

STATE OF MICHIGAN
COURT OF APPEALS

FLOYD DIXON,

Plaintiff-Appellee,

v

AMANDA DIXON,

Defendant-Appellant.

UNPUBLISHED

March 21, 2013

No. 308253

Wayne Circuit Court

Family Division

LC No. 10-116073-DM

Before: MURRAY, P.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

Defendant Amanda Dixon appeals as of right the trial court's judgment of divorce awarding her and plaintiff Floyd Dixon joint legal and physical custody of the parties' minor child. We affirm.

I. FACTS

A. BACKGROUND

The parties' child was born in 2007. Floyd Dixon testified that he and Amanda Dixon were separated for about five months in 2007 or 2008 because Amanda Dixon told him to leave. Amanda Dixon testified that she left Floyd Dixon at that time because she was afraid of him. In November 2008, the parties entered a consent judgment of child support in Oakland County that awarded the parties joint physical and legal custody.

The parties married in February 2009. Floyd Dixon testified that he, Amanda Dixon, and the child lived in Royal Oak until October 2010, when they moved in with his mother. He testified while he and Amanda Dixon were living with his mother, his mother was the child's primary caretaker. Amanda Dixon testified that the child's grandmother watched her only a few times. Floyd Dixon testified that he plans to continue living with his mother.

The parties separated in November 2010. Amanda Dixon testified that she left because Floyd Dixon physically threw her out of the home. Floyd Dixon testified that Amanda Dixon left because they got into an argument and she was "tired of it."

Floyd Dixon filed for divorce on December 1, 2010. Amanda Dixon obtained a personal protection order against Floyd Dixon in December 2010. She testified that during the marriage,

Floyd Dixon called her names, threatened her, threatened to take the child, shoved her in front of the child, and took her car. Floyd Dixon testified that the parties only verbally argued and that there was no domestic violence. He testified that on one occasion, the police were called to a verbal argument.

B. SEXUAL ABUSE ALLEGATIONS

In May 2011, Amanda Dixon reported to Child Protective Services (CPS) that Floyd Dixon was sexually abusing the child. She testified that the child had vaginal pain and discharge, Floyd Dixon washed her genital area on his bed instead of in a bath or shower, and the child repeated inappropriate comments that she claimed he made to her. Floyd Dixon testified that he did not make any inappropriate comments to the child.

Rashanna Baker, an employee of the Department of Human Services, testified that she investigated the allegations. She testified that she did not substantiate them. Baker testified that the child's doctors stated that she was having recurrent vaginal infections, but attributed the infections to improper hygiene and not to sexual abuse. Baker testified that the child repeated inappropriate comments at a forensic interview that she attributed to Floyd Dixon, but also said he did not touch her.

Stephanie Newbury, an employee of the Family Evaluation, Mediation, and Counseling Unit in Wayne County, testified that she met with both parties and observed a visit between Floyd Dixon and the child. She testified that the child immediately approached him when he entered the room, hugged him, and said she missed him. Newbury testified that Floyd Dixon showed appropriate parenting skills, and that the child was engaged, smiling, and active.

Newbury recommend that the trial court grant the parties joint physical and legal custody if CPS did not substantiate the sexual abuse allegations. She recommended that Floyd Dixon have custody on alternating weeks because the child had lived with him since birth and had a good relationship with him.

C. THE TRIAL COURT'S FINDINGS AND CONCLUSIONS

The trial court concluded that the child has an established custodial environment with both parents. The trial court found that Amanda Dixon's allegations of sexual abuse had "no basis in fact," and that she made "unsubstantiated allegations against [Floyd Dixon] which ha[ve] caused trauma to all involved." It found that four best interest factors favored Floyd Dixon, including the capacity of the parties to provide the child with love, affection, and guidance; the capacity of the parties to provide for the child's physical needs; the mental health of the parties; and the willingness of the parents to facilitate a close relationship between the child and the other parent. The trial court found that the domestic violence factor favored Amanda Dixon. The trial court ultimately awarded the parties joint legal and physical custody with equal parenting time.

II. SUBJECT MATTER JURISDICTION

A. STANDARD OF REVIEW

This Court reviews de novo a party's claim that the trial court lacked jurisdiction.¹

B. LEGAL STANDARDS AND APPLICATION

Amanda Dixon argues that the trial court did not have jurisdiction to enter its custody order in this case because a custody order existed in Oakland County pursuant to the 2008 child support case. We disagree.

