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STATE OF MICHIGAN

COURT OF APPEALS

TIFFANY SHIPLEY,

Plaintiff-Appellee,

v

JONATHAN SHIPLEY,

Defendant-Appellant.

UNPUBLISHED
August 26, 2021

No. 355726
Wayne Circuit Court
Family Division
LC No. 18-110949-DC

Before: CAVANAGH, P.J., MURRAY, C.J., and REDFORD, J.

PER CURIAM.

Defendant, Jonathan Shipley, appeals as of right the trial court's order modifying custody and granting plaintiff, Tiffany Shipley, sole physical custody of their children, MS and AS. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter returns following remand by this Court in *Shipley v Shipley*, unpublished per curiam opinion of the Court of Appeals, issued April 2, 2020 (Docket No. 349502) in which this Court summarized the following facts:

> Jonathan and Tiffany divorced in April 2017. The judgment of divorce[1] provided that the parties would share joint legal and joint physical custody over their children, M and A. Primarily, the children would reside with Jonathan, who was living in Missouri at the time. The judgment specifically provided that they would go to school in the area where Jonathan resided. During the majority of the summer, the children would reside with Tiffany, who was planning to live in Michigan. In accordance with the agreement, the children were picked up by Tiffany in June 2017, and she flew back to Michigan with them. The children were

[1] A Missouri court entered the judgment of divorce.

supposed to travel back to Missouri over the 4th of July holiday, but Jonathan and Tiffany agreed that they would instead stay with Tiffany and that Jonathan would pick them up ten days earlier than indicated in the judgment of divorce.

In August 2017, Jonathan contacted Tiffany and asked that she "flip" the agreed upon schedule so that he would have them in the summer and she would have them in the school year. Tiffany agreed and drafted a written agreement to that effect. The agreement was signed and notarized, but was not filed with the court in Missouri. According to Jonathan, the agreement was temporary. He explained that he had moved to California because he could not find work in Missouri, and he needed time to acquire appropriate housing. Tiffany, however, believed that the agreement was not temporary. The written agreement does not indicate the duration of the "flipped" custody schedule.

In August 2018, Jonathan registered the original child custody order, as contained in the parties' judgment of divorce, in a California court. Jonathan then attempted to exercise physical custody in accordance with the original child custody order, and he expected Tiffany to place the children on a flight to California before school started in September 2018. Tiffany, despite agreeing to do so and showing proof of a scheduled flight, did not allow the children on the plane to California. When Jonathan, who was at the airport to pick the children up, asked where they were, she told him that she had been advised that she did not have to return them to his care.

In late August 2018, Tiffany filed a petition to modify child custody under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*. She sought to have the child custody order modified to reflect that the children would remain in her custody during the school year and spend four weeks and alternating holidays with Jonathan. However, before a hearing on the petition could be held in the trial court, Jonathan took the children out of school in Michigan during a school day without Tiffany's knowledge. He and the children flew back to California. The children remained in his custody and were enrolled in a school in California until the trial court ordered Jonathan to return the children to Tiffany's custody in December 2018.

An evidentiary hearing regarding the petition for modification of the child custody order was held in March 2019. At the hearing, the trial court found that (1) proper cause and a change of circumstances justified review of the original custody order, (2) an established custodial environment existed solely with Tiffany, and (3) modification of the child custody order was in the children's best interests. Accordingly, the trial court entered an order awarding Tiffany sole physical custody of the children. [*Shipley*, unpub op at 1-2.]

Jonathan appealed the trial court's order modifying custody and parenting time, arguing that the trial court erred in finding that proper cause or a change of circumstances existed to justify revisiting the original custody order. *Id*. at 3. In *Shipley*, this Court ruled that the trial court erred in finding proper cause or a change of circumstances to warrant revisiting the initial custody order

because it based that determination on the relinquishment of jurisdiction by both Missouri and California and "the fact that Michigan has jurisdiction is not likely to have a significant impact on the children's wellbeing." *Id*. at 4. Moreover, this Court noted that, even if Tiffany had established proper cause or a change of circumstances to warrant revisiting the custody order, reversal would nonetheless be warranted because the trial court erred in concluding that the children only had an established custodial environment with Tiffany. *Id*. at 4-5. This Court concluded:

