

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL PAUL BOOTS,

Plaintiff-Appellant,

v

TIFFANY LEIGH VOGEL-BOOTS,

Defendant-Appellee.

UNPUBLISHED

February 5, 2013

No. 309265

Wayne Circuit Court

LC No. 10-110752-DM

Before: DONOFRIO, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Plaintiff, Michael Paul Boots, appeals as of right from a judgment of divorce which distributed the parties' marital assets, provided for an award of spousal support to defendant, and awarded sole physical custody of the parties' minor child to defendant. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

On appeal, plaintiff first argues that the trial court abused its discretion in awarding defendant sole physical custody of the minor child. He further contends that the court's factual findings with respect to the minor child's established custodial environment and best interest factors (a), (b), (e), (f), and (j), were against the great weight of the evidence. We agree in part and disagree in part.

When reviewing a custody order, this Court applies three standards of review. See MCL 722.28; *Brausch v Brausch*, 283 Mich App 339, 347; 770 NW2d 77 (2009). First, this Court will not disturb the trial court's findings of fact unless they are against the great weight of the evidence. *Brausch*, 283 Mich App at 347. A trial court's factual findings are against the great weight of the evidence if the facts "clearly preponderate in the opposite direction." *Shade v Wright*, 291 Mich App 17, 21; 805 NW2d 1 (2010). Second, this Court reviews the trial court's discretionary rulings for an abuse of discretion. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). In custody cases, an abuse of discretion occurs when "the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Berger*, 277 Mich App at 705. A trial court's decision to whom to award custody is subject to this standard and is entitled to "the utmost level of deference." *Id.* at 705-706. Finally, this Court must determine if the trial court made a clear legal error on a major issue. A clear legal error occurs when the trial court

“errs in its choice, interpretation, or application of the existing law.” *Shade*, 291 Mich App at 21.

When making a custody determination, the trial court must first determine if the child has an established custodial environment with one or both parents. See MCL 722.27(1)(c). 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.” *Berger*, 277 Mich App at 706. It is “marked by security, stability, and permanence.” *Id.* MCL 722.27(1)(c) provides:

The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

“A custodial environment can be established as a result of a temporary custody order, in violation of a custody order, or in the absence of a custody order.” *Id.* at 707, citing *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995). A child can also have an established custodial environment with both parents. *Berger*, 277 Mich App at 707. Whether an established custodial environment exists is a question of fact. *Rittershaus v Rittershaus*, 273 Mich App 462, 471; 730 NW2d 262 (2007).

A parent seeking to change the established custodial environment of a child must show by clear and convincing evidence that such a change is in the child’s best interest, considering the factors enumerated in MCL 722.23. See MCL 722.27(1)(c). When making a custody determination, the finder of fact generally must consider and make conclusions with respect to each best interest factor. *Rittershaus*, 273 Mich App at 475.

In the instant matter, the trial court concluded that the minor child has an established custodial environment with defendant. This finding is clearly supported by the evidence. Plaintiff does not dispute this but argues that the minor child *also* has an established custodial environment with him. We agree.

The minor child resided with both parties until he was approximately 3 years old. At that time, plaintiff left the marital home by agreement of the parties, but returned to the home every other night to participate in the child’s nightly routines. This schedule continued until the child was 3 1/2. Thereafter, the parties were generally able to work out a parenting time schedule that continued during the pendency of the divorce (until the child was approximately 4 1/2) wherein the minor child spent 5 overnights out of every 14 with plaintiff as well as 2-3 dinner periods on additional days. Plaintiff testified that he and the minor child have a very strong bond. According to plaintiff, the minor child has said that he wants to be like his dad and they make a great team. Plaintiff testified that he encourages the minor child to pursue his interests and learn new things. For example, the minor child is interested in trains, so plaintiff has taken him to train stations and the Henry Ford Museum to see the trains. Plaintiff is also involved with the minor child’s many activities, and has helped coach the minor child’s t-ball and soccer teams for the last two years. Plaintiff has additionally taken the minor child fishing, camping, and hiking.

When the minor child is with plaintiff, plaintiff frequently takes the minor child to church and encourages the minor child to call defendant to say good night.

