STATE OF MICHIGAN

COURT OF APPEALS

KRISTINE CASEY,

Plaintiff/Counterdefendant-Appellant,

v

WILLIAM VERVOORT,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
July 29, 2021

No. 355056
Wayne Circuit Court
LC No. 16-155030-DS

Before: TUKEL, P.J., and SAWYER and CAMERON, JJ.

PER CURIAM.

In this custody matter, plaintiff/counterdefendant, Kristine Casey appeals the trial court's order modifying custody and parenting time with respect to the child that Casey shares with defendant/counterplaintiff William Vervoort. We affirm.

I. BACKGROUND

The parties are the parents of a minor child who was born in July 2015. In February 2018, the trial court issued an order, awarding the parties joint custody. The order also awarded Vervoort parenting time every other Wednesday through Monday, with alternating weeks in the summer.

In April 2019, Vervoort filed an emergency motion to modify custody and parenting time, asserting that Casey was uncommunicative, had failed to pick up the minor child at the scheduled time periods, was under investigation, and was acting in a paranoid and inappropriate manner. After reviewing the verified pleading, the trial court entered an ex parte order awarding Vervoort "temporary possession" of the minor child until further order of the court. After a two-day evidentiary hearing, the trial court awarded Vervoort sole legal and physical custody of the minor child. Casey was ordered to immediately begin attending individual counseling and was granted supervised parenting time. This appeal followed.

II. ANALYSIS

A. ENTRY OF EX PARTE ORDER

Casey first argues that the trial court erred by issuing an ex parte order that changed the established custodial environment and suspended Casey's parenting time without first conducting an evidentiary hearing. Because there is no indication that this argument was raised before the trial court, it is unpreserved.[1] See *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; ___ NW2d ___ (2020). We therefore review for plain error affecting substantial rights. *In re Pederson*, 331 Mich App 445, 463; 951 NW2d 704 (2020).

In *Pluta v Pluta*, 165 Mich App 55, 60; 418 NW2d 400 (1987), we held that a trial court should not "be allowed to circumvent and frustrate the purpose of the law by issuing an ex parte order changing custody without any notice to the custodial parent or a hearing on the issue whether clear and convincing evidence was presented that a change of custody was in the child's best interest." In *Mann v Mann*, 190 Mich App 526, 532-533; 476 NW2d 439 (1991), we reaffirmed the holding in *Pluta* and held that a hearing must be conducted when determining whether a temporary change of physical custody is appropriate or necessary. We have since adhered to the same principle regarding the necessity for a hearing. See, e.g., *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005) ("An evidentiary hearing is mandated before custody can be modified, even on a temporary basis."); *Schlender v Schlender*, 235 Mich App 230, 233; 596 NW2d 643 (1999) ("A hearing is required before custody can be changed on even a temporary basis.").

Nevertheless, we recognized in *Mann*, 190 Mich App at 533, that

> situations might arise in which an immediate change of custody is necessary or compelled for the best interests of the child pending a hearing with regard to a motion for a permanent change of custody. Such a determination, however, can only be made after the court has considered facts established by admissible evidence—whether by affidavits, live testimony, documents, or otherwise. [Citations omitted.]

Importantly, MCR 3.207(A) permits trial courts to issue "ex parte . . . orders with regard to *any matter* within its jurisdiction" (emphasis added). MCR 3.207(B)(1) provides as follows:

> Pending the entry of a temporary order, the court may enter an ex parte order if the court is satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an order can be issued.

[1] Casey has failed to provide this Court with the transcripts of the proceedings that preceded the August 2020 evidentiary hearing.

Thus, MCR 3.207(B) essentially permits a trial court in a domestic-relations matter to issue an ex parte order regarding child custody if the court is satisfied that there is a threat of imminent harm.