> As recently stated by our Supreme Court, "it is critical that trial courts, in the first instance, carefully and fully comply with the requirements of MCL 722.27(1)(c) before entering an order that alters a child's established custodial environment" as "[a]ny error in this regard may have lasting consequences yet effectively be irreversible." *Daly v Ward*, 501 Mich 897, 898 (2017). In this case, because proper cause or a change of circumstances was not established, the trial court was without authority to make a determination regarding the existence of an established custodial environment or to reconsider the statutory best interest factors. Accordingly, we reverse the order granting Tiffany's motion to modify custody and remand for further proceedings. **On remand, the trial court shall consider updated information before making any decisions regarding the custody of the children.** [*Id*. at 5-6 (emphasis added).]

On remand, in September 2020, the trial court held new custody proceedings to address proper cause or a change of circumstances, established custodial environment, and the best interests of the children. On November 20, 2020, the trial court issued an opinion finding again that, on the basis of evidence presented at the new custody hearings, Tiffany had established proper cause and a change of circumstances to warrant revisiting the initial custody order. The trial court also found that the children had an established custodial environment solely with Tiffany. The trial court required Tiffany to show by a preponderance of the evidence that the children's best interests would be served by modification of the custody order. The trial court found that the majority of the best-interest factors favored Tiffany and concluded that Tiffany had established by a preponderance of the evidence that modifying custody served the children's best interests. The trial court, however, also determined that, if this Court concluded again on appeal that the children had an established custodial environment with both parents, the trial court also found that Tiffany established by clear and convincing evidence that the children's best interests would be served by modifying the custody order. The trial court granted Tiffany sole physical custody, both parents joint legal custody, and ordered that Jonathan will have parenting time every summer, one weekend a month, and on extended holiday weekends. Defendant now appeals.

II. ANALYSIS

A. INTERPRETATION OF THIS COURT'S REMAND ORDER

Jonathan first argues that, under the law-of-the-case doctrine, the trial court misinterpreted this Court's remand order by reevaluating the custody issues instead of simply denying Tiffany's motion to modify custody or requiring her to file a new motion to modify custody. We disagree.

We review de novo whether and to what extent the law-of-the-case doctrine applies. *Kasben v Hoffman*, 278 Mich App 466, 470; 751 NW2d 520 (2008). This Court explained the extent of the application of the law-of-the-case doctrine in *Kasben* as follows:

> When this Court disposes of an appeal by opinion or order, the opinion or order is the judgment of the Court. And a lower court may not take action on remand that is inconsistent with the judgment of the appellate court. Rather, the trial court is bound to strictly comply with the law of the case, as established by the appellate court, according to its true intent and meaning. However, the law-of-the-case doctrine only applies to issues actually decided—implicitly or explicitly—on appeal. [*Id*. (quotation marks and citations omitted).]

In *Shipley*, after concluding that the trial court erred, this Court reversed and remanded for further proceedings to be conducted by the trial court. This Court specifically directed that, on "remand, the trial court shall consider updated information before making any decisions regarding the custody of the children." *Shipley*, unpub op at 4-6.

Jonathan contends that, because this Court concluded that the trial court erred in finding that Tiffany met the proper cause or a change of circumstances threshold to warrant revisiting the custody order, the law-of-the-case doctrine required the trial court to deny Tiffany's motion and hold no further proceedings. Jonathan's argument lacks merit because this Court's opinion plainly directed the trial court to take specific further action. Further, when Jonathan moved in this Court for immediate effect of *Shipley*, this Court reiterated in its order that, "the trial court shall on remand consider updated information before making any decisions as to the custody of the children at issue in this case." *Shipley v Shipley*, unpublished order of the Court of Appeals entered April 30, 2020 (Docket No. 349502). Jonathan also moved for reconsideration and clarification of this Court's *Shipley* decision, arguing that further proceedings were unnecessary because this Court concluded that Tiffany had failed to establish proper cause or a change of circumstances, and therefore, under *Vodvarka*, no further proceedings could occur. This Court, however, denied Jonathan's motion. *Shipley v Shipley*, unpublished order of the Court of Appeals, entered July 8, 2020 (Docket No. 349502). We conclude that the trial court correctly interpreted this Court's remand order and properly held further proceedings by considering updated information as directed by this Court.

