STATE OF MICHIGAN

COURT OF APPEALS

JO EDGE, a/k/a JO DARLINGTON, Plaintiff-Appellee, V JOEL D. EDGE, Defendant-Appellant.	UNPUBLISHED August 23, 2011 No. 300668 Washtenaw Circuit Court LC No. 07-000993-DM

JO DARLINGTON EDGE, Plaintiff-Appellee, V JOEL D. EDGE, Defendant-Appellant.	 No. 300713 Washtenaw Circuit Court LC No. 07-000993-DM

Before: BECKERING, P.J., and FORT HOOD and STEPHENS, JJ.

PER CURIAM.

Defendant Joel D. Edge appeals as of right and by leave granted orders that awarded plaintiff Jo Edge, a/k/a, Jo Darlington and Jo Darlington Edge, sole legal and physical custody of the parties' only child, a five-year-old boy, and that denied defendant's motion for reconsideration. We affirm.

A consent judgment of divorce had originally provided for joint legal custody and shared parenting time. At the heart of this appeal are post-judgment rulings that modified the parenting time and joint legal custody arrangement. A full evidentiary custody hearing was conducted by the trial court. A major focus of the evidentiary hearing was the series of emails between defendant, plaintiff, and a parenting coordinator (PC). Defendant's emails revealed a tone that was hostile, accusatory, sarcastic, confrontational, hyperbolic, and condescending, all of which tended to escalate the conflict between the parties. We note that, during the litigation below, defendant employed five different attorneys, changing counsel on a regular basis. He also opined that two different PCs were biased, incompetent, and the cause of increased tension

between the parties. He alleged that an evaluating psychologist was biased and had committed perjury. Defendant's appellate brief appears to also contain an implicit but veiled accusation that the trial court was biased and not impartial. We hold that the trial court's rulings on the established custodial environment, proper cause and change of circumstances, and the best-interest factors were not against the great weight of the evidence, nor did the trial court make any clear legal errors. Further, continuing the joint custody arrangement was simply not workable given defendant's distain for plaintiff and his uncooperative nature, and the trial court did not abuse its discretion in awarding sole legal and physical custody of the minor child to plaintiff. Finally, the best interests of the child supported the reduction in defendant's parenting time.

In *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006), this Court summarized the review standards for child custody cases, stating:

> There are three different standards of review applicable to child custody cases. The trial court's factual findings on matters such as the established custodial environment and the best-interests factors are reviewed under the great weight of the evidence standard and will be affirmed unless the evidence clearly preponderates in the opposite direction. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003) (citation omitted); *Fletcher v Fletcher*, 229 Mich App 19, 24; 581 NW2d 11 (1998), citing MCL 722.28. In reviewing the findings, this Court defers to the trial court's determination of credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000). A trial court's discretionary rulings, such as the court's determination on the issue of custody, are reviewed for an abuse of discretion. *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). Further, pursuant to MCL 722.28, questions of law in custody cases are reviewed for clear legal error. See *Fletcher, supra* at 24. [Internal quotations omitted.]

Defendant first argues that the trial court erred in finding that there was proper cause and a change of circumstances; therefore, the court should never have entertained the issues regarding the established custodial environment and best-interest factors. We disagree.

The trial court did not err in finding that there was proper cause and a change of circumstances such that the issue of custody could be revisited under MCL 722.27(1)(c). The court focused on the hostility and interactions between the parties, the email communications, the relationship between the parties and the second PC, and defendant's claims of wrongdoing by plaintiff. Although the court spoke in terms of "allegations" at times, it is clear that it was referring to the evidence and finding that the evidence supported a conclusion that proper cause existed and that there had been a change of circumstances. The emails, plaintiff's testimony, the testimony by preschool personnel and the PC, and even defendant's own testimony, reflected a growing hostility and anger between the parties and an escalation of the conflict, due mostly to defendant's attitude and demeanor. Plaintiff's testimony indicated that the parties' ability to communicate and cooperate since entry of the judgment of divorce (JOD) had greatly diminished, even to the point that plaintiff stopped talking to defendant by phone because calls devolved into defendant yelling at plaintiff, even in front of the child. While defendant testified that there had been no real change in the parties' ability to function jointly and communicate since the JOD, he did acknowledge that the hostility increased when the PC became involved.

