that factors (a), (g), and (j) weighed evenly in favor of plaintiff and Singleton, stating:

[(A)] really goes to both parents. There's a bond between [PAS] and both his mother and father, so there's love, and affection, and other emotional ties there.

* * *

[Plaintiff and Singleton are] both in adequate mental and physical health to care for this child. So, G doesn't weight either way in the findings.

* * *

There's testimony on this record and the Court believes that it's earnest, both for [Singleton] and [plaintiff] that they both see a need for each other to be in their child's life. And so, the Court finds that that factor supports both parents as that regardless of who had custody, the Court believes that they would reach out to the other parent to make sure the other parent was involved.

Additionally, the trial court concluded factor (f) did not weigh in favor of either party because both plaintiff and Singleton have moral fitness "issues" regarding their criminal histories. The trial court further found that factors (i), (k), and (l) were not applicable, nor was PAS of sufficient age to have a preference. The trial court determined that factors (b), (c), (d), (e), and (h) weighed in favor of Singleton, stating:

[Singleton] has had the child now for two years and [plaintiff's] still working on her treatment plan with the court, albeit she's made some progress, but B does favor the father, as does C at this point, which is the capacity and disposition of the parties involved to provide the child with food, clothing, medical care, and other remedial care. The Father's been essentially providing the majority of the support for this child since 2018. And that's not to say the Mother has not made any contribution. She has, she contributed some support and clothes, but the Father has done certainly more of that. So, C would support the Father in the best interest findings.

* * *

The continuity at this point would dictate custody to the Father due to he's lived there exclusively for the last two years and the Father's home is certainly suitable at this point and satisfactory.

* * *

E, the permanence of the family unit of the existing or proposed custodial home. Father's home, he has a permanent home, he has a bungalow, there's not any issues there, so that would support the Father.

* * *

The child's too young to have a school record at this point and really too young to have a community record. Certainly, his home record is with the Father at this point given the length of time that he's been there.

The trial court entered a written order, awarding sole legal and physical custody of PAS to Singleton. The trial court also dismissed the child protective proceeding (lower court docket number 18-000817-NA), and terminated the wardship of PAS. At the same time, the trial court entered an order of referral, stating:

The Juvenile Section judge has entered a custody order in the Domestic Relations child custody proceeding. The custody order . . . supersedes any prior custody order entered in the Domestic Relations case.

As a result, the parties' child custody issue was transferred from the juvenile section to the domestic relations section of the family court division.

Four or five months after the trial court's custody order at issue was entered, and while this appeal was pending, the child protective proceeding was dismissed and plaintiff's remaining children were ordered to be placed back in her care. However, the order was subsequently amended to remove PAS from the order, stating PAS "was listed on the original order in error. Sole legal and physical custody of [PAS] was awarded to [Singleton] on 7/1/2020." Accordingly, plaintiff moved, in this Court, for remand, arguing remand was necessary so a new evidentiary hearing could be conducted as "newly discovered evidence shows the [trial] court wrongly decided the best interests of the child among other custody concerns." Plaintiff asserted that remand for an evidentiary hearing would serve judicial economy and may be ordered at any time by this Court. Neither Singleton, MDHHS, nor PAS's guardian ad litem responded to plaintiff's motion to remand. This Court denied plaintiff's motion to remand "for failure to persuade the Court of the necessity of a remand at this time." *Buckhannon v Singleton*, unpublished order of the Court of Appeals, entered on May 12, 2021 (Docket No. 354801).

II. ANALYSIS

Plaintiff argues that the trial court erred procedurally, and in granting sole physical and legal custody of PAS to Singleton after finding that the custodial environment of PAS was with Singleton and that the best interests factors favored Singleton. We disagree.

Generally, an issue is preserved for appellate review if it is raised in the trial court and pursued on appeal. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 182-183; 521 NW2d 499 (1994). In the trial court, the parties disputed the best interests of PAS. The trial court found that a custodial environment existed with Singleton and that it was in the best interests of PAS for Singleton to have sole custody. Because plaintiff raised the custody issue in the trial court, it is preserved for appellate review. However, plaintiff did not raise her argument as to the procedural transfer of the case from the juvenile section to the domestic relations section of the trial court; therefore, this issue is unpreserved for appellate 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), citing MCL 722.28 (quotation marks omitted). Under the great weight of the evidence standard, this Court 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). "An abuse of discretion standard applies to the trial court's discretionary rulings such as custody decisions." *Pennington v Pennington*, 329 Mich App 562, 570; 944 NW2d 131 (2019). "[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). “Questions of law are reviewed for clear legal error.” *Butler v Simmons-Butler*, 308 Mich App 195, 201; 863 NW2d 677 (2014). 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).