B. PROPER CAUSE AND CHANGE OF CIRCUMSTANCES

Jonathan argues that the trial court erred by finding that Tiffany met her burden of establishing proper cause or a change of circumstance. We disagree.

This Court reviews a trial court's custody determination for an abuse of discretion. *McRoberts v Ferguson*, 322 Mich App 125, 133; 910 NW2d 721 (2017). "In the context of a child custody dispute, an abuse of discretion is found only in extreme cases wherein the trial court's decision is so palpably and grossly violative of fact and logic that it evidences the exercise of passion or bias or a perversity of will." *Id*. at 133-134 (citations omitted). In custody disputes, this Court reviews findings of fact to determine whether the findings are against the great weight of the evidence. *Kubicki v Sharpe*, 306 Mich App 525, 538; 858 NW2d 57 (2014). "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, this Court defers to the trial court's findings of fact unless the trial court's findings "clearly preponderate in the opposite direction." *Id.*

"The requirement that a party seeking a change in custody first establish proper cause or a change of circumstances emanates from the Child Custody Act, MCL 722.21 *et seq*." *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003). "Specifically, MCL 722.27(1)(c) provides that if a child custody dispute has arisen from another action in the circuit court, the court may "[m]odify or amend its previous judgments or orders for proper cause shown or because of change of circumstances . . . ." *Vodvarka*, 259 Mich App at 508. "The movant, of course, has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstances exists before the trial court can consider whether an established custodial environment exists (thus establishing the burden of proof) and conduct a review of the best interest factors." *Id*. at 509. "[I]f the movant does not establish proper cause or change in circumstances, then the court is precluded from holding a child custody hearing[.]" *Id*. at 508.

"These initial steps to changing custody—finding a change of circumstance or proper cause and not changing an established custodial environment without clear and convincing evidence—are intended to erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders." *Id.* at 509 (citation omitted). "[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." *Id*. at 513. "[N]ot just any change will suffice, for over time there will always be some changes in a child's environment, behavior, and well-being." *Id*. "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." *Id*. at 513-514. "Because a 'change of circumstances' requires a 'change,' the circumstances must be compared to some other set of circumstances." *Id*. at 514. "[S]ince the movant is seeking to modify or amend the prior custody order, it is evident that the circumstances must have changed since the custody order at issue was entered." *Id*.

The trial court did not err in concluding that, since the entry of the Missouri custody order, Tiffany had established a change of circumstances, i.e., the conditions surrounding custody of the children, which have or could have a significant effect on the children's well-being, had materially changed. In *Shipley*, this Court concluded that the trial court erred in finding proper cause or a change of circumstances because the trial court failed to address "all" of the changes since the last custody order. This Court concluded that the trial court placed too much emphasis on the children traveling between states because the initial custody order contemplated such travel. The record reflects that, on remand, the trial court thoroughly compaired the conditions in place at the time of entry of the initial custody order with the changes that occurred since that time and articulated on the record the proper cause and change of circumstances that warranted revisiting the order.

The trial court heard Tiffany's testimony and considered documentary evidence in the record and new evidence presented by the parties. The trial court explained in detail how the children's present lives were significantly different from their lives at the time of the initial custody

order. The record reflects that the initial custody order contemplated the children traveling between Missouri and Michigan, and intended for the children to live primarily in Missouri in the parties' marital home where they were born and reared, and to continue to attend school in Missouri, the only school system they had known. The parties also wanted the children to maintain a close relationship with their grandmother who lived in Missouri. For those reasons, the initial custody order ordered that the children stay in Missouri so that their lives would not be disturbed.

The record reflects that those circumstances no longer existed making the initial custody order's provisions inapplicable to the children's current lives. When Jonathan moved to California, the children's lives and routine were substantially changed. They no longer lived in Missouri—the only place the custody order expected them to live while with Jonathan. Nothing about the initial custody order addressed or contemplated the children moving from Missouri to a completely different state with Jonathan, uprooting their established lives and relationships, and changing schools. The trial court correctly found, based upon the evidence, that the children's lives had been subjected to significant changes.