Regardless of whether the hostility was attributable to the PC's actions, the hostility existed nonetheless. Defendant's testimony and his emails indicated that he had discussions with the child, who just turned five in February 2010, about plaintiff's behavior. Furthermore, there was evidence regarding problems, conflicts, communication failures, and/or disputes with respect to the child's clothing, the parties' behavior, alleged physical assaults against the child, medical matters, allegations of serious mental illness, payment of medical bills, where the child was going to go to kindergarten, extracurricular activities, counseling for the child, and recent troubling changes in the child's demeanor at parenting exchanges. All of these matters taken together, along with the escalation of hostility and general inability to effectively communicate and cooperate, easily established proper cause to reexamine custody, given that, under *Vodvarka*, 259 Mich App at 512, this evidence constituted grounds relevant to the child's best interests and was of such a magnitude as to have a significant effect on the child's well-being. Furthermore, all of those matters taken together, along with the escalation of hostility and recent general inability to effectively communicate and cooperate, easily established a change of circumstances necessitating a reexamination of custody under *Vodvarka*, *id.* at 513-514. This evidence reflected changed conditions relating to custody that had or *could have* a significant effect on the child's well-being and best interests. The evidence went well beyond normal life changes.[1] With respect to defendant's argument that his emails to the PC did not have any impact on the child's well-being, these emails not only showed uncontrolled anger directed at the PC but also uncontrolled anger directed at plaintiff, and the exhibited hostility would necessarily create conflicts that would most certainly impact the child. In sum, the trial court did not err in finding proper cause and a change of circumstances, and therefore, the court did not err in reexamining the issue of custody. There is no dispute that the trial court properly found an established custodial environment with *both* parties and that, accordingly, any change of custody had to be proven by clear and convincing evidence on examination of the best-interest factors. MCL 722.27(1)(c); *Sinicropi*, 273 Mich App at 178; *LaFleche v Ybarra*, 242 Mich App 692, 696; 619 NW2d 738 (2000).

In the context of joint custody, defendant next argues that the trial court erred when it determined that the parties would not be able to cooperate, nor generally agree, concerning important decisions affecting the welfare of the child. Defendant contends that the joint custody arrangement should not have been modified simply because the parties could not agree on the child's schooling, his counseling, and on parenting time. He argued that, under *Lombardo v Lombardo*, 202 Mich App 151; 507 NW2d 788 (1993), the proper approach to the schooling, counseling, and parenting time disputes was to have the court resolve the impasse, not deprive defendant of joint legal custody rights. Defendant further argues that the question of whether the parties could sufficiently cooperate and function jointly did not entail the need to show that the parties agreed on everything. Defendant maintains that the trial court failed to consider several facts that revealed the ability of the parties to communicate and cooperate.

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[1] With respect to the schooling dispute, we agree with defendant that a child going to kindergarten is a normal and anticipated life change, but what is not normal is two parents bitterly at war over what school the child will attend to such a degree that defendant declared that he would fight the child going to a particular school "forever."

The issue of joint custody is addressed in MCL 722.26a, which provides in pertinent part:

> (1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:
>
> (a) The factors enumerated in section 3 [MCL 722.23].
>
> (b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

MCL 722.26a, by its plain and unambiguous language, does not create a presumption in favor of joint custody. *Wellman v Wellman*, 203 Mich App 277, 285-286; 512 NW2d 68 (1994). The ability of the parties to cooperate is but one factor for the court to consider in its decision to award joint custody. *Nielsen v Nielsen*, 163 Mich App 430, 434; 415 NW2d 6 (1987). In *Fisher v Fisher*, 118 Mich App 227, 232-233; 324 NW2d 582 (1982), this Court observed:

> In order for joint custody to work, parents must be able to agree with each other on basic issues in child rearing - including health care, religion, education, day to day decision making and discipline - and they must be willing to cooperate with each other in joint decision making. If two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children. The establishment of the right to custody in one parent does not constitute a determination of the unfitness of the noncustodial parent but is rather the result of the court's considered evaluation of several diverse factors relevant to the best interests of the children. [Citations omitted.]

