STATE OF MICHIGAN

COURT OF APPEALS

JOSLYN E. KREH, Plaintiff-Appellant,	UNPUBLISHED January 29, 2013
v	No. 309618 Macomb Circuit Court
MICHAEL G. KREH, Defendant-Appellee.	LC No. 2005-003015-DM

JOSLYN E. KOZICKI, f/k/a JOSLYN E. KREH, Plaintiff-Appellant,	
v	No. 309715 Macomb Circuit Court
MICHAEL G. KREH, Defendant-Appellee.	LC No. 2005-003015-DM

Before: WILDER, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right two orders granting sole legal and physical custody to defendant in this consolidated appeal in this post-judgment action. We affirm.

I. BACKGROUND

This case arises out of a divorce proceeding. Plaintiff and defendant were married on May 21, 1999. The parties had one minor child together, who was born June 26, 2002. On March 7, 2006, a judgment of divorce was entered. The judgment awarded the parties joint legal and "joint physical custody of the child, with Plaintiff being awarded primary physical custody of the child." Defendant was awarded reasonable and liberal parenting time, which included every other weekend and two evenings on the alternating weeks that defendant had no weekend parenting time. The parties agreed to alternate holidays and school breaks.

From May 2006 to December 2007, the parties filed multiple motions regarding parenting time. On July 24, 2006, the court issued an order that referred the parties for parental

coordination evaluation (PCE), ordered make-up parenting time for defendant, granted defendant specific parenting time on Tuesdays and Wednesdays from 4:30 p.m. until 7:30 p.m., and awarded both parties telephone parenting time every night for five minutes at 7:00 p.m. on the nights that they did not have parenting time.

Dr. Eric Alsterberg interviewed the parties over the course of four months and prepared the initial PCE report, which was released to the court on November 27, 2006. On March 19, 2007, Dr. Alsterberg prepared his final PCE report, which provided in pertinent part[1]:

> With the final PCE session, it became increasingly clear that [plaintiff] will not relinquish her anger and bitterness toward [defendant], which she justifies to herself and others. While [defendant] appears to be more willing to be cooperative, she continues to want to control his time with the minor child. . . . The reality [is] that [plaintiff] is not willing to resolve conflict and overcome her anger and bitterness, wants to control the minor child with [defendant] and wants to control [defendant's] parenting time. As noted in the initial evaluation, [plaintiff] tends to perceive the minor child as much older than her stated age, expressing fears about what she may be exposed to, as though the child was a more mature child.

The problems continued, and on October 22, 2007, plaintiff filed a motion to modify parenting time, claiming that defendant's weekday parenting time was disruptive to the child and that defendant was not exercising his weekday parenting time. Defendant responded, and on December 6, 2007, he filed a third motion against plaintiff to show cause for violating the parenting-time order, alleging that there were 23 instances where plaintiff denied defendant his parenting time. The court entered an order on December 17, 2007, denying plaintiff's motion to modify parenting time, awarding defendant make-up parenting time, and ordering the parties to attend more counseling with Dr. Alsterberg.[2] After the December 2007 proceedings, there was an 18-month period of relative calmness, where no further legal proceedings, filings, or hearings took place.

The current dispute arises from defendant's motion to modify parenting time, which was filed on July 20, 2009. In his motion, defendant alleged, among other things, that plaintiff denied him parenting time on numerous occasions: on May 20, 2009; over the Memorial Day weekend May 22-25, 2009; on June 3, 2009; and on June 16, 2009. Defendant alleged that on May 20, 2009, plaintiff withheld parenting time because the child was getting a haircut. Defendant alleged that plaintiff contacted him on the Tuesday leading up to Memorial Day weekend, stating that she was not going to allow his upcoming weekend parenting time. Defendant alleged that on June 3, 2009, he arrived at school to pick up the child for his parenting

[1] This report was not located in the lower court file, but this excerpt was quoted in the GAL report.

[2] Dr. Alsterberg explained at the December 16, 2010, evidentiary hearing that his conclusions from his previous PCE reports did not change after these additional counseling sessions.

time, but plaintiff was there too and, after a dispute, ended up taking the child home with her. Finally, defendant alleged that on June 16, 2009, plaintiff had the child call him to tell him that she could not see him because her "tummy was upset." Defendant claimed that he tried to contact plaintiff, but she refused to answer any calls or answer the door when he arrived at the house.

Defendant also stated that the child was tardy to school 24 times during the school year, and only two of those were his fault. Defendant asked that a guardian ad litem be appointed and requested a modification of the parenting-time schedule. Specifically, defendant asked that he be granted parenting time Wednesday through Sunday on alternate weeks.