In this case, the verified pleading filed by Vervoort alleged that Casey had been evicted, was leaving the minor child with third parties during her parenting time, had "disappeared without notice," had failed to appear during scheduled times to pick up the minor child, and was under investigation by Child Protective Services (CPS) concerning her oldest child, which Casey shared with another man. The pleading further alleged as follows:

> 7. On April 10, 2019, CPS informed [Vervoort] that he needs to immediately file a motion to change custody and that if he lets the minor child go with [Casey] and she is a danger to the child they could open up a case against him. He was also informed that the minor child "should remain in [Vervoort's] care until Ms. Casey contacts CPS." . . . .
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> 8. On April 10, 2019, an officer from the Wyandotte Police Department contacted [Vervoort] to inform him that [Casey] came into the police department indicating that she is being stalked, that her social media accounts are being hacked, that people are breaking into her home and poisoning her food, etc. The police indicated that she may be suffering from a breakdown because of the conspiratorial nature of her allegations against unknown individuals.

The motion also alleged that Casey had a history of engaging in inappropriate, "erratic and unpredictable behavior." Given Casey's behavior, Vervoort indicated that he was concerned that Casey would "show up, demand the minor child, take the minor child to an unknown location, and refuse to truthfully provide any explanation regarding her living-situation and unannounced absence." Because Vervoort's verified pleading supported that irreparable injury would result if there was a delay in ordering a change in custody and visitation and because the order complied with MCR 3.207(B)(5)'s notice requirements, the trial court did not violate MCR 3.207(B)(1) by entering the order before holding an evidentiary hearing.

Moreover, the record reveals that multiple evidentiary hearings were scheduled. In the April 12, 2019 order, the trial court ordered the parties to appear for a hearing at 9:00 a.m. on May 6, 2019. The hearing was adjourned for reasons that are not clear from the record. However, given that Casey's signature appears on the order, it is clear that she was present. On May 22, 2019, the trial court ordered that an evidentiary hearing would be held on June 20, 2019. On that date, the trial court entered an order granting Casey parenting time "every other Friday at 6 PM through Sunday at 6 PM" once she provided Vervoort's counsel "with evidence of where [she was] currently residing" and once Casey signed onto Our Family Wizard and read and responded to certain messages sent by Vervoort. The parties were also ordered to submit to an evaluation through FAME with respect to custody and parenting time, and Casey was ordered to attend a psychological evaluation. Although Casey provided a month-to-month lease agreement to Vervoort's counsel, the address on the lease was redacted.

On September 23, 2019, the trial court permitted Casey's attorney to withdraw. On September 30, 2019, the trial court entered an order, reflecting that the parties had agreed to Casey having 10 sessions of "therapeutic parenting time." Several weeks before the evidentiary hearing

was scheduled to commence in April 2020, Casey's new counsel requested to withdraw because of Casey's failure to respond to his requests for communication. Following a May 2020 hearing, the trial court permitted Casey's counsel to withdraw. The evidentiary hearing commenced on August 3, 2020, at the beginning of which the trial court denied Casey's request for an adjournment.

Accordingly, although an evidentiary hearing was not held on the issue of custody until more than 22 months after the April 12, 2019 order was entered, the record establishes that the trial court scheduled multiple hearings, including one that was to occur less than one month after the ex parte order was entered. While those hearings were adjourned for reasons that are unclear from the record given that Casey did not order transcripts of those hearings for this Court's review, Casey was granted parenting time early in the proceeding. Although it is true that the April 12, 2019 order likely changed the custodial environment, the record establishes that the order was entered as a result of the trial court's concern for the child's safety and well-being given Casey's erratic behavior, lack of stable housing, and mental health issues. As will be discussed later in this opinion, the trial court's decision regarding custody was not against the great weight of the evidence given Casey's lack of stability and mental health issues. Consequently, given the record before us, we fail to see how Casey can establish that her substantial rights were affected.

B. ADMISSION OF EVIDENCE AT THE EVIDENTIARY HEARING

Casey argues that the trial court improperly admitted certain exhibits into evidence during the hearing. Because Casey failed to object to the admission of this evidence, this argument is unpreserved. See *Glasker-Davis*, 333 Mich App at 227. We therefore review for plain error affecting substantial rights. See *In re Pederson*, 331 Mich App at 463.

Casey first argues that the trial court erred in admitting Vervoort's exhibits at the hearing because "counsel attempted to offer the exhibits without any foundation and without the agreement or stipulation" of Casey. In so arguing, however, Casey does not provide any authority or meaningful argument. Indeed, Casey merely makes an allegation of error concerning the myriad of exhibits that were offered into evidence by Vervoort and ultimately admitted into evidence by the trial court. Casey's cursory treatment of this argument renders it abandoned. *Johnson v Johnson*, 329 Mich App 110, 126; 940 NW2d 807 (2019) ("An appellant may not merely announce his or her position and leave it to this Court to discover and rationalize the basis for his or her claims.") (quotation marks and citation omitted.) Consequently, we will not consider it.