Subject matter jurisdiction is the power of the court to decide the *type* of case—not the particular case before it.² The trial court's subject matter jurisdiction does not depend on the particular facts of the case.³ Subject matter jurisdiction to hear a divorce case is “strictly statutory.”⁴ In order for the trial court to have subject matter jurisdiction to issue a divorce judgment, the parties must (1) be seeking to dissolve a marriage that has broken down,⁵ and (2) meet statutory residency requirements.⁶ If the parties dispute a minor child's custody, the court must declare the parents' duties of support, care, and custody in the divorce judgment.⁷

Here, the record indicates that the parties were married, sought a divorce judgment on the basis of a breakdown of their marital relationship, met the residency requirements to file for divorce in this state, and disputed a minor child's custody. We conclude that the Wayne circuit court had subject matter jurisdiction to hear the case.

III. ESTABLISHED CUSTODIAL ENVIRONMENT

A. STANDARD OF REVIEW

Whether a child has an established custodial environment is a question of fact.⁸ This Court must affirm the trial court's findings of fact related to matters of child custody unless they

¹ *Berger v Berger*, 277 Mich App 700, 702; 747 NW2d 336 (2008).

² *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992).

³ *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011); *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004).

⁴ *Id.*

⁵ MCL 552.6; *Ryan*, 260 Mich App at 331-332.

⁶ MCL 552.9; *Stamadianos v Stamadianos*, 425 Mich 1, 5-6; 385 NW2d 604 (1986).

⁷ MCL 722.24(1); MCL 552.16; *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004).

⁸ *Berger*, 244 Mich App at 706.

are against the great weight of the evidence.⁹ The trial court’s factual findings are against the great weight of the evidence only if the evidence “clearly preponderate[s] in the opposite direction.”¹⁰

B. LEGAL STANDARDS

“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.”¹¹ This is the environment in which “the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort.”¹² A child has an established custodial environment with both parents if the child “looks to both the mother and father for guidance, discipline, the necessities of life, and parental comfort.”¹³

C. APPLYING THE STANDARDS

Amanda Dixon argues that the trial court’s finding that the child had an established custodial environment with both parents was against the great weight of the evidence because the parents were frequently separated throughout the marriage and Floyd Dixon did not see the child for the entire summer before the trial. We disagree.

We conclude that the record evidence does not clearly preponderate against the trial court’s finding that the child had an established custodial environment with both parents. Though Amanda Dixon testified that the parties were frequently separated, Floyd Dixon testified that, except for a period of about five months in 2008, the parties lived together and raised the child together. The trial court found that for the majority of the child’s life, both parents lived with and cared for her, and she looked to both parents for love, affection, guidance, and necessities. This Court defers to the trial court’s findings of credibility, and we will not substitute our judgment for that of the trial court.¹⁴ Because the parties’ directly conflicting testimony about how often they lived together was the only evidence on that fact, the trial court’s finding that the parties lived together and raised the child together for most of the child’s life was in this case essentially a finding of credibility. We will not disturb it on appeal.

⁹ MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010).

¹⁰ *Id.* (alteration in original), quoting *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994).

¹¹ *Berger*, 244 Mich App at 706.

¹² MCL 722.27(1)(c); see *Berger*, 277 Mich App at 706.

¹³ *Berger*, 277 Mich App at 707.

¹⁴ MCR 2.613(C); *Berger*, 277 Mich App at 707; *Woodington v Shokoohi*, 288 Mich App 352, 358; 792 NW2d 63 (2010).

We also disagree with Amanda Dixon's argument that the child could not have an established custodial environment with Floyd Dixon because he did not have any parenting time for the summer before the trial. The existence of an established custodial environment does not depend on how the environment was created.¹⁵ But a temporary custody order does not preclude the trial court from finding that an established custodial environment exists with someone other than the temporary custodian.¹⁶

Though Floyd Dixon was temporarily precluded from visiting his child because of the CPS investigation and Amanda Dixon's refusal to cooperate with the trial court's order, we conclude that the trial court's finding was not against the great weight of the evidence. Here, the trial court noted that since the parties separated, Floyd Dixon was unable to exercise his parenting time because of the CPS investigation and Amanda Dixon's subsequent refusal to comply with its parenting time order. But, as we note above, the trial court found that the parties lived together and raised the child together for most of her life. Floyd Dixon testified that he continued to live with his mother, where the parties lived before they were separated, and that his mother was also a primary caretaker of the child. Further, Newbury observed a visit between Floyd Dixon and the child in July 2011, and reported that he and the child appeared to have a close relationship. She reported that the child immediately approached him when he entered the room, hugged him, and said she missed him. Thus, there was evidence that despite the temporary physical separation, over an appreciable period of time the child naturally looked to him in the environment for guidance and discipline, and that she continued to do so.