The trial court appropriately found that plaintiff “has provided care, love and guidance to the child and is a good father,” but also that the minor child’s bond with defendant is stronger and he looks to her more for fulfillment of his emotional needs. Thus, the trial court did not base its decision by concluding that plaintiff’s testimony concerning his bond with and guidance to the child was incredible. Rather, the court appears to have chosen with whom the minor child has the *strongest* established custodial environment. It stated that the minor child has a *closer* bond with his mother and looks to her *more* for parental comfort and care.

The court’s factual finding that the minor child does not have an established custodial environment with plaintiff was against the great weight of the evidence. The determination of with whom a child has an established custodial environment is not a contest; a child can have an established custodial environment with one, neither, or both parents. See *Berger*, 277 Mich App at 707. The trial court specifically found that plaintiff provides the minor child care, love, and guidance, and is a good father. Thus, its finding that the minor child does not have an established custodial environment with plaintiff is contrary to its own evidentiary conclusions.

In sum, the evidence shows that the minor child looks to both of his parents for care, discipline, love, and guidance. See MCL 722.27(1)(c); *Berger*, 277 Mich App at 706. Because the trial court’s finding that the minor child does not have an established custodial environment with plaintiff was against the great weight of the evidence, the trial court committed clear legal error by applying the wrong burden of proof. Defendant sought, and the trial court awarded her, sole physical custody of the minor child. Because the minor child has an established custodial environment with both of his parents, defendant had the burden of proving by clear and convincing evidence that changing the minor child’s established custodial environment with plaintiff was in the minor child’s best interests. See MCL 722.27(1)(c). Instead, the trial court stated that “defendant has proved by a preponderance of the evidence that it is in the best interest of [the minor child] to maintain the current custodial environment with her by awarding her physical custody.” While defendant sought sole physical custody of the minor child, plaintiff requested joint physical custody. Because the minor child has an established custodial environment with both parents, the trial court should have awarded defendant sole physical custody only if she showed by clear and convincing evidence that changing the minor child’s established custodial environment with plaintiff was in the minor child’s best interest. See MCL 722.27(1)(c). We remand for the trial court to determine if defendant has met this higher threshold or if joint physical custody is appropriate.

Plaintiff also argues that the trial court’s factual findings with respect to five of the best interest factors were against the great weight of the evidence. While the evidence supports the trial court’s findings with respect to factors (a), (b), (f), and (j), the trial court relied on the wrong facts in considering factor (e). Correctly analyzed, this factor favors neither party.

Factor (a) is the “love, affection, and other emotional ties existing between the parties involved and the child.” MCL 722.23(a). The trial court found that this factor favors defendant. While both parties have emotional ties with the minor child, defendant has been his primary caregiver since at least May 2008. Since the parties’ separation, the minor child’s primary

residence has been with defendant in the marital home. Before the separation, plaintiff worked long hours and was not always home from work in the evenings to see the minor child before his bedtime. Since the separation, the minor child has not had more than five overnights in a two-week period with plaintiff. Since 2008, defendant has worked only three days each week, with only one day outside the home. This schedule allows her to spend ample time with the minor child, even on days when she is working and defendant testified regarding the many activities they do together. Mandy Ervin, who has worked as the minor child's nanny for four years, testified that defendant is very loving, energetic, and attentive with the minor child. She also said that the minor child gets very emotional when he does not see his mother for a day and will ask when his mother is coming home. The evidence shows that defendant and the minor child have a strong relationship. As indicated by the trial court, plaintiff and the child have a loving bond as well, but defendant has stronger bond with the child. The evidence thus supports a finding that this factor favors defendant.

Factor (b) is 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." MCL 722.23(b). The court found that this factor slightly favors defendant because she is the one who signs the minor child up for activities, arranges play dates, and establishes what behavior is appropriate. She is the minor child's primary disciplinarian and has been a consistent presence in the minor child's life. The court acknowledged that plaintiff and defendant have different parenting styles and rejected the idea that plaintiff has discouraged the minor child's growth in any way. The court's findings are supported by the evidence.