We hold that the trial court did not err in concluding that the parties were and would not be able to cooperate or generally agree concerning important decisions affecting the child's welfare. The parties could not agree on schooling, and defendant expressed in an email that he would fight "forever" the child going to a particular school proposed by plaintiff. Additionally, the parties could not agree on whether the child should be in counseling, where defendant was adamant that counseling was unnecessary and that he, defendant, could counsel the child. Defendant switched positions on this issue, but only at the time of trial. The parties had differences regarding the child's extracurricular activities, medical matters, clothing, and parenting time. Defendant's communications to plaintiff were caustic and hostile, with no indication that matters were going to improve; rather, all indications appeared to suggest that the hostility would worsen. The simple act of a parenting time exchange created tension and problems. Given the hostility, it is almost nonsensical to conclude that the parties "will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." MCL 722.26a(1)(b). An ability to cooperate and generally agree necessitates an underlying ability to effectively communicate, and there was evidence that the parties could not

do so. The record supports the conclusion that plaintiff was making great strides and was genuine in her attempts relative to communicating in an amicable manner. It is equally clear, however, that while defendant testified that the parties could effectively communicate and cooperate and that he would facilitate such communication and cooperation, the emails showed utter contempt and disdain for plaintiff and were inconsistent with his claimed intent to support facilitation. In one breath, defendant claimed that the parties could co-parent the child, that plaintiff's participation in the child's life was important, and that plaintiff was at least partially responsible for the child being such a great little boy, while in the next breath, he exclaimed that plaintiff is mentally ill with an urgent need for psychological treatment and that if she was the sole decision-maker, it would be a disaster, as she would not act in the child's best interests. Furthermore, as observed by the trial court, both parties had a history of taking unilateral actions absent any communication or cooperation on a multitude of matters where the sharing of information and a joint effort would have been appropriate. Even the assistance of PCs was ineffectual. The court's ruling was not against the great weight of the evidence.

We note that some of the allegations made by defendant regarding plaintiff's conduct are very troubling and, if true, could even support an effort to terminate her parental rights. Plaintiff, however, adamantly denied the allegations. The trial court clearly found plaintiff to be credible and not defendant, and credibility assessments are for the trier of fact. Also, the emails reflect that defendant is prone to exaggeration and hyperbole, e.g., plaintiff's counsel molested more children in the county than anyone. Furthermore, we are cognizant of the list of events or situations cited by defendant wherein the parties did find some agreement and worked matters out, but the big picture showed a relationship fraught with conflict and hostility which supported the trial court's ruling. With respect to the *Lombardo* argument and that the joint custody arrangement should have been left in place with the court simply resolving the various disputes, given that even in ideal circumstances there will be disagreements between joint custodians, this case entailed so much more as evidenced by the conflicts regarding alleged bad behavior, clothing, medical care, claimed assaults, basic communications, alleged mental illness, extracurricular activities, unilateral actions, and the whole matter of general hostility. Furthermore, a *Lombardo*-type hearing was not specifically requested, and the trial court was presented with plaintiff's motion to change custody.

Defendant next challenges the trial court's ruling with respect to the best interest-factors. Defendant argues that there was a lack of clear and convincing evidence relative to the best-interest factors, such that a change of custody was unwarranted. Child custody disputes are to be resolved according to a child's best interests. MCL 722.25(1). MCL 722.23 enumerates each of the best-interest factors. The trial court need not give the statutory factors equal weight, and the court's finding regarding one factor does not necessarily countervail its other findings. *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998). Furthermore, mathematical equality on the statutory factors does not necessarily amount to an evidentiary standoff that would preclude a change in custody. *Heid v AAASulewski (After Remand)*, 209 Mich App 587, 594; 532 NW2d 205 (1995). The overwhelmingly predominant factor is, as always, the welfare of the child. *Id*.