The trial court also correctly found that the parties mutually agreed to place the children in school in Michigan upon Jonathan's move to California. That decision changed the children's lives. The trial court properly found that evidence established that, at the time of the new custody hearings, Michigan had been the children's primary residence since 2017, they were starting their fourth year of school in Michigan, they were comfortable and well-adjusted to their home in Michigan, and they had an established routine, activities, and friends in Michigan. None of these changes were contemplated by the initial custody order.

The trial court also correctly found that Jonathan's move to California changed the travel contemplated in the initial custody order. The flight to California from Michigan took a significantly longer amount of time and required the children to fly unattended with a stop and plane change in a Chicago airport. Further, the cost of the flights were substantially higher compared to the flight costs from Michigan to Missouri.

The trial court did not err by concluding that all of these changes had significant effects upon the well-being of the children. To have the children move to California as their primary residence, have them enroll in California schools, where they only attended school for one semester in the fall of 2018, would deprive them of the permanency and stability they had in Michigan. Doing so meant forcing upon the children things that were never contemplated by the initial custody order, nor the intent of the parties at the time of entry of the initial custody order. The initial custody order had been put in place to maintain the security, routine, and structure of the children's lives in Missouri. The changed circumstances made those goals no longer a possibility for the children.

"[P]roper cause means one or more appropriate grounds that have or could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken." *Vodvarka*, 259 Mich App at 511. The criteria outlined in the best-interest factors set forth in MCL 722.23(a)-(l) "should be relied on by a trial court in deciding if a particular fact raised by a party is a 'proper' or 'appropriate' ground to revisit custody orders." *Vodvarka*, 259 Mich App at 511-512. However, "not just any fact relevant to the twelve factors will constitute sufficient cause." *Id*. at 512. "Rather, the grounds presented must be 'legally sufficient,' i.e., they

must be of a magnitude to have a significant effect on the child's well-being to the extent that revisiting the custody order would be proper." *Id.* In *Vodvarka*, this Court explained:

> to 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. [*Id.*]

In this case, the record reflects that the parties had neither the ability to communicate effectively with each other regarding the custody of the children nor the ability to facilitate a close and continuing relationship between the children and the other parent. Evidence supported the trial court's factual findings in this regard. Both parents testified that they had difficulty conversing with the other person. Further, each believed and presented evidence that the other did not work to facilitate a relationship between the children and themselves and actively tried to discourage the children from communicating with the other parent. The inability of the children's parents to communicate and the parents' mutual mistrust detrimentally affected the children. Nevertheless, the children loved both of their parents. The parties needed to work together to encourage the children's relationship with the other parent. The trial court also found that the children had lived in Michigan for approximately four years in an established stable and satisfactory family and community environment that provided the children permanency, education and extracurricular opportunities. The record reflects that the children had not established the same in California. The trial court properly concluded that these concerns constituted proper cause.

C. ESTABLISHED CUSTODIAL ENVIRONMENT

Jonathan argues that the trial court erred by finding that the children's established custodial environment was solely with Tiffany. We disagree.

"Whether an established custodial environment exists is a question of fact to which the great weight of the evidence standard applies." *Kubicki*, 306 Mich App at 540 (citation omitted). "Before making a custody determination, the trial court must determine whether the child has an established custodial environment with one or both parents, which is an intense factual inquiry[.]" *Bofysil v Bofysil*, 332 Mich App 232, 242; 956 NW2d 544 (2020) (citation and quotation marks omitted). This Court has stated that an established custodial environment is "one of significant duration in which a parent provides care, discipline, love, guidance, and attention that is appropriate to the age and individual needs of the child. It is both a physical and a psychological environment that fosters a relationship between custodian and child and is marked by security, stability, and permanence." *Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 336 (2008).

"Determining a child's established custodial environment is a pivotal step in a custody battle because it dictates the applicable burden of proof." *Bofysil*, 332 Mich App at 243. "If a proposed change would modify the child's established custodial environment, the proponent must demonstrate by clear and convincing evidence that the proposed change is in the child's best

interests." *Id*. (citation omitted) "If the proposed change would not modify the established custodial environment, the proponent need only demonstrate by a preponderance of the evidence that the proposed change is in the child's best interests." *Id*. "If a child has an established custodial environment with both parents, neither parent's custody may be disrupted absent clear and convincing evidence that the change is in the child's best interests." *Id*. (citation omitted)

In this case, the record reflects that the children had an established custodial environment only with Tiffany. Although this Court previously concluded in *Shipley* that the trial court erred by finding that only Tiffany had the established custodial environment as of March 2019, nearly a year and a half had transpired by the time the trial court revisited the issue on remand and heard additional testimony regarding the established custodial environment in September 2020. Although Jonathan contended that the trial court could only find that both Jonathan and Tiffany had an established custodial environment because nothing had changed since March 2019, the trial court properly considered updated information, as directed by this Court, before making its custody determination. The trial court properly considered whether, from March 2019 to September 2020, the children continued to have an established custodial environment with both parents or had an established custodial environment with only one of them.