In addition, this Court reviews unpreserved issues for plain error. *Demski v Petlick*, 309 Mich App 404, 426-427; 873 NW2d 596 (2015). “To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *Id.* at 427 (quotation marks and citations omitted). “Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008).

“Generally, the state has no interest in the care, custody, and control of the child and has no business interfering in the parent-child relationship.” *In re AP*, 283 Mich App 574, 591; 770 NW2d 403 (2009). “Rather, it is the parent’s duty, and fundamental right, to do what the state cannot—direct a child’s upbringing and education and prepare that child for future obligations.” *Id.* Likewise, “a child has a right to proper and necessary support; education as required by law; medical, surgical, and other care necessary for his health, morals, or well-being” *Id.* (quotation marks and citations omitted). Accordingly, “when a parent is fit and a child’s needs are met, there is no reason for the state to interfere in a child’s life.” *Id.* However, the state may become involved in certain limited circumstances when the child’s welfare is affected. *Id.* at 592.

Under domestic-relations law, certain actions implicate the state’s interest in the child’s welfare, including child support and paternity actions. *Id.* If these actions “directly or incidentally involve the legal or physical custody of a child, the courts are bound by the [Child Custody Act (CCA), MCL 722.21, *et seq.*] in determining who should have physical and legal custody of a child.” *In re AP*, 283 Mich App at 592. “The purposes of the [CCA] are to promote the best interests of the child and to provide a stable environment for children that is free of unwarranted custody changes.” *Pennington*, 329 Mich App at 570-571 (quotation marks and citation omitted). “The [CCA] authorizes a trial court to award custody and parenting time in a child custody dispute and also imposes a gatekeeping function on the trial court to ensure the child’s stability.” *Id.* at 571. In making a custody determination, “the child’s best interests are of paramount importance, and the goal is to resolve a custody dispute in a way that promotes the child’s best interests and welfare.” *In re AP*, 283 Mich App at 592. “Once a court enters a custody order, it cannot change the award of custody without overcoming certain procedural safeguards[,]” which “are in place for the stability of the child and are meant to protect against unwarranted and disruptive changes of custody.” *Id.*

The state may also become involved in the parent-child relationship when a child’s safety is threatened, including through abuse, neglect, or abandonment of the child by the parent. *Id.* “The state’s involvement under these types of circumstances is governed by the [J]uvenile [C]ode, MCL 712A.1, *et seq.*” *In re AP*, 283 Mich App at 592. The trial court obtains jurisdiction over the matter and the child once an authorized petition has been filed, an adjudication on the merits of the allegations in the petition occurs, and the trial court finds by a preponderance of the evidence that there is factual support for permitting judicial intervention. *Id.* at 592-593. “Subsequently, the court can hold dispositional review hearings and permanency planning hearings and enter

orders governing the child's care and custody[.]" with the goal being to reunify the family unit. *Id.* at 593.

When circumstances arise that trigger both domestic relations and juvenile proceedings to intersect, "a conflict may arise concerning the care and custody of a child[.]" *Id.*

Obviously, upon entry of a child custody order under the CCA, a child's parents, or other custodians, must abide by the terms of the custody order. However, once a juvenile court assumes jurisdiction over a child and the child becomes a ward of the court under the juvenile code, the juvenile court's orders supersede all previous orders, including custody orders entered by another court, even if inconsistent or contradictory. MCR 3.205(C)[.] . . . In other words, the previous custody orders affecting the minor become dormant, in a metaphoric sense, during the pendency of the juvenile proceedings, but when the juvenile court dismisses its jurisdiction over the child, all those previous custody orders continue to remain in full force and effect. [*In re AP*, 283 Mich App at 593-594 (internal citation omitted).]