On July 24, 2009, plaintiff responded to defendant's motion. Plaintiff admitted that defendant missed parenting time on the cited days but denied that he missed the time for the reasons he asserted. Of note, plaintiff explained that her stepfather died on Friday, May 22, 2009, which was why the child missed parenting time with defendant over the Memorial Day weekend. Plaintiff also stated that she gave defendant make-up parenting time.

The trial court held a hearing on defendant's motion to modify parenting time on July 28, 2009. The trial court took testimony from both parties regarding the denial of parenting time over the Memorial Day weekend. Defendant testified that on Tuesday, May 19, 2009, plaintiff sent him a text message at 3:22 p.m. that stated, "I've decided that I'm going to keep [the child] this weekend so file your motion." Three days later, on Friday, May 22, 2009, plaintiff called defendant in the morning and asked him to pick the child up because plaintiff's stepfather had died. Defendant called her back less than 20 minutes later, but the child was already with a baby sitter. Defendant did not see the child that weekend. Plaintiff claimed that the text message she sent on the preceding Tuesday was sent in the context of plaintiff wanting to swap defendant's parenting time from Tuesday to Wednesday because Tuesday would "be the last day [the child could] see her grandpa," who was scheduled for surgery on Wednesday. Plaintiff, however, did not explain the disconnect when the text message itself referenced "this weekend."

After the parties testified, a Friend of the Court (FOC) employee recounted to the judge the history of the case and reported that there were over 20 complaints filed about parenting time between the parties since entry of the judgment of divorce.

The trial court found that plaintiff denied defendant parenting time over the Memorial Day weekend, found plaintiff in contempt of court, and ordered make-up parenting time for defendant. The court also stated that it was concerned about the potential of parental alienation being caused by plaintiff. The court appointed Gail Pamukov as the guardian ad litem (GAL). The order stated that Pamukov was to (1) determine whether parental alienation had occurred, (2) determine whether the issue of custody should be referred to the FOC for investigation and recommendation, (3) determine whether the child's best interests were being met in the current custodial environment, and (4) determine whether there were parenting-time issues that require intervention.

Pamukov investigated and prepared a report, which was issued on September 17, 2009. Pamukov reviewed the entire lower court record, reviewed the child's school and medical records, and conducted interviews with many people, including plaintiff, defendant, the child,

and others. Pamukov observed that the child was very sensitive to the issues between her parents. Pamukov expressed various concerns about plaintiff. She described plaintiff's behavior since the divorce judgment as "disturbing," citing plaintiff's deliberate violation of court orders. She found that, even after being held in contempt, plaintiff continued to blame others for her behavior. She opined that plaintiff's actions could have been "reflective of untreated psychological, psychiatric or emotional difficulties." According to Pamukov, plaintiff consistently put her own needs before the child's needs and exposed the child to stressful parenting-time disputes. In regard to defendant, Pamukov stated that he interacted with the child in an age-appropriate manner but seemed to be more concerned with "settling scores" with plaintiff than solving problems with the child.

Based on her investigation, Pamukov recommended that the issues of custody and parenting time be referred to the FOC for investigation and recommendation. She also recommended that plaintiff and defendant receive psychological evaluations and attend parenting classes. She noted that communication between the parties was broken and made suggestions for how the parties could more effectively communicate with each other. On October 26, 2009, a consent order adopting the GAL's report in its entirety was entered.

After the parties consented to the adoption of the GAL report, they were referred to Dr. Patrick Ryan, for psychological evaluations. Dr. Ryan performed psychological evaluations of the parties and the child, and a report on the results of his evaluations was issued on December 9, 2009. Dr. Ryan had "a great deal of concern" about how plaintiff and the child were bonding over health issues, which has manifested in "what appears to be a severe preoccupation with [the child's] health." Dr. Ryan concluded that this inappropriate preoccupation with health was "driven primarily, if not exclusively by the natural mother." Dr. Ryan ultimately recommended that the court reverse the parenting-time arrangement for six months in order to assess whether the child functioned better with defendant.

After the psychological evaluations were completed, the case was referred to the FOC for investigation. On May 28, 2010, FOC investigator Katherine Ferrell issued her custody and parenting-time recommendation. Ferrell found that the child had an established custodial environment with plaintiff but further found that there was clear and convincing evidence that it would be in the child's best interests to change custody and parenting time. Ferrell recommended that defendant be awarded custody and that plaintiff be awarded reasonable parenting time. In addition, she advised that plaintiff should continue counseling and that the child should also be enrolled in counseling.

