

STATE OF MICHIGAN
COURT OF APPEALS

CELESTE RANESES FEOLE, formerly known as
CELESTE RANESES MALLARI,

Plaintiff-Appellant,

v

JACK WILLIAM KREMKOW,

Defendant-Appellee.

UNPUBLISHED
December 21, 2021

No. 357121
Otsego Circuit Court
Family Division
LC No. 14-015608-DM

Before: STEPHENS, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion to strike plaintiff's objection to the referee's findings and recommendation with respect to plaintiff's motion to modify custody and parenting time. We reverse and remand for further proceedings.

I. BACKGROUND

Plaintiff and defendant were married and had one child, JK. The parties divorced in 2015, and agreed, by stipulation, to share joint legal and physical custody of JK with a three-days-on, three-days-off parenting-time schedule. In August 2018, the parties stipulated to move to a week-on, week-off parenting-time schedule.

In November 2019, after picking JK up from school following defendant's parenting time, noticing bruising under and on JK's arm, and suspecting abuse by defendant, plaintiff filed an ex parte motion to modify custody and parenting time, requesting that defendant's parenting time be suspended or, in the alternative, be supervised. In her motion, plaintiff explained that she had taken JK to the police station, and after a deputy saw the marks on JK's arm, he referred the matter to Children's Protective Services (CPS), who were still investigating the matter at the time the motion was filed.

Upon receiving the motion, the trial court immediately entered an ex parte order suspending defendant's parenting time and permitting only supervised parenting time as agreed upon by the parties. In January 2020, the trial court held a brief hearing and referred the matter to

the Friend of the Court for a two-hour hearing. However, for reasons attributable to the COVID-19 pandemic, the evidentiary hearing did not commence until August 2020, and continued into September and November 2020.

During those hearings, defendant acknowledged that he had visited JK only six times since the ex parte order was entered in November 2019. According to defendant, this was in part because plaintiff only permitted defendant's former girlfriend to supervise his visits. Plaintiff meanwhile alleged that defendant refused to allow plaintiff to supervise his visits.

With respect to the events surrounding the alleged abuse, defendant testified that JK had been misbehaving and so defendant picked up JK under the arms and carried him downstairs to put him in a "time-out." After the time-out, defendant picked up JK under the arms again and carried him upstairs to his bedroom.

A CPS worker testified that JK told him that defendant pulled his ear and pulled him by his arm. JK also told the CPS worker that defendant picked JK up and threw him on his bed, which caused him to hit his head on the ceiling because he was on the top bunk. The CPS worker substantiated the case for physical abuse. Based on a series of risk factors, including that defendant did not have a history of substantiated cases or a criminal history, the allegations in defendant's case were categorized by CPS as "low." Despite this categorization, the CPS worker would have recommended that defendant participate in services, but because the ex parte order was in place, CPS was unable to offer services to defendant.

Following the three-day evidentiary hearing, the referee recommended that the standard parenting-time schedule for the county be instituted and that a hearing be scheduled to consider whether there were reasons why the parties should not resume having equal parenting time. Plaintiff filed an objection to the referee's recommendation and requested a de novo hearing. In response, defendant moved to strike plaintiff's objection, arguing that she failed to state with specificity the findings of fact or application of law to which she was objecting. The trial court agreed with defendant and struck plaintiff's objection. Plaintiff filed a motion for reconsideration, which the trial court denied. This appeal followed.

II. ANALYSIS

Plaintiff argues that the trial court erred by granting defendant's motion to strike her objection to the referee's recommendation. We agree.

A. STANDARD OF REVIEW

"[A]ll 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." MCL 722.28. "[A] reviewing court should not substitute its judgment on questions of fact unless they clearly preponderate in the opposite direction." *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994) (quotation marks and citation omitted). To constitute an abuse of discretion, "the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias."

Id. at 879-880 (quotation marks and citation omitted). A trial court commits clear legal error when it “incorrectly chooses, interprets, or applies the law” *Id.* at 881.