Accordingly, "the juvenile court's orders function to supersede, rather than modify or terminate, the custody orders while the juvenile matter is pending because the juvenile orders are entered pursuant to a distinct statutory scheme that takes precedence over the CCA." *Id.* at 594. Further, any modification to the custody order during the juvenile proceedings is also superseded by the juvenile court's orders. *Id.*

To grant a change of custody under the CCA, the trial court must determine whether a proper cause or a change of circumstances existed such that a custody modification was in the child's best interests. *In re AP*, 283 Mich at 600. The party seeking the change must establish either proper cause or a change of circumstances. *Corporan v Henton*, 282 Mich App 599, 603; 766 NW2d 903 (2009). To constitute a change of circumstances warranting a consideration of a custody change, there must have been a change in conditions regarding custody that has, or could have, a significant impact on the child's well-being since the entry of the last custody order. *Id.* at 604 (quotation marks and citation omitted). Removal of a child from the home by CPS is sufficient evidence of a change in circumstances to warrant consideration of a change in custody. *Shann v Shann*, 293 Mich App 302, 306; 809 NW2d 435 (2011).

The trial court did not err in granting sole custody of PAS to Singleton. To support her argument, plaintiff contends the trial court should have waited to decide custody of PAS until the child protective proceeding was closed. A review of the record indicates that this matter originated as a child protective proceeding initiated by MDHHS to remove plaintiff's children. According to the petition, it was contrary to PAS's welfare to remain with plaintiff because of plaintiff's "substance abuse, sexual abuse, criminality, domestic violence, and failure to protect." At the custody hearing, the trial court properly concluded that a change of circumstances existed to hear Singleton's custody motion because the proceeding, prompting the removal of PAS from plaintiff's care, remained open.

The trial court determined that PAS's established custodial environment was with Singleton. Whether an established custodial environment exists is a question of fact that the trial

court must address before it determines the child's best interests. *Brausch v Brausch*, 283 Mich App 339, 356 n 7; 770 NW2d 77 (2009). A custodial environment is established if

over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. [MCL 722.27(1)(c).]

“A custodial environment can be established as a result of a temporary custody order, in violation of a custody order, or in the absence of a custody order.” *Berger v Berger*, 277 Mich App 700, 707; 747 NW2d 336 (2008). In addition, “[r]epeated changes in physical custody and the uncertainty resulting from an upcoming custody trial can destroy an established custodial environment.” *Rains v Rains*, 301 Mich App 313, 333; 836 NW2d 709 (2013). The trial court concluded that PAS's custodial environment was with Singleton “because he had really [sic] partial custody from 2016 to 2018 and then he had [PAS] full-time from 2018 to 2020.” The trial court further noted:

It's not to say that [plaintiff] is not doing some things, or providing some support, or seeing [PAS], but the bottom line is the weight goes to [Singleton] on that question.

We also note, during the child protective proceedings, plaintiff struggled to complete or benefit from any of the court-ordered services to obtain reunification with her children, largely because of continued substance use and failure to submit to drug testing. It took over two years for plaintiff to complete her court-ordered treatment plan, and during that time PAS was residing with Singleton. After PAS was placed with him, Singleton became actively involved in PAS's life, providing food, shelter, clothing, and daycare. Because the evidence established that Singleton “provided more support and more supervision for [four-year-old PAS] since birth[,]” the trial court did not err by finding that an established custodial environment existed with Singleton.

Accordingly, “[i]f an established custodial environment exists with one parent and not the other, then the noncustodial parent bears the burden of persuasion and must show by clear and convincing evidence that a change in the custodial environment is in the child's best interests.” *In re AP*, 283 Mich App at 601. Under MCL 722.23, the trial court is required to evaluate and explicitly state its findings and conclusions for each of the 12 statutorily enumerated best-interest factors:

- (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. 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.
- (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; see also *Kessler v Kessler*, 295 Mich App 54, 63; 811 NW2d 39 (2011).]

“[T]he statutory best interests factors need *not* be given equal weight[.]” “[n]or does a finding regarding one factor necessarily countervail the findings regarding the other factors.” *Pierron v Pierron*, 282 Mich App 222, 261; 765 NW2d 345 (2009) (quotation marks and citation omitted and emphasis included). The trial court found factors (b), (c), (d), (e), and (h) favored Singleton. The trial court determined that factors (a), (g), and (j) equally favored plaintiff and Singleton, and that factor (f) favored neither party. As to factors (i), (k), and (l), the trial court concluded that PAS was not of sufficient age to have a preference, nor was there evidence of domestic violence or any other factor to consider.