On June 14, 2010, defendant filed a motion to adopt the FOC report and recommendation. On June 18, 2010, plaintiff filed objections to the FOC report and recommendation and asserted that it was in the child's best interests to remain with plaintiff. On August 3, 2010, the parties entered into a stipulated order referring the matter for an evidentiary hearing to be held before the FOC referee. The parties further stipulated that "[a] judicial hearing on any objection(s) shall be based solely on the record of the Referee hearing, which shall include the transcript of testimony, exhibits, and other evidence introduced before the Referee; provided, however, the Court may direct additional testimony and evidence considered necessary for entry of a judgment or order."

The evidentiary hearing was scheduled to begin in October 2010 but was adjourned several times. Due to the lapse in time, Dr. Ryan reevaluated the parties and the child and prepared a report, which was issued November 8, 2010. Pamukov also prepared a supplemental report, which was issued on December 14, 2010.

The FOC evidentiary hearing began on December 16, 2010, and ended on May 18, 2011.[3] The referee heard testimony from many people, including Pamukov, Dr. Alsterberg, Ferrell, Dr. Ryan, and the parties themselves. On September 20, 2011, the referee issued a 155-page report and recommendation. The report considered the best interest factors under MCL 722.23 and found that factors (a), (b), (c), (d), (g), (j), and (l) favored defendant, while factors (e), (f), (h), and (k) were weighted equally.[4] The report ultimately concluded that the parties should continue to share custody but that primary physical custody should be awarded to defendant, with plaintiff awarded parenting time. The referee also recommended that plaintiff continue counseling and that the child be immediately enrolled in counseling.

On September 26, 2011, defendant filed a motion to adopt the FOC referee recommendation. Plaintiff responded to defendant's motion and asked that it be denied. Plaintiff asserted that she planned on filing objections and a request for a de novo hearing. On October 3, 2011, the court held a hearing on the motion and issued an order denying plaintiff's motion, ordering that the transcripts of the evidentiary hearing be completed within 30 days, and scheduling a settlement conference.

On December 16, 2011, plaintiff filed objections to the FOC recommendation and requested a de novo hearing on the issue of custody. According to the register of actions, the court spent the next few months reviewing the transcripts and documents from the evidentiary hearing.

On March 28, 2012, the court entered an opinion and order. The court found that there was an established custodial environment with plaintiff and that a change in custody was appropriate if there was clear and convincing evidence that a change in custody was in the best interest of the child.

The trial court then considered each best-interest factor. The trial court found that factors (a), (b), (c), (d), (g), (h), (j), and (l) favored defendant. The trial court found that the parties were equal on factors (e), (f), and (k), and it also noted that it considered factor (i). The court concluded that the evidence established by a clear and convincing standard that a change in custody was in the child's best interests and ordered "that custody be awarded to the Defendant,

[3] Even though the hearing spanned six months, there were only 12 days that the hearing actually took place.

[4] The referee further noted that she considered factor (i) in her evaluation (the preference of the child) but did not disclose what this preference was.

with parenting time in accordance with the 16th Circuit Reasonable Parenting Time Schedule granted to the Plaintiff."[5]

II. ANALYSIS

A. PROPER CAUSE/CHANGE OF CIRCUMSTANCES

Plaintiff first argues that the trial court erred when it failed to determine if there was proper cause or a change of circumstances, which is the threshold requirement for a change of custody. We find that while the court failed to explicitly state whether there was proper cause or a change of circumstances, the error does not necessitate reversal or remand.

All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010).

A child custody order may be modified only if the moving party first establishes proper cause or a change of circumstances. MCL 722.27(1)(c); *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). The purpose of this limitation on the modification of child custody is to minimize unwarranted and disruptive changes of custody. *Vodvarka*, 259 Mich App at 509. In a proceeding seeking modification of child custody, the court need not necessarily conduct an evidentiary hearing on whether there was proper cause or a change of circumstances, even though the consideration is fact-intensive. *Id.* at 512.

"The movant, of course, has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstances exists *before* the trial court can consider whether an established custodial environment exists (thus establishing the burden of proof) and conduct a review of the best interest factors." *Id*. at 509. If the movant fails to show proper cause or a change of circumstances, the trial court may not hold a child custody hearing. *Id*. at 508-509. To establish a change of circumstances to merit modification of a custody order, "the movant must prove that 'since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a significant effect on the child's well-being, have materially changed.'" *Dailey v Kloenhamer*, 291 Mich App 660, 665; 811 NW2d 501 (2011), quoting *Vodvarka*, 259 Mich App at 513 (emphasis omitted). "[T]o establish 'proper cause' necessary to modify a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court." *Vodvarka*, 259 Mich App at 512. The appropriate grounds to establish a change in child custody "should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being." *Id.*

[5] A subsequent order, entered April 13, 2012, clarified that defendant was awarded sole legal and sole physical custody of the child.

Plaintiff does not