The trial court first properly concluded that the children had an established custodial environment with Tiffany:

> These children are currently 11 & 13 years old. After spending over 3 school years in Michigan, in a home with [Tiffany], [her husband Nicholas Sohmer], and their half sibling, there is a strong inclination of permanency of the relationship between [Tiffany] and the children. Over this appreciable period of time (almost 4 school years now), the children look to [Tiffany] for guidance, the necessities of life ([Jonathan] pays no support), and most definitely parental comfort.

The trial court noted that, although it found in its June 6, 2019 order modifying custody that the children primarily looked to Tiffany, not Jonathan, for comfort, it was likely more correct that the children looked primarily to Tiffany and their paternal grandmother for comfort. However, as of September 2020, the trial court found that

> after the current testimony and child interviews, this Court finds that the children look solely to [Tiffany]. The testimony showed that they do not hesitate to look to her, or call her, when a concern arises. They are stable and secure in her home, more so than they were at the last child interview.

The trial court also found that the children did not have an established custodial environment with Jonathan:

> This Court finds that there is an established custodial environment with [Tiffany], as these children, over an appreciable period of time, naturally look to her for guidance, necessities of life, and parental comfort. Each party testified to the children looking to them, yet even the actions of the children indicate otherwise. Evidence of the children looking only to their mother include situations this past

> summer where [MS] contacted [Tiffany] for blisters on his feet and didn't want his dad to know. [Tiffany] testified that [Jonathan] was upset when she relayed this information to him because apparently the child told [Jonathan] otherwise. [Tiffany] testified that when the children have a bad day they call her. [Tiffany] further testified that this past summer, the children went to California with a suitcase of clothing. Both parties testified that [Jonathan] asked [MS] if he only had one pair of pajamas with him, to which [MS] by his own volition called [Tiffany] asking her to send more. [Tiffany] testified that the children have always come to her for discipline, guidance, necessities of life, and parental comfort. The Court does not find that the children naturally look to [Jonathan] for discipline, guidance, necessities of life, or parental comfort. The testimony presented does not clearly preponderate in [Jonathan's] direction. This Court is not convinced that [Jonathan] ever acted like the custodial parent, even over the 2-3 months they spent with him in Missouri, as he was still trying to figure out his own life.

The record supports the trial court's findings. At the time of the custody hearings in September 2020, Jonathan had never provided financial assistance for the children. The children had lived primarily with Tiffany since the fall of 2017. Jonathan admitted that he had never provided Tiffany with any kind of financial assistance for the children, including money for the cost of appointments, activities, or school supplies. The testimony supported that while the children were in California for the summer of 2020, Tiffany sent the children care packages that included activities for the children to do while Jonathan worked, brownies, and pajamas. Tiffany also provided the children with summer clothes to take to California. The testimony established that MS, who occasionally suffered from athlete's foot, contacted Tiffany from California when he had blisters on his feet. Despite Tiffany encouraging MS to tell Jonathan about the problem, MS did not want to tell Jonathan. Further, the children lived with Jonathan for a brief period during the school year from September 2018 to December 2018, but nearly two years had passed since that time, during which Tiffany served as the children's primary caregiver. The great weight of the evidence supports the trial court's conclusion that the children did not have an established custodial environment with Jonathan but had an established custodial environment with Tiffany.

D. BEST-INTEREST FACTORS

Jonathan argues that the trial court erred in improperly weighing several of the best-interest factors, resulting in the improper modification of custody. We disagree.