Defendant provided a detailed description of the minor child's personality. She testified that he is very inquisitive, generous, thoughtful, sensitive, silly, and a creature of habit. He likes structure but also likes to test his boundaries. Defendant explained how she promotes the minor child's inquisitiveness by going online or to the library to research what he is interested in. Defendant has also enrolled the minor child in a variety of activities, including swimming, gymnastics, soccer, vacation Bible school, art class, and French class. She is also very involved with these activities, volunteering for field trips and at vacation Bible school.

Ervin also testified that defendant has stable rules and expectations for the minor child and uses a reward chart with stickers to reinforce good behavior and punish bad behavior. When the minor child does not follow the rules, defendant gets down to his level and explains to him what he did wrong. She sometimes gives the minor child time-outs. Ervin testified that defendant is very consistent with the minor child. While plaintiff is also involved with the minor child's activities, the evidence showed that defendant plays more of a role in initiating the minor child's participation in school and activities and encouraging his interests.

Factor (e) is the "permanence, as a family unit, of the existing or proposed custodial home or homes." MCL 722.23(e). The court concluded that this factor slightly favors defendant because she intends to stay in the marital home and continue using Ervin as a nanny to watch the minor child, which maintains continuity for the minor child. In addition, the trial court noted that defendant is not in a relationship, while plaintiff was at one point, and that plaintiff has lived two places and plans to move again when the divorce is finalized and is not sure he will continue using Ervin to watch the minor child.

Plaintiff argues that the trial court erred by focusing too much on the minor child's physical home, which relates to factor (d), instead of the continuity of his family unit. Plaintiff is correct that the focus of factor (e) is the child's prospect for a stable family environment. *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996). Because the minor child does not have any siblings, his family environment consists of only him and his parents. We agree that the trial court committed clear error by considering factors other than the continuity of the minor child's family unit. The evidence, as presented, does not support finding that this factor favors either party.

Factor (f) is the "moral fitness of the parties involved." MCL 722.23(f). The court found that this factor slightly favors defendant because plaintiff has "used poor judgment" by placing his own needs above the minor child's interests. For example, plaintiff's extramarital relationship with Crystal, a woman at work, has impeded on the time plaintiff spends with the minor child. The court also found that plaintiff and defendant have different approaches with respect to manners and acceptable language and behavior, though one approach is not better than the other. The trial court's finding that this factor *slightly* favored defendant is supported by the evidence. Plaintiff testified that he took the minor child to another city with him because he wanted to see Crystal. An extramarital affair is not *necessarily* an indication of a parent's moral fitness with respect to his child. See *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994). In this case, however, the evidence shows that plaintiff's affair with Crystal had some effect, however minimal, on plaintiff's relationship with the minor child and, more specifically, on his ability to place the child's needs first.

Factor (j) is 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." MCL 722.23(j). The court found that this factor favors both plaintiff and defendant because both have encouraged the minor child's parent-child relationship with the other and both have complied with the parenting time agreement. Plaintiff argues that the trial court should have found that this factor favors him. In support of this argument, plaintiff contends that he moved out of the marital home, continued to pay marital bills, and went along with the defendant-controlled parenting time schedule for the minor child's benefit, even though it was not what he personally wanted.

These arguments do not explain how defendant has demonstrated an unwillingness to encourage plaintiff's relationship with the minor child. Rather, they focus on plaintiff's willingness to facilitate the minor child's relationship with defendant. The court did not find in favor of defendant on this factor. The evidence shows that both parties, including defendant, have encouraged the minor child's relationship with the other parent. Defendant testified that she wants the minor child to have a strong relationship with his father. She and the child talk about plaintiff and have pictures of him throughout the house. According to Ervin, defendant is very encouraging of the minor child's relationship with plaintiff. She has the minor child call his father, tells the minor child that his dad is coming over, and encourages the minor child's visits with plaintiff. A neighbor also testified that defendant has never said anything negative about plaintiff in the minor child's presence. We find no error in the trial court's finding with respect to this factor.

Plaintiff next argues that the trial court did not comply with the statutory requirements of MCL 722.26a(1), which concerns joint custody. We disagree.

This Court will reverse a trial court's custody decision if the trial court committed clear legal error on a major issue. See MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). A clear legal error occurs when the trial court "errs in its choice, interpretation, or application of the existing law." *Shade*, 291 Mich App at 21.