Next, Casey argues that the trial court admitted the exhibits even though Vervoort acknowledged that they contained hearsay. To support this argument, Casey cites to the following statement made by Vervoort's counsel when he was moving the trial court to admit certain exhibits into evidence:

> I would like Defendant's exhibit I, text message from Plaintiff mother, Defendant's exhibit J, text messages from Plaintiff mother, the case note summaries from Growth Works, the CPS Protective Services investigations report, just for the sole, for the quotes from mom and dad. That is it, I don't need it for any other purpose but for the hearsay.

Thus, it appears that Vervoort's counsel moved to admit certain exhibits that he acknowledged contained hearsay. However, because counsel clarified that he was moving to admit the exhibits for purposes of providing the trial court with quotes from the parties, the evidence concerning the statements made by Casey was not hearsay and was admissible. See MRE 801(d)(2). Furthermore, even to the extent that the statements made by Vervoort to CPS amounted to inadmissible hearsay, there is no indication that the statements impacted the outcome of the hearing. Indeed, as discussed later in this opinion, the record overwhelmingly established the trial court's custody decision. Therefore, Casey has failed to establish plain error affecting her substantial rights.

C. BEST-INTEREST FACTORS

Casey argues that the trial court's findings and conclusions regarding the best-interest factors were against the great weight of the evidence. We disagree.

"All custody orders must be affirmed on appeal unless the [trial] court's findings were against the great weight of the evidence, the [trial] court committed a palpable abuse of discretion, or the [trial] court made a clear legal error on a major issue." *Lieberman v Orr*, 319 Mich App 68, 76-77; 900 NW2d 130 (2017) (quotation marks and citations omitted). A finding is against the great weight of the evidence when "the evidence clearly preponderates in the opposite direction." *Id*. at 77 (quotation marks and citation omitted). An abuse of discretion occurs when a trial court's decision "is so palpably and grossly violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias." *Rains v Rains*, 301 Mich App 313, 324; 836 NW2d 709 (2013) (quotation marks and citations omitted). "A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law." *Lieberman*, 319 Mich App at 77 (quotation marks and citation omitted).

After the close of proofs, the trial court addressed each of the best-interest factors in MCL 722.23. 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. 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.]

With regard to factor (a), the "love, affection, and other emotional ties existing between the parties involved and the child," Casey argues that the trial court improperly concluded that this factor favored Vervoort. However, because the trial court concluded that factor (a) favored both parties, Casey's argument is unsupported by the record.

Casey also argues that the trial court erred by finding that factor (b) did not favor her because she has the capacity and disposition to give the minor child love, affection, and guidance and that the evidence did not establish otherwise. However, the record supports that Casey suffered from mental health issues that impeded her ability to effectively parent the minor child. Indeed, Casey acknowledged that she failed to pick up the minor child from Vervoort at the scheduled time in April 2019. Casey further acknowledged that she did not contact Vervoort for several days, thereby resulting in Vervoort filing the emergency motion in April 2019. In contrast, the evidence supported that Vervoort provided the minor child with stability and consistency.

With regard to factor (c), "[t]he capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care," Casey argues that she had been the primary caretaker until April 2019, which was when Vervoort filed the emergency motion. However, the record reveals that the motion had to be filed because there was a concern that Casey was unable to provide for the minor child's needs as a result of her erratic behavior, lack of stable housing, and untreated mental health issues. Additionally, Casey acknowledged that she had not provided Vervoort with any child support since April 12, 2019, indicating that she "shouldn't." In contrast, Vervoort testified that he provided for the minor child financially, provided medical insurance for her, and ensured that she had proper medical care and a well-balanced diet. Vervoort testified that Casey had never contributed to the cost of the minor child's healthcare or daycare expenses and had not attended the child's medical appointments despite being provided notice. Although the minor child was not yet in school because of her age, Vervoort testified that he was in the process of enrolling the child.