We review "the trial court's findings regarding the best-interest factors under the great weight of the evidence standard." *McRoberts*, 322 Mich App at 133 (quotation marks and citation omitted). "We review the court's ultimate custody decision for an abuse of discretion." *Id*. (citation omitted). "In the context of a child custody dispute, an abuse of discretion is found only in extreme cases wherein the trial court's decision is so palpably and grossly violative of fact and logic that it evidences the exercise of passion or bias or a perversity of will." *Id*. at 133-134 (citations omitted). "In child custody cases, the family court must consider all the factors delineated in MCL 722.23 and explicitly state its findings and conclusions with respect to each of them." *Id*. at 134 (quotation marks and citation omitted). "This Court will defer to the trial court's credibility determinations, and the trial court has discretion to accord differing weight to the best-interest factors." *Id*. (quotation marks and citation omitted).

Because the trial court concluded that the children had an established custodial environment only with Tiffany, she bore the burden of proving by a preponderance of the evidence that modification of custody served the children's best interests. *Bofysil*, 332 Mich App at 243. MCL 722.23 sets forth the factors to be considered in determining a child's best interests:

> (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.

In *Rains v Rains*, 301 Mich App 313, 329; 836 NW2d 709 (2013) (citation and quotation marks omitted), this Court explained that a trial court's

> findings and conclusions need not include consideration of every piece of evidence entered and argument raised by the parties. However, the record must be sufficient for this Court to determine whether the evidence clearly preponderates against the trial court's findings. This Court will defer to the trial court's credibility determinations, and the trial court has discretion to accord differing weight to the best-interest factors.

"A court need not give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances." *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006) (citation omitted).

In this case, the trial court found best-interest factors (a), (b), (c), (d), (h), (j), (k) and (l) favored Tiffany. The trial court found that best-interest factors (e), (f), (g) were neutral and did not weigh in favor of either party. The trial court also considered (i)—the preference of the children.[2] On appeal, Jonathan asserts that, following the proceedings after remand, the trial court incorrectly found that (a), (b), (c), (d), (h), (j), (k) and (l) favored Tiffany. On appeal, Jonathan provides substantive analysis for factor (j). Jonathan asserts that the trial court could not have possibly "flipped" its conclusions and found that factors (a), (b), (c), (d), (h), (k), and (l) favored Tiffany. Examination of the record, however, establishes that Jonathan's contention lacks merit. The trial court articulated its reasoning and based its decision on evidence in the record, and the great weight of the evidence supported its determinations of each of the best-interest factors.

1. MCL 722.23(j)

We first address best-interest factor (j), the factor which Jonathan provides argument, contending that it was impossible for the trial court to now conclude that this factor favored Tiffany on remand, when nothing had changed since the trial court's earlier conclusion that the factor favored him. We disagree.

Jonathan, relying only on testimony presented during the March 2019 custody hearing, argues that the evidence clearly established that Tiffany alienated him, as illustrated by evidence that Tiffany withheld medical, school, and prescription records from him by leaving Jonathan's name off the records and provided Sohmer's name. Jonathan also argued that the record established that Tiffany put Sohmer's name in the children's phone under "dad," and had once blocked Jonathan and his girlfriend, Mallory Van Dongen, from the children's phone.

Contrary to Jonathan's contention, the trial court not only had discretion to consider updated information on remand but this Court required that it do so. The trial court, therefore, was not bound by its previous determinations. The record reflects that, despite the parties' continued inability to facilitate a relationship between the children and the other parent, things continued to change and evolve since the previous custody hearing in March 2019. Approximately a year and a half had passed, during which the parties continued to struggle to facilitate their children's

[2] In June 2019, following the March 2019 custody hearing, the trial court found all of the best-interest factors neutral other than two. In June 2019, the trial court concluded that best-interest factor (j) "slightly" favored Jonathan, and best-interest factor (k) favored Tiffany.

relationships with the other parent. The trial court heard testimony from both Tiffany and Jonathan to that effect. MCL 722.23(j) requires consideration of "[t]he 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." The trial court made several findings regarding this factor, ultimately concluding that Tiffany's behavior did not appear intentionally destructive, while Jonathan engaged in alienating behaviors.