Plaintiff primarily argues it was in PAS's best interests to wait to decide custody of PAS until after the child protective proceeding was closed. Plaintiff also argues the trial court failed to consider the progress in her treatment plan as a factor for custody and attributed too much weight to the open child protective proceeding. Plaintiff contends she has successfully completed all of the court-ordered services and that her other children were returned to her care after the trial court entered the custody order regarding PAS. However, the trial court specifically recognized that PAS was removed from plaintiff's care when he was two years old, stating PAS “was living back and forth between parents for approximately half of his life and for the last couple years, which is the other half of his life, he's lived with [Singleton].” While plaintiff had made “some progress” on her court-ordered treatment plan since PAS's removal, she was still working on it more than

two years later, and during that time Singleton was providing the majority of support and care for PAS. We note much of the delay in closing the child protective proceeding resulted from plaintiff's continued use of substances, failure to comply with drug testing, and resistance with court-ordered parenting classes.

Additionally, plaintiff briefly argues the trial court prematurely held the custody hearing before the juvenile proceeding was closed because MDHHS and the trial court were only interested in closing the neglect case at the earliest opportunity. However, plaintiff has failed to cite any authority in support of her assertion that required the trial court to wait until the juvenile proceeding was closed to conduct a custody hearing. Rather, changes in custody are permissible during juvenile proceedings. *In re AP*, 283 Mich App at 594. There was also no requirement mandating the trial court weigh the statutory factors, including the existence of the open child protective proceeding, equally with the other best-interest factors. *Pierron*, 282 Mich App at 261. Moreover, given the lengthy procedural history in this case, it does not appear that the trial court unduly expedited the custody hearing to "close the neglect case at the earliest opportunity." Instead, defendant's initial motion for a change in custody was denied by the referee 16 months before the trial court ultimately granted a change in custody. Regardless, "the focus at the best-interest stage has always been on the child, not the parent." *In re Payne/Pumphrey/Fortson Minors*, 311 Mich App 49, 63; 874 NW2d 205 (2015) (brackets omitted), quoting *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). Accordingly, the trial court's refusal to delay permanency and stability for PAS, at his young age, was not improper where plaintiff participated in every phase of the proceedings.

Moreover, beyond broadly stating that the trial court relied on the "wrong legal standards" and labeling the court-ordered treatment plan as against public policy, plaintiff offers no cases or other authority that support her claims. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Bank of America, NA v Fidelity Nat Title Ins Co*, 316 Mich App 480, 517; 892 NW2d 467 (2016) (quotation marks and citation omitted). As a result, plaintiff's failure to properly address the merits of her arguments results in their abandonment. See *id.* Regardless, as discussed, we conclude that the trial court did not err in conducting the change of custody proceedings.

Further, plaintiff is not without remedy. As stated, plaintiff focuses her argument—that she should regain custody of PAS—on the basis of the trial court's December 2020 order that returned her children at the conclusion of the child protective proceeding. However, the trial court's order awarding custody of PAS to Singleton did not function as a termination of plaintiff's parental rights, as plaintiff implies. And while plaintiff contends the order returning her children warrants changing the trial court's custody decision on appeal, plaintiff can raise her change-of-circumstance issue in the trial court. Indeed, the trial court can, upon the showing of proper cause or a change in circumstances, modify an existing custody order. *Mitchell v Mitchell*, 296 Mich App 513, 517; 823 NW2d 153 (2012).

Plaintiff also argues that it is in PAS's best interests to be in the same household as his siblings. "[I]n most cases it will be in the best interests of each child to keep brothers and sisters together. However, if keeping the children together is contrary to the best interests of an individual child, the best interests of that child will control." *Wiechmann v Wiechmann*, 212 Mich App 436,

440; 538 NW2d 57 (1995) (footnote omitted). After examining the relevant factors, the trial court determined it was clearly in PAS's best interests to remain with Singleton and we find no fault with that decision. The trial court noted, at that time, plaintiff's other children remained in foster care or with their respective fathers. While PAS was in Singleton's care, PAS had periodic visits with his siblings. Singleton asked that the sibling visits continue, and the trial court ordered that plaintiff should have "reasonable and frequent" parenting time. As such, there was a recognition of the importance of maintaining PAS's sibling relationships, as well as his relationship with plaintiff, and steps were being taken to preserve and encourage those relationships. Under the facts of this case, the trial court did not err in granting sole legal and physical custody of PAS to Singleton.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Colleen A. O'Brien

/s/ James Robert Redford