Factor (d) concerns "[t]he length of time the child has lived in a stable, satisfactory environment[.]" Casey argues that she had "always provided a home" for the minor child. According to Casey, her housing issues began because she was required to move as a result of black mold. However, the record reveals that Casey's housing was consistently unstable. In March 2019, Casey lived with a woman named "Rebecca" in Westland, Michigan. Casey lived in Livonia, Michigan, a short period of time after that. At the time of the hearing, Casey was living in a home in Wyandotte, Michigan, with a woman named "Starla." Casey acknowledged that her living situation was temporary and that she had been unemployed since at least 2019. Although Casey alleged that Vervoort contributed to her inability to work by taking her vehicle, Casey admitted that she has had possession of a car since 2018. In contrast, Vervoort's testimony established that he had stable employment and housing, where the minor child had her own bedroom. Therefore, the trial court's conclusion that factor (d) weighed in favor of Vervoort was supported by the record.

Casey next appears to contest the trial court's conclusion that factor (g) favored Vervoort, arguing that the trial court improperly questioned Casey about her mental stability and that the trial court failed to consider certain test results and reports that were submitted by Casey at the hearing. However, when making its ruling, the trial court specifically referenced the report submitted by Casey's psychologist and indicated that the court had reviewed it. Moreover, as already discussed, the record supports that Casey suffered from untreated mental health issues that impacted her ability to effectively parent and to provide stability to the minor child. Casey's argument on appeal that there is no evidentiary support that she displayed paranoia is entirely without factual merit. Indeed, Casey demonstrated paranoia throughout the evidentiary hearing, and Vervoort's testimony supports that CPS reports were often made against him. Although Casey testified that she had not contacted CPS and made unfounded allegations that Vervoort had sexually assaulted the minor child, the trial court clearly did not find this testimony to be credible. We defer to the trial court concerning issues of credibility. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). Thus, the trial court's conclusion that factor (g) weighed in favor of Vervoort is not against the great weight of the evidence.

Because Casey does not argue that the trial court improperly concluded that factors (e), (f), (h), (i), and (k) did not favor either party and that the trial court improperly concluded that factor (j) weighed in favor of Vervoort, we need not consider those factors. To the extent that Casey challenges the trial court's decision to consider Casey's mental health and her past conduct toward Vervoort with respect to factor (l), we conclude that the trial court's findings with respect to that factor were not against the great weight of the evidence for the reasons already discussed. In sum, the trial court's findings regarding the challenged best-interest factors were not against the great weight of the evidence.

Finally, Casey argues that the trial court abused its discretion by granting Vervoort sole legal and physical custody. To support this argument, however, Casey only argues that the trial court had already decided before the hearing commenced that Casey was unstable and suffered from paranoia. According to Casey, "[i]t really didn't matter what evidence or lack of evidence there was presented." To the extent that Casey argues that the trial court demonstrated bias or prejudged the facts, this argument is not properly presented.

Moreover, the record establishes that the argument lacks factual merit. Indeed, a review of the hearing transcripts demonstrates that the trial court did not conduct the proceedings with a predetermined outcome and was incredibly patient with Casey, who was acting as her own attorney during the proceeding. For example, Casey would often testify herself while questioning Vervoort as a witness. While the trial court often reminded Casey that she could not testify while questioning a witness, the court typically permitted Casey finish before reminding her. Similarly, the trial court allowed Casey to give nonresponsive or narrative answers to questions in an effort to allow her to say what she needed to say. The trial court also afforded Casey every opportunity to present testimony and evidence despite the fact that she had failed to provide Vervoort's counsel with her proposed exhibits before the hearing. Moreover, the trial court did not make a conclusory ruling at the close of proofs. Rather, the trial court ordered a brief adjournment so that the court could prepare its ruling and then carefully reviewed each factor on the record and made detailed factual findings as to each factor. As already discussed, the trial court's challenged findings were not against the great weight of the evidence.[2]

Affirmed.

/s/ Jonathan Tukel
/s/ David H. Sawyer
/s/ Thomas C. Cameron

[2] To the extent that Casey challenges certain questions that were asked of her at the evidentiary hearing and the trial court's alleged failure to issue subpoenas on Casey's behalf, those arguments are abandoned and will not be considered.