The trial court found that, while both parties struggled to have phone communications with the children, Tiffany struggled to get through to the children at all; whereas, Jonathan got through to them but his calls were cut short because he called around their bedtimes. The trial court appropriately noted that its June 6, 2019 order required Jonathan to call the children before 9:00 p.m. Tiffany, therefore, had not violated the order by limiting the children's phone communications with Jonathan after 9:00 p.m. The trial court also found that, during Jonathan's parenting time in the summer, he did not allow AS to give Tiffany her phone number. The trial court found further that Tiffany had to purchase last minute flights for the children to return home at an additional expense to herself because Jonathan refused, despite the June 6, 2019 order mandating that he purchase the flights. The trial court found that Tiffany made unilateral decisions regarding the children's schooling and doctors, but she had been making those decisions even before the divorce. Further, the trial court found that, although Jonathan believed that Tiffany endeavored to replace him with Sohmer, Jonathan also testified that his communications with the children had improved and were currently better than in the past.

The record reflects that the trial court's findings were supported by the great weight of the evidence. Evidence established that, as of the most recent custody hearing, Tiffany had not intentionally tried to alienate Jonathan from the children's lives but actually had encouraged the children to speak with him. For example, while in California, MS called Tiffany about his problems, including the blisters on his feet. Tiffany encouraged MS to go to Jonathan. She also encouraged MS to call Jonathan to speak with him about music, their common interest.

The record indicates that Tiffany never had the children ignore Jonathan's phone calls. She blocked Jonathan's phone number one time when he said he intended to take the children to California and enroll them in school there. Evidence also established that Tiffany had not decided to enforce the children's bedtimes simply to alienate Jonathan. The record reflects that she sought to enforce and maintain the children's bedtime routine. The record also indicated that, despite the court's order that Jonathan pay for the summertime flights, Tiffany had been forced to purchase last minute flights for the children. Although Jonathan maintained that Tiffany alienated him from the children, the record indicated that his communication had improved with the children since March 2019.

The record reflects that the parties presented conflicting evidence and testimony regarding their willingness and ability to facilitate the parent-child relationship with the other parent. Credibility determinations are matters for the trial court to decide. *Rains*, 301 Mich App at 329. Analysis of the record in this case establishes that the trial court's determination that best-interest factor (j) favored Tiffany was not against the great weight of the evidence.

2. MCL 722.23(a)

MCL 722.23(a) requires consideration of "[t]he love, affection, and other emotional ties existing between the parties involved and the child." The trial court found that although both parties loved their children, showed them affection, and had emotional ties to the children, this factor weighed in favor of Tiffany because the evidence illustrated that the children turned to Tiffany first when they were in need, and as a stay-at-home parent, Tiffany focused on the children's schoolwork and emotional needs. Evidence supports the trial court's determination of this factor. The children turned primarily to Tiffany in times of need and she attended to them. The children contacted Tiffany to send them clothing. She also sent them care packages with various items that they needed. Further, testimony established that Tiffany provided for the children's daily needs and supported them emotionally and intellectually. The children sought Tiffany when they felt upset. Although Jonathan testified that the children discussed their problems with him as well, the great weight of the evidence supports the court's findings and conclusion that factor (a) favored Tiffany.

3. MCL 722.23(b)

MCL 722.23(b) requires consideration of "[t]he 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." The trial court found that, although both parties had the capacity to give the children love and affection, Tiffany had the ability to provide proper guidance to the children. The record reflects that she recognized the children's needs for stability and comfort. Tiffany chose not to remove the children from Missouri after the divorce because it would have been difficult legally, and she recognized the importance of having the children remain in the family home, stay in their same school, and maintain a relationship with their maternal grandmother. Tiffany chose what served the children's overall needs. After the divorce, Jonathan moved to California. Initially, he agreed to have the children live in Michigan and go to school there to enable them to have stability. Later, however, he sought to uproot the children's lives and took them out of their school and flew them to California without notifying Tiffany. The record also indicates that Tiffany found it important to maintain the children's relationships with their relatives, including their grandmother. No evidence was presented that Jonathan facilitated such relationships. Jonathan testified that he asked the children about their preference and discussed the "pros" and "cons" about living in Michigan or California. The trial court properly found this troubling because discussing court matters with children is highly inappropriate and lends itself "to a parent's inability to properly guide." The great weight of the evidence supports the trial court's determination that best-interest factor (b) favored Tiffany.