The trial court found the parties to be equal with respect to factors (a), (d), (e), and (g) under MCL 722.23, and the court found that factor (k) was inapplicable. Defendant does not challenge these rulings. With respect to factor (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), the trial court found that it favored plaintiff. Defendant argues that the court's ruling was against the great weight of the evidence. We hold that the evidence did not clearly preponderate in the opposite direction of the trial court's finding on factor (b). Factor (b) speaks of the *capacity* and *disposition* to provide love, affection, and guidance. While defendant declared his love and affection for the child and claimed an ability to give the child guidance, the rage exhibited by defendant towards plaintiff, his belief in the need to escalate conflict, his controlling nature, the exaggeration of benign incidents, and defendant's actions in talking to the child about his mother's behavior, all reflect a lack of capacity and absence of a disposition necessary to provide true love, affection, and guidance. With respect to education, defendant's abhorrence of the school chosen by plaintiff makes it questionable whether defendant has the capacity and disposition to support the child's schooling at that location. In regard to religion, plaintiff was regularly taking the child to church, although defendant did support those efforts without objection. Defendant testified to instilling morals and values in the child, but defendant is not leading by example given his hostility.

With respect to factor (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), the trial court found that the parties were equal. Defendant does not expressly argue that the trial court's ruling was against the great weight of the evidence, but he indicates that the factor favored him. We hold that the court's finding on factor (c) was not against the great weight of the evidence. Both parties were capable of providing the child with food, clothing, and medical care. In regard to the clothing and medical issues, the court found plaintiff to be more credible than defendant on these matters, and we defer to the trier of fact on credibility determinations. There was evidence that the child was always properly dressed for school when brought there by plaintiff, that plaintiff had a basis to believe that the child was suffering from allergies, that she was not "drugging" the child to get back at defendant, that plaintiff participated in taking the child to the pediatrician, and that she alone took him to the dentist. The fact that defendant was the first to suspect a problem with the child's tonsils and adenoids does not provide a basis to find that factor (c) favored defendant. As to the holes in the right knees of the child's pairs of pants, they appear to be of a nature that one would expect to find with normal wear and tear, especially with a five-year-old boy.

With respect to factor (f) (the moral fitness of the parties involved), the trial court found that plaintiff was slightly favored. Defendant argues that the parties were equal on this factor, contending in part that the only supporting evidence was plaintiff's testimony. We fail to understand defendant's argument that somehow plaintiff's testimony is meaningless and cannot provide evidentiary support for the court's finding. Once again, weight and credibility were matters for the trial court to determine as the trier of fact. There was evidence supporting a conclusion that plaintiff was not critical of defendant in front of the child, and there was evidence that defendant spoke to the child about plaintiff's behavior, which discussion proved "interesting" according to defendant. There was evidence that plaintiff was making a concerted effort to reduce the hostility, whereas defendant desired to increase the hostility. In regard to the trial court touching on religion after also doing so with respect to factor (b), this Court in *Fletcher*, 229 Mich App at 25, noted the natural overlap of some of the factors when it rejected the defendant's claim that the circuit court committed clear legal error in considering the same

evidence of negative influence under multiple factors. Here, the trial court's finding as to factor (f) was not against the great weight of the evidence.

With respect to factor (h) (the home, school, and community record of the child), the trial court found that plaintiff was favored. Defendant argues that the trial court's analysis of factor (h) focused on email communications between defendant and the PC and on patterns of hostility, which had no direct relevance to the child's home, school, and community record. The trial court's ruling on factor (h) does appear to have somewhat strayed from the focus of the factor's language. The child is generally thriving at home, school, and in regard to extracurricular or community activities. However, the potential disruption to the child's continuing success and development at home, school, and in the community comes from defendant's hostility and efforts to increase conflict, along with his actions in drawing the child into the conflict and hostility. Plaintiff testified to a recent change in the child's typical happy demeanor at parenting time exchanges where defendant was dropping the child off at plaintiff's home. We also note defendant's actions in telling personnel at the child's preschool that plaintiff is mentally ill and assaulting the child, which does not enhance the child's schooling experience. While perhaps the trial court should have found the parties equal on factor (h), the ruling was not against the great weight of the evidence and, assuming that it was, it was harmless in that there remained a sufficient basis to support the change in custody, MCR 2.613(A).