B. ANALYSIS

MCL 552.507(4) provides, “The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court.” MCR 3.215(E)(4) provides details on what the request for a de novo hearing must include:

A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing and that resulted in a statement of findings and a recommended order by filing a written objection and notice of hearing within 21 days after the referee’s recommendation for an order is served on the attorneys for the parties, or the parties if they are not represented by counsel.^[1] The objection must include a clear and concise statement of the specific findings or application of law to which an objection is made. Objections regarding the accuracy or completeness of the recommendation must state with specificity the inaccuracy or omission.

In her written objection, plaintiff took issue with the completeness of the referee’s recommendation, arguing that the referee omitted any reference to the testimony of a number of plaintiff’s witnesses. Plaintiff further contended that the referee omitted discussion of the evidence that defendant largely failed to see JK while the ex parte order was in place due to “his own shortcomings,” and that the referee instead “used COVID-19 as an excuse throughout his recommendation”

In a similar vein, plaintiff objected to the referee’s finding that COVID-19 was the sole disruption in this case. In its recommendation, the referee stated that the “disruption” in defendant’s parenting time was “one of the unforeseen consequences of the general disruption that occurred due to the COVID-19 pandemic[.]” The referee mentioned this disruption in defendant’s parenting time in its analysis of proper cause or change in circumstances, the established custodial environment, and best interests. Plaintiff contended that COVID-19 was not the “sole disruption” to defendant’s parenting time because, “COVID-19 or not,” the evidence established that defendant’s reluctance to participate in supervised parenting times caused the disruption to his parenting time.

Plaintiff also appeared to take issue with the referee’s finding that best-interest factor (j) (the willingness and ability of each of the parties to facilitate and encourage a close and continuing

¹ On appeal, defendant asserts, without further elaboration, that “[t]here is a significant question if [plaintiff’s] objection was timely filed pursuant to MCR 3.215(E)(4).” In the lower court, defendant challenged the timeliness of plaintiff’s objection, but the trial court ruled that the objection was timely. Defendant fails to address that ruling on appeal or explain why it was incorrect. In light of this failure, even if defendant had properly presented this issue for review, we would consider it abandoned. See *McIntosh v McIntosh*, 282 Mich App 471, 484-485; 768 NW2d 325 (2009).

parent-child relationship between the child and the other parent or the child and the parents) favored neither party. The referee found that factor (j) favored neither party because “each parent has problems facilitating [JK’s] relationship with the other parent,” but plaintiff contended that the evidence established that she “attempt[ed] to help facilitate that parent-child relationship” between defendant and JK while the ex parte order was in place, “which cannot be ignored.”

Finally, plaintiff’s objection took issue with the referee’s findings with respect to the instance of alleged abuse. In discussing the best interest factors, the referee concluded that best-interest factor (k) (domestic violence, regardless of whether the violence was directed against or witnessed by the child) favored neither parent on the basis that the parties did not have a history of domestic violence and that the instance of alleged abuse was an “isolated incident and frankly it is difficult for the Court to find any domestic violence involved in that incident.” Later in its recommendation, the referee stated that “with regard to the issues of child safety, there was never a reported incident before or after the . . . incident and, frankly, considering witness testimony and CPS involvement, it does not indicate a pattern of abuse or neglect or risk to [JK].” In objecting to these findings, plaintiff asserted that the referee minimized the testimony of the CPS worker regarding how, in light of the substantiated instance of abuse, services would have been not just offered but required if the ex parte order was not in place, how defendant avoided having to engage in such services because of the ex parte order, and how defendant nevertheless “could have engaged in the recommended services of his own volition.”

Contrary to the trial court’s conclusion, plaintiff did not simply raise a “general challenge” to the referee’s findings in her objection. Plaintiff’s objection included a “clear and concise statement of the specific findings or application of law to which an objection is made,” and further “state[d] with specificity the inaccuracy or omission” that she was challenging. MCR 3.215(E)(4). Therefore, the trial court committed legal error by granting defendant’s motion to strike plaintiff’s objection to the referee’s opinion and recommendation on the sole basis that plaintiff did not present a clear and concise statement of her specific objections. Accordingly, we remand for the trial court to conduct a de novo hearing.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.²

/s/ Cynthia Diane Stephens
/s/ Stephen L. Borrello
/s/ Colleen A. O’Brien

² In light of our resolution of the issue, we do not address plaintiff’s additional arguments that the trial court’s findings with respect to the established custodial environment and best-interest factors were against the great weight of the evidence.