IV. BEST INTERESTS FACTORS

A. STANDARD OF REVIEW

This Court must affirm the trial court's findings of fact related to matters of child custody unless they are against the great weight of the evidence.¹⁷

B. LEGAL STANDARDS

The trial court must make its determination about a child's custody on the basis of the child's best interests.¹⁸ To determine what is in the child's best interests, the trial court must consider the following factors:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.

¹⁵ *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995).

¹⁶ *Berger*, 277 Mich App at 706-707.

¹⁷ *McIntosh v McIntosh*, 282 Mich App 471, 475; 768 NW2d 325 (2009); MCL 722.28.

¹⁸ MCL 722.25(1); see *Berger*, 277 Mich App at 705.

(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.

(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.^[19]

C. APPLYING THE STANDARDS

Amanda Dixon first argues that the trial court's finding that Floyd Dixon had a greater capacity to provide the child with love, affection, and guidance was against the great weight of the evidence because she honestly believed that sexual abuse occurred. We disagree.

We reiterate that this Court defers to the trial court's findings on issues of credibility.²⁰ Here, the trial court stated that it was concerned about Amanda Dixon's ability to provide the

¹⁹ MCL 722.23.

²⁰ MCR 2.613(C); *Berger*, 277 Mich App at 707; *Woodington*, 288 Mich App at 358.

child with guidance. Floyd Dixon testified that Amanda Dixon was frequently untruthful and alleged that she instigated the sexual abuse investigation to attain an advantage in the custody proceedings. Amanda Dixon testified that she believed Floyd Dixon was sexually abusing the child. The trial court found that Amanda Dixon's allegations of sexual abuse had no basis in fact and caused unnecessary trauma. To the extent that the trial court determined that Amanda Dixon fabricated the allegations, we defer to the trial court's credibility assessment.

The trial court found that the unsubstantiated allegations caused the child to miss parenting time and to undergo medical examinations and investigations. The record reflects that CPS investigated the allegations and the child was interviewed and medically examined. Floyd Dixon was not allowed to exercise his parenting time during the pendency of the investigation. Further, the trial court found that Amanda Dixon enrolled the child in unnecessary therapy for anxiety without consulting him. Amanda Dixon testified that this was because the child exhibited anxiety after visits with Floyd Dixon. Newbury testified that during her visit with Floyd Dixon, the child appeared happy and relaxed. We conclude that the trial court's findings concerning this factor were not against the great weight of the evidence.

Amanda Dixon also argues that the trial court's finding that the mental health of the parties favored Floyd Dixon was against the great weight of the evidence, because there was no psychological evidence. The trial court found that Amanda Dixon suffered from and was treated for depression, and that Newbury strongly recommended a psychological evaluation.

We conclude that the trial court's failure to order a psychological evaluation is not dispositive to whether one party or another is favored in terms of mental health. Amanda Dixon argues that, because there was no psychological evaluation, there was no psychological evidence. To the contrary, we have determined that psychological evaluations are not conclusive and that the trial court must assess them as other evidence.²¹ Further, Amanda Dixon admitted that she previously suffered from depression and took medications. There was no evidence or allegation that Floyd Dixon suffered from any psychological issues. Thus, we conclude that the trial court's finding that this factor favored Floyd Dixon was not against the great weight of the evidence.

Finally, Amanda Dixon argues that the trial court's finding that the factor concerning the willingness of the parent to facilitate a close relationship with the other parent favored Floyd Dixon was against the great weight of the evidence. Here, the trial court found that Amanda Dixon violated its parenting time order. The trial court also considered that Amanda Dixon told the evaluator that she did not want Floyd Dixon to have any contact with the child because of the sexual abuse allegations. The trial court found that Amanda Dixon's actions reflected interference with Floyd Dixon's parenting time and that she failed to comply with the court's order. The trial court ordered that Floyd Dixon's parenting time resume with the child on August 9, 2011, after the child abuse allegations were unsubstantiated. It is clear from the lower court record that Amanda Dixon refused to comply with the trial court's order. We conclude that

²¹ *McIntosh*, 282 Mich App at 475.

the trial court's finding that Amanda Dixon was unlikely to facilitate a relationship between the child and Floyd Dixon was not against the great weight of the evidence.

We affirm.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ William C. Whitbeck