With respect to factor (i) (the reasonable preference of the child, if the court considers the child to be of sufficient age to express preference), the trial court stated that, despite defendant's request, it did not interview the child because a five-year old is typically too young to express a preference and nothing in this case supported making an exception. Defendant argues that the court erred in failing to conduct an *in camera* interview with the child, if only to determine whether he had the capacity to express a reasonable preference. A trial court is required to consider the reasonable preference of a child, but only if the court considers the child to be of sufficient age to express a preference. MCL 722.23(i); *Treutle v Treutle*, 197 Mich App 690, 694; 495 NW2d 836 (1992). A child's preference is but only one of the factors to be evaluated and does not automatically outweigh the other factors. *Id.* at 694-695. In *Bowers v Bowers*, 190 Mich App 51, 55-56; 475 NW2d 394 (1991), this Court ruled:

> Children of six, and definitely of nine, years of age are old enough to have their preferences given some weight in a custody dispute, especially where there was a prior custody arrangement. The trial court's failure to interview the children was error requiring reversal. Where the trial court has failed to analyze the issue of child custody in accord with the mandates of MCL 722.23 . . . and make reviewable findings of fact, the proper remedy is to remand for a new child custody hearing. [Citations omitted; see also *Stringer v Vincent*, 161 Mich App 429, 434; 411 NW2d 474 (1987) (failure to interview children who were 9 and 12 years old was an error that required reversal).]

A court does have the discretion to determine whether a child is of sufficient age to express a preference. *Dempsey v Dempsey*, 96 Mich App 276, 283; 292 NW2d 549 (1980), mod on other grounds 409 Mich 495 (1980). In *In re Custody of James B*, 66 Mich App 133; 238 NW2d 550 (1975), the custody of a four-year-old child was at issue, and the trial court declined to interview the child on the basis that the child was not of sufficient age to express a preference.

This Court found that the conclusory statement by the trial court left it with nothing to review and that if a court deemed a child to be of insufficient age to express a preference, this Court needed a factual record. *Id.* at 134. The panel remanded for an evidentiary hearing on the issue of whether the child's age made the child incapable of expressing a reasonable preference. *Id.* In *Burghdoff v Burghdoff*, 66 Mich App 608, 612; 239 NW2d 679 (1976), a case involving an eight year old, this Court observed, "We think that as a general rule, the *in camera* conference is the best way for a circuit judge to determine the preference of the child, and this Court has held that sound practice will sometimes dictate that the trial judge hold such a conference." Under the Child Custody Act, "[w]hen the court makes its best interests determination, it is well settled that it may interview the children in camera limited to determining their parental preferences." *In re HRC*, 286 Mich App 444, 451; 781 NW2d 105 (2009). In *Sinicropi*, 273 Mich App at 182-183, this Court implicitly recognized a harmless error approach with respect to a failure to comply with MCL 722.23(i), stating:

> Assuming that the child, who was six years old when the custody hearing was conducted, was of sufficient age to express a preference, and assuming that the trial court erred in not interviewing the child when neither party apparently wished to have the child appear, reversal is not warranted because had the child expressed a preference, it would not have changed the trial court's ruling, given the court's overall statements and strong feelings regarding what was best for the child, nor would it lead us to conclude that the court erred in awarding sole physical custody . . . ."