MCL 722.26a outlines the statutory requirements for awarding or rejecting joint custody:

(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 [the best interest factors of MCL 722.23].

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

(2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child.

* * *

(7) As used in this section, "joint custody" means an order of the court in which 1 or both of the following is specified:

(a) That the child shall reside alternately for specific periods with each of the parents.

(b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

Notably, when the statute uses the term "joint custody," it does not specify physical or legal custody. See MCL 722.26a. Furthermore, it specifically defines "joint custody" as relating to a child's residence *or* the parents' "decision-making authority as to the important decisions affecting the welfare of the child." MCL 722.26a(7).

In any event, the trial court followed the proper statutory procedure for determining joint legal and physical custody. First, the trial court must advise the parties of joint custody and consider an award of joint custody upon the request of either party. MCL 722.26a(1). Plaintiff requested joint physical and legal custody of the minor child in his complaint for divorce. Thus,

he has been aware of joint custody from the start of this action and there was no need for the court to advise him of joint custody.

Second, the trial court must consider the best interest factors of MCL 722.23 and “whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.” See MCL 722.26a(1). In its written opinion, the trial court considered each of the best interest factors. Further, the trial court indirectly considered the parties’ ability to cooperate and agree on important decisions. It spoke of the parties past agreements concerning parenting time, noted that plaintiff and defendant agreed to joint legal custody, and found that joint legal custody was not against the minor child’s best interest. Finally, the trial court must state its reasons for granting or denying joint custody on the record, which the trial court did in its written opinion.

Plaintiff next contends that the trial court’s parenting time award was an abuse of discretion. This Court reviews an order regarding parenting time *de novo*. *Borowsky v Borowsky*, 273 Mich App 666, 688; 733 NW2d 71 (2007). However, a parenting time order should be affirmed “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; see also *Borowsky*, 273 Mich App at 688.

As discussed above, the minor child has an established custodial environment with both parents. This environment can only be changed if the change is shown to be in the minor child’s best interest by clear and convincing evidence, see MCL 722.27(1)(c), and we have remanded to the trial court for a determination of whether defendant has established by clear and convincing evidence that changing the child’s established custodial environment to her alone. Because the trial court’s parenting time schedule may well be affected by the trial court’s decision as to custodial environment on remand, we find it unnecessary to address the parenting time schedule at this juncture. Given that each party agrees that the other party is a good parent, that it is in the minor child’s best interest to have a strong and consistent relationship with each parent and have been able, in the past, to agree upon a parenting time schedule, we are optimistic that should any parenting time issues remain following remand, the parties will be able to resolve these issues between themselves.

Next, plaintiff claims that the trial court clearly erred in its conclusion that all funds in the Baird investment account (the Baird account) and all of the marital home equity were marital property. We disagree.

This Court reviews for clear error a trial court’s decision regarding whether a particular asset is marital or nonmarital property. *Woodington v Shokoohi*, 288 Mich App 352, 357; 792 NW2d 63 (2010). The trial court’s findings of fact are reviewed for clear error and special deference is given to the trial court’s credibility determinations. *Id.* at 357-358.

When dividing property in a divorce proceeding, the trial court must first determine if an asset is marital or separate property. *Woodington*, 288 Mich App at 358. “Marital assets are those that came ‘to either party by reason of the marriage’” *Id.*, quoting MCL 552.19. The marital property should then be equitably divided after considering “the duration of the marriage, the contribution of each party to the marital estate, each party’s station in life, each party’s

earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance." *Woodington*, 288 Mich App at 363, citing *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996).

Generally, separate property "is that which is obtained or earned before the marriage." *Cunningham v Cunningham*, 289 Mich App 195, 201; 795 NW2d 826 (2010). However, "separate assets may lose their character as separate property and transform into marital property if they are commingled with marital assets and 'treated by the parties as marital property.'" *Id.*, quoting *Pickering v Pickering*, 268 Mich App 1, 10; 706 NW2d 835 (2005). In *Pickering*, 268 Mich App at 10, this Court held that one party's pain and suffering award from a personal injury lawsuit became marital property when the money was used to pay for the marital home mortgage, taxes, car insurance, debt, and a family car, i.e., treated by the parties as a joint marital asset.