4. MCL 722.23(c)

MCL 722.23(c) requires consideration of "[t]he capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs." The trial court found that the evidence and testimony established that Tiffany maintained the health insurance for the children through Sohmer, and although the parties provided food and clothing for the children when the children were with them, Tiffany also sent the children additional clothing, food, and other things during their parenting time with Jonathan in California. Jonathan

provided no financial support to Tiffany for the children. The court also found that when Jonathan attempted to rent an expensive instrument for MS in Michigan, he never paid anything for the instrument. Tiffany had to tell MS that the instrument was too expensive.

All of the trial court's factual findings regarding factor (c) are supported by evidence in the record. In regard to the instrument, Sohmer testified that when MS spoke to Jonathan about which instrument MS should play, their conversation turned to instrument rental expense, after which Tiffany received a message from Jonathan lamenting Tiffany's and Sohmer's inability to financially support a band rental considering they lived in a low-class neighborhood. Jonathan told Tiffany and Sohmer that he would pay the monthly rent for the instrument, but he failed to do so. Jonathan testified that he never paid for the instrument only because he was never presented with the bill. The trial court found that Jonathan never paid any child support over the years, he paid nothing for the instrument, and simply shifted the blame to Tiffany. Jonathan admitted that he had never provided Tiffany any financial support for the children. Analysis of the record establishes that the great weight of the evidence supports the trial court's determination that best-interest factor (c) favored Tiffany.

5. MCL 722.23(d)

MCL 722.23(d) requires the consideration of "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." The record reflects that the children lived in a stable and satisfactory environment with Tiffany in Michigan since 2017. The children went to Michigan for their summer parenting time in 2017, but remained there for the school year because Jonathan moved to California. Despite the fact that they attended school in California for a semester in the fall of 2018, the children lived primarily in Michigan since the summer of 2017 pursuant to the parties' agreement. The record established that the children had a structured and stable life in Michigan. They lived comfortably and happily with Tiffany, Sohmer, and their baby sister. The children never stayed in California for a prolonged period of time, and their primary residence from 2017 to 2020 remained in Michigan. The trial court deemed maintenance of the continuity of that stable environment an important consideration for the children's best-interest analysis. The trial court did not err in this regard. The great weight of the evidence supported the trial court's determination regarding best-interest factor (d).

6. MCL 722.23(h)

MCL 722.23(h) requires consideration of "[t]he home, school, and community record of the child." The trial court found that, although Jonathan testified that MS had problems with reading and credited himself with helping MS improve in reading, this factor favored Tiffany because, at the time of the new custody hearings, the children were in their third year in Michigan schools and Tiffany historically handled the children's school, doctor, and dentist appointments. The record supports the trial court's findings. As stated in best-interest factor (d), the children had been attending school almost exclusively in Michigan since 2017. Further, although Jonathan had concerns about MS's reading, the record established that Tiffany handled the children's schooling and medical appointments, Tiffany and Sohmer were home with the children to assist in their schooling, and the children were doing well in school. The trial court's findings regarding best-interest factor (h) were not against the great weight of the evidence.

7. MCL 722.23(l)

MCL 722.23(l) requires consideration of "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." The trial court found that the children were doing considerably better than at the time of the March 2019 custody hearing. The trial court stated that, "[b]ack in 2019, the Court was concerned that the absence of the paternal grandmother from their lives would have a detrimental effect on them. However, [Tiffany] has done an admirable job fostering that relationship for them. Today, the children are stable and secure, and have positive attitudes about both of their parents." The children spent the majority of their time with Tiffany, who provided financial, mental, and emotional support for the children. Further, Tiffany testified that the children's grandmother continued to play an active role in their lives. The children called their grandmother at least every other day, and Tiffany also planned trips for the children to visit their grandmother in Missouri during their school breaks. The great weight of the evidence supports the trial court's conclusion that Tiffany provided the children stability and had a positive impact on the children. The trial court, therefore, properly determined that best-interest factor (l) favored Tiffany.

The great weight of the evidence in this case establishes that the majority of the best-interest factors favored Tiffany. Tiffany met her burden of establishing that modification of the custody order served each of the children's best interests. The evidence established that the children have permanence and stability in Michigan with a loving family that provides for them. The children are also able to maintain their relationship with Jonathan through parenting time. The trial court's custody order maintains the way in which the children have been living since 2017, and ensures that their lives are not disrupted.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Christopher M. Murray
/s/ James Robert Redford