Here, the child was five years old at the time of the custody trial, and while the court made a generalized statement that a five-year-old child is typically too young to express a preference, the court followed that observation with the remark that nothing in this case supported making an exception. Therefore, the court essentially found that the evidence presented at trial pertaining to the child led the court to believe that he was not of sufficient age to express a reasonable preference, and thus the court was not prepared to deviate from its belief that five-year olds are typically too young to state a preference. Defendant does not cite any caselaw that mandates a court to personally interview a child *in camera* in order to determine if he or she is capable of expressing a reasonable preference, as opposed to making the determination on the basis of other testimony and evidence presented at trial that touched on the child's maturity level and capacity to express a reasonable preference. Moreover, assuming error on the part of the trial court, it is abundantly clear that had the child expressed a preference, even for defendant, it would not have changed the court's ruling, given the court's overall statements and strong feelings on the matter of defendant's hostility and the relationship of that hostility to the child's best interests. *Sinicropi*, 273 Mich App at 182-183.

With respect to factor (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), the trial court found that plaintiff was favored. The trial court engaged in a lengthy discussion in support of its conclusion. Defendant argues that the ruling was against the great weight of the evidence. We hold that the trial court's finding with respect to factor (j) was not against the great weight of the evidence. We see no reason to go into detail in order to support our conclusion, where the trial court's thorough analysis on factor (j) was fully supported by the record. The vicious emails, the evidence concerning the various

events and situations touched on above, and, in part, defendant's own testimony reflected that he was unwilling and unable to facilitate and encourage a close and continuing parent-child relationship between the child and plaintiff; defendant had nothing but palpable distain for plaintiff.

With respect to factor (*l*) (any other factor considered by the court to be relevant to a particular child custody dispute), the trial court appears to have found that plaintiff was favored, although the court did not expressly make that finding. During the discussion of factor (*l*), the court indicated that the evidence supported a finding that defendant had been placing undue and inappropriate emotional pressure on the child. Defendant argues that there was an absence of evidence, expert or otherwise, to support the court's conclusion of undue and inappropriate emotional pressure, except for the testimony provided by plaintiff.

Again, defendant simply and improperly discounts plaintiff's testimony as if it was irrelevant, meaningless, and not subject to any consideration. Given defendant's own admission that he talked to the child about plaintiff's behavior and would continue to do so, there was evidence supporting the court's conclusion that defendant had been placing undue and inappropriate emotional pressure on the child.

In sum, the trial court did not err in concluding that the best-interest factors, MCL 722.23, did not support an order maintaining the joint custodial arrangement, MCL 722.26a(1)(a), and the court did not err in finding that under the best-interest factors there was clear and convincing evidence that supported an award of sole legal and physical custody in favor of plaintiff, MCL 722.25(1).

Apart from his arguments addressing the best-interest factors, defendant also argues that the trial court erred in relying on the PC's recommendations and testimony and erred in issuing the consent order that appointed the PC in the first place. Defendant asserts that the PC was not an expert, that he could not offer expert testimony, that the PC never saw the child, and that his recommendations contained psychological assessments absent foundation. With respect to his attack on the consent order appointing the PC, defendant maintains that the order unlawfully yet effectively gave the PC the power to enter orders without statutory or constitutional authority. Defendant argues that only a court has such power and authority and that a court cannot assign or delegate said authority to another person. Defendant also contends that this case did not involve arbitration and that the PC was not a statutorily-created position. Defendant further argues that the PC was not authorized under the consent order to convey custody recommendations, nor did the parties submit a custody issue to him. Defendant complains that custody became an issue only after the PC made his remark that the court may wish to reconsider the current joint custodial arrangement.

We find defendant's arguments regarding the PC to be a bit disingenuous. First, the PC was not recognized as an expert, nor did he testify as an expert; rather, he merely testified as to his interactions with defendant during his short tenure as PC, especially in connection with the email communications. The trial court never indicated in any sense whatsoever that it was treating the PC's testimony and report as evidence of psychological assessments. The PC's testimony was essentially lay witness testimony. And despite the PC's recommendation for the court to reconsider the custody arrangement, it was plaintiff's motion that initiated reexamination

of custody, and the court did not base its decision to award plaintiff sole custody simply because the PC made a recommendation; there was a plethora of evidence supporting the modification. Also, the PC had authority under the consent order to make recommendations relative to parenting time and disputes between joint legal custodians.