In this case, plaintiff contends that the Baird account was opened-albeit during the marriage-with \$100,000 from his premarital funds and \$25,000 from defendant's premarital funds. The trial court rejected plaintiff's argument and concluded that all of the Baird account funds were marital property. The court found that the parties opened the Baird account with the intent of it being a joint marital account with rights of survivorship, to be used for marital purposes. And, although some premarital funds may have been used to initially fund the account, that money has been commingled with marital funds that were deposited during the marriage. During the parties' marriage, stocks were bought and sold, losses were sustained, and gains incurred. The trial court thus concluded that the parties acted as a single economic unit with respect to the account and the account's funds are marital property.

This decision was not clearly erroneous. See *Woodington*, 288 Mich App at 357. First, plaintiff claims that the trial court clearly erred in stating that funds had been withdrawn from the account. In fact, the trial court simply stated that the Baird account was used for marital purposes. Although no funds were ever withdrawn from the account, plaintiff testified that it was "a future account," or an investment account. This testimony indicates that the Baird account was intended to be some kind of investment or retirement account for both plaintiff and defendant, such the trial court's finding that the account was for marital purposes was not clearly erroneous.

Plaintiff also contends that any commingling was incidental because the account balance never dropped below \$125,000 – the parties' initial deposit. However, the parties *treated* the account as marital property, so the original deposits lost their character as separate property. See *Cunningham*, 289 Mich App at 201. After plaintiff and defendant married, they merged the funds from three premarital accounts (two from plaintiff and one from defendant) into a "safety net account," with Huron River Credit Union. From the Huron River account, the parties took \$125,000 and opened the Baird account. Thus, the Baird account was first created as a joint account, opened during the marriage, and initially funded with money from another marital account, the Huron River account. The parties then deposited \$833 each month into the account, which was some combination of both plaintiff's and defendant's incomes. Given that the Baird account was initially opened as a joint account during the marriage, and then funded by both parties during the marriage, the trial court did not clearly err in concluding that all of the account's funds were marital property.

The trial court also rejected plaintiff's argument that the down payment on the marital home came from his separate pre-marital funds that should be returned to him, instead finding that all of the home's equity (including the down payment) was part of the marital estate. The trial court found that from the initial purchase of the marital home, both parties intended for it to be marital property. The parties purchased the home in anticipation of marriage, to be used as the marital home, and purchased the same as joint owners with rights of survivorship. Both parties were liable on the mortgage and both parties made significant contributions to the mortgage payments. The trial court concluded that the \$80,000 down payment paid by plaintiff "lost any characteristic of being separate property due to the parties' intent when the house was purchased, passive market decline and both parties' significant contributions to the property from marital property." The trial court found that plaintiff and defendant acted as a "single economic unit," not two individual property owners.

Plaintiff argues that the instant case is comparable to *Korth v Korth*, 256 Mich App 286, 293; 662 NW2d 111 (2003), and *Reeves v Reeves*, 226 Mich App 490, 495-496; 575 NW2d 1 (1997), where this Court considered the down payment and equity built up in a marital home prior to a marriage as separate property. Both cases, however, are distinguishable.

In *Korth*, 256 Mich App at 292, the defendant bought the property in question over a year before the parties married. At some point after the marriage, the defendant added the plaintiff's name to the deed. *Korth*, 256 Mich App at 292. This Court concluded that the equity in the property gained during the marriage was marital property, but the defendant's initial down payment was not. *Id.* at 292-293. In *Reeves*, 226 Mich App at 495-496, the defendant also purchased the property, as an individual, nearly four years before the parties' marriage. The defendant then individually paid a large part of the mortgage before his marriage to the plaintiff. *Reeves*, 226 Mich App at 495-496. The property also appreciated during this period before the marriage. *Id.* This Court held that any appreciation that occurred during the marriage was marital property, but the down payment and appreciation that occurred prior to the marriage was separate property. *Id.*

In this case, the marital home was initially purchased jointly, by plaintiff and defendant, with rights of survivorship. Plaintiff testified that the home was purchased in anticipation of the marriage, to be used as the marital home. Unlike the plaintiff in *Korth*, 256 Mich App at 292, defendant's name was not added at some subsequent date after the marriage. Unlike the couple in *Reeves*, 226 Mich App at 495-496, plaintiff and defendant both paid a significant amount on the mortgage, \$112,866, during their marriage, using money from both of their incomes. Plaintiff took no steps to separate the \$80,000 down payment from the rest of the home's equity and does not deny that both parties' incomes were used to pay down the mortgage balance, contributing to the home's equity.

Furthermore, it would be inequitable for plaintiff to receive \$80,000 before the rest of the equity was divided as marital property because the value of the home depreciated \$75,000 during the marriage. Once plaintiff paid the down payment on the marital home and both parties made mortgage payments during their marriage, the funds became inextricably commingled. "[S]eparate assets may lose their character as separate property and transform into marital property if they are commingled with marital assets and treated by the parties as marital

property.” *Cunningham*, 289 Mich App at 201 (internal quotations omitted). The trial court did not clearly err in deciding that all of the equity in the marital home was marital property.

Finally, plaintiff asserts that the trial court abused its discretion in awarding defendant a lump sum of spousal support, by ordering that the marital home mortgage be paid off with funds from the Baird account. We disagree.

“This Court reviews a trial court’s award of spousal support for an abuse of discretion.” *Woodington*, 288 Mich App at 355. A trial court has abused its discretion when its decision “falls outside the range of reasonable and principled outcomes.” *Id.* The trial court’s findings of fact with respect to spousal support are reviewed for clear error. *Id.*, citing *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). “A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake was made.” *Woodington*, 288 Mich App at 355.

An award of spousal support should be based on what is just and reasonable, with the goal of balancing the parties’ incomes and needs so neither will be impoverished. *Berger*, 277 Mich App at 726. A trial court should consider the following factors in determining if spousal support is appropriate:

(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties’ ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties’ health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party’s fault in causing the divorce, (13) the effect of cohabitation on a party’s financial status, and (14) general principles of equity. [*Id.*, quoting *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

The trial court made detailed findings with respect to each of these factors in fashioning its award. The trial court found that the parties have been married for seven years and are economically interdependent. The trial court faulted plaintiff for the breakdown of the marriage, because of his infidelity, but noted that fault was only one factor to consider. The trial court also discussed the parties’ decision that defendant would stay home with the minor child and work part-time, which has put her at an economic disadvantage because she earns less and does not have any benefits. The trial court found that defendant would have difficulty refinancing the marital home because she is self-employed. Plaintiff was also noted to have a higher income than defendant and fewer expenses. The trial court concluded that defendant’s monthly expenses were approximately \$8,000.

These findings are supported by the evidence. Plaintiff argues that defendant failed to demonstrate that \$8,000 was a reasonable amount for monthly expenses. However, defendant provided the court with a detailed account of her monthly expenses. Plaintiff had the opportunity to cross-examine defendant on her expenses, but did not do so. Defendant also testified that she looked into refinancing and learned it would be difficult to qualify. Therefore, there was evidence to support the court’s factual finding on this issue.

Plaintiff also argues that the trial court abused its discretion by not considering the effects of depleting a valuable investment account, including the tax ramifications, to pay off a mortgage with a low interest rate. In fact, the trial court made detailed findings and provided solid reasoning for its decision to award spousal support in gross in this manner. The trial court reasoned that removing defendant's monthly mortgage payment would allow her to meet her monthly expenses and, at the same time, remove plaintiff's mortgage liability. Consequently, plaintiff would be free to finance a home for himself. The trial court stated that the Baird account has sufficient funds to pay the mortgage and this method of spousal support would allow the parties' assets to be truly separated. Given the evidentiary support for the trial court's factual findings and the court's sound reasoning, the trial court's award of spousal support was not an abuse of discretion.

We reverse the trial court's finding that the minor child does not have an established custodial environment with plaintiff and remand for a determination on joint physical custody using the proper burden of proof. We affirm the trial court's judgment with respect to parenting time, property division, and spousal support. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Karen Fort Hood
/s/ Deborah A. Servitto