

STATE OF MICHIGAN  
COURT OF APPEALS

---

RITA HOLLIS,

Plaintiff-Appellee,

v

JASON MILLER,

Defendant-Appellant.

---

UNPUBLISHED  
December 6, 2012

No. 306090  
Clinton Circuit Court  
LC No. 10-022075-DZ

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J. (*dissenting*).

I respectfully dissent. While I appreciate and understand the other two opinions concerns regarding the grandparenting statute and its burden of proof, I believe the trial court must be affirmed. Additionally, the lead opinion incorrectly asserts that a proceeding for grandparenting time is not a custody proceeding.

Initially, it must be noted that “[o]rders concerning [grand]parenting time must be affirmed on appeal unless the trial court’s findings were against the great weight of the evidence, the court committed palpable abuse of discretion, or the court made a clear legal error on a major issue.” *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005). “A trial court’s findings of fact are not against the great weight of the evidence unless the evidence clearly preponderates in the opposite direction.” *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994).

I am not able to draw a conclusion that the trial court erred, as cited above in *Pickering* and *Fletcher*, based on the trial court’s written opinion and order. Initially, the quote from the trial court in Judge Shapiro’s opinion is not from the written order. Instead, it is a statement of the trial court on the record, from approximately the middle of the hearing, before it received all the evidence. The law is clear: Courts speak through their written orders. *Johnson v Johnson*, 276 Mich App 1, 12 n2; 739 NW2d 877 (2007). The trial court made sufficient findings of fact to conclude its findings were not against the great weight of the evidence, nor a palpable abuse of discretion, nor was there a clear legal error in its written order. *Pickering* at 5. This Court is directed to focus on these standards. In the findings that the trial court made through its written

order, it did include the ruling made by the court on the record on September 14, 2010 as cited in Judge Shapiro's opinion.<sup>1</sup> This ruling on September 14, 2010, was in response to a motion for directed verdict, not a final opinion. Significantly, prior to the section of the court's ruling as quoted in the Judge Shapiro's opinion, the court began by ruling on the motion and stated:

Well, the court has heard the testimony of a variety of witnesses, and is of the opinion that the motion for a directed verdict should be denied. There has been significant testimony developed through a variety of witnesses, most notably the petitioner, her husband, two of her daughters, that there was close and—a bond between [the child] and the maternal family since the time of [the child's] birth. The Court . . . has reviewed Plaintiff's exhibit . . . One, which further demonstrates to the Court that not only is it the opinion of the witnesses who have testified, but it's borne out in the photos. And the photos depict a variety of family events, again from the time [the child] was and infant until the time that [the child] last saw his—maternal grandmother, that there is a close bond. There furthermore is a close bond between [the child] and his cousins, and the relationship between [the child] and the petitioner and her family, based on the evidence that the Court has heard thus far, is a solid one, and the Court finds that if it were to rule at this point, looking at the evidence in the light most favorable to the non-movant, that it is appropriate to deny the motion.

Then the remainder of the court's ruling on the motion for directed verdict takes place, as quoted in Judge Shapiro's opinion.

The lower court's written opinion stated, in part, the following facts and findings: Defendant had the 5 year old child explain to plaintiff why the child could not have contact with her instead of relaying this information adult-to-adult himself, the child had a close relationship with plaintiff, plaintiff was involved in the child's life from the date of his birth until January 2010 (for over 5 years), the child spent the night with plaintiff on many occasions during that time and the child enjoyed his time with plaintiff.

Further, the lower court opined that defendant acknowledged in letters that were received into evidence that the child loved plaintiff and defendant thanked plaintiff for being a "wonderful grandma, and for just being there to [sic]". In these letters, defendant stated that he would never take the child from plaintiff. In addition, the court cited the PPO that defendant served on plaintiff, which the lower court set aside. The trial court has a history with the parties and is in the best place to judge credibility. *Berger v Berger*, 277 Mich App 700, 708; 747 NW2d 336 (2008). The lower court's credibility determinations should not be set aside absent an abuse of discretion. *People v Brownridge*, 459 Mich 456; 591 NW2d 26 (1999).

---

<sup>1</sup> The trial court did reference its previous ruling as follows: "As noted above, this Court previously concluded at the hearing held on September 14, 2010 that Mrs. Hollis proved by a preponderance of the evidence that Mr. Miller's decision to deny grandparenting time created a substantial risk of harm to [the child's] emotional health." However, the trial court's written opinion includes the facts on which it relied more explicitly.

The trial court specifically stated that there were dated photos which contradicted defendant's testimony that the child did not have a relationship with plaintiff the first few years of the child's life. The lower court found that, based on the evidence presented, defendant did not want to allow contact with plaintiff because defendant was angry about the break-up with the plaintiff's daughter who is the child's mother. Based on all the evidence, the trial court ruled that plaintiff did overcome the presumption that defendant's denial of grandparenting time served the child's best interest, and then it engaged in the required evaluation of the best interest factors.

All of this evidence, contained in the written findings of the trial court, and a review of the entire record and written opinion, leads me to the conclusion that the opinion and order must be affirmed as the court's findings were not against the great weight of the evidence, the court did not commit a palpable abuse of discretion, nor did the court make a clear legal error on a major issue. *Keenan v Dawson*, 275 Mich App 671, 679; 739 NW2d 681 (2007), quoting *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005). The trial court is in the best place to judge credibility, and I will not disturb those findings absent an abuse of discretion.

Additionally, I disagree with the resolution reached by the other two opinions. MCL 722.27b, the statute under which this case was brought which is commonly referred to as grandparenting time, is part of the Child Custody Act and a custody matter. MCL 722.21 *et seq.*; see also *Terry v Affum*, 237 Mich App 522, 529; 603 NW2d 788 (1999). I am simply unable to comprehend how any other conclusion can be reached.

As a custody matter, even if I agreed with the substantive result reached by the other opinions, their resolution of the matter is independently inappropriate. The "primary goal of the Child Custody Act . . . is to secure custody decisions that are in the best interests of the child," which "cannot be reduced merely to providing expedient proceedings." *Fletcher*, 447 Mich at 889. Consequently, the "proper disposition of custody cases following appellate review" is to "remand the case for reevaluation" and "consider up-to-date information . . ." *Id.* at 888-889. Any situation involving a child will simply not remain static during the pendency of an appeal. Consequently, presuming the trial court made a non-harmless error, the proper remedy is to vacate the trial court's order and remand for further proceedings consistent with the guidance provided by this Court in its opinion and on the basis of updated information about the child's life and environment as it now exists rather than how it existed at the time of the original decision, dated September 7, 2011.

Additionally, even if reversal was legally permissible, it will in any event wreak the maximum amount of disruption, and consequently, harm, to the child's life as possible. All other things being equal, this Court is a proper forum for determining whether the trial court made a gross mistake, but given the fact-intensive and ever-changing nature of this kind of case, it is an

improper forum for directly deciding what order should be issued. If I were to find that the trial court abused its discretion, the trial court must be given the opportunity to evaluate the child's best interests with the most up-to-date information available, which necessarily must include an assessment of how the grandparenting time has actually affected the child.

/s/ Amy Ronayne Krause