In regard to the consent order appointing the PC, it was, as the title indicates, a "consent" order entered by stipulation. Indeed, it was defendant who desired the appointment of a PC to address 50/50 parenting time and schooling. This issue was effectively waived. See *In re Gazella*, 264 Mich App 668, 679; 692 NW2d 708 (2005) (observing that an appellant "may not harbor error, to which he or she consented, as an appellate parachute"). Had defendant received a favorable report, defendant would most certainly have argued against any attack on the consent order. Moreover, the consent order merely gave the PC authority to make recommendations on disputed issues submitted to the PC, which would be treated as a court order only if agreed to by the parties, with any objections giving rise to the right to have the dispute addressed anew by the court. In other words, the trial court always had the final say if either party did not accept the PC's recommendation. Although defendant complains about a lack of statutory or constitutional authority, he fails to even acknowledge the language in the consent order that the PC was "serving as an evaluative mediator, as defined in MCR 3.216." Defendant does not cite MCR 3.216, which addresses domestic relations mediation, let alone analyze it. MCR 3.216(A)(2) provides that the parties may agree to have the mediator issue a written recommendation when the parties cannot reach a mediated settlement on a disputed issue. Under MCR 3.216(I)(2), a mediator's proposed recommendation is submitted to the parties, and pursuant to MCR 3.216(I)(3), if the parties accept the recommendation, a judgment is entered in conformity with the recommendation. A case proceeds to trial if the parties do not agree with the recommendation. MCR 3.216(I)(4). MCR 3.216(A)(4) provides that a "court may order, on stipulation of the parties, *the use of other settlement procedures*." (Emphasis added.) Given defendant's agreement to the consent order appointing a PC, thereby creating a waiver of this appellate issue, and considering MCR 3.216's applicability, especially in light of defendant's failure to address it, we see no reason to reverse on this issue. The caselaw cited by defendant is not relevant and is distinguishable. See e.g., *Carson Fischer Potts & Hyman v Hyman*, 220 Mich App 116, 123-124; 559 NW2d 54 (1996) (sufficient challenge to order *was made* below and "the trial court's order appointing an expert witness exceeded the authority implicit in MRE 706 by requiring the expert to perform duties outside the scope of the duties of an expert witness and within the purview of a court").

Finally, defendant challenges the trial court's reduction of his parenting time, which is governed by MCL 722.27a. The best interests of the child govern parenting time issues, including modification of existing parenting time orders. *Berger v Berger*, 277 Mich App 700, 716; 747 NW2d 336 (2008). Defendant had been exercising six overnights in a two-week period relative to his parenting time, and this amount was reduced to four overnights in a two-week span. This reduction goes hand in hand with the award of sole physical custody to plaintiff. There were no claims of abuse or neglect by defendant, nor evidence that he previously failed to exercise his parenting time or that his parenting time created a logistical inconvenience and burden. See MCL 722.27a(6). However, the disturbing nature of defendant's emails, defendant's outwardly hostile, contemptuous, and negative feelings about plaintiff, which were escalating, defendant's troubling tendency to talk to the child about plaintiff's alleged behavior and steadfastness about continuing to point out that behavior in the future, thereby exposing the

child to conflict, and defendant's uncooperative nature, all support the conclusion that the child's best interests were served by the reduction in parenting time. The trial court's findings were not against the great weight of the evidence relative to the child's best interests and parenting time, nor does the record support a conclusion that the court's parenting time ruling constituted an abuse of discretion. With respect to extracurricular activities, in an order clarifying parenting time, the court ruled that both parties could attend the child's T-ball and soccer games, even if a party did not have parenting time on the day of a game. Defendant could also take the child to and attend his martial arts class on defendant's Thursdays, although he could not do so on plaintiff's Thursdays. Furthermore, "[w]henever there is a public performance, game or exhibition for the agreed-upon activity of the type that entire families or public audiences usually attend . . ., then both parties may attend[.]" Reversal is unwarranted with respect to parenting time.

Affirmed. Having fully prevailed on appeal, plaintiff is awarded taxable costs under MCR 7.219.

/s/ Jane M. Beckering
/s/ Karen M. Fort Hood
/s/ Cynthia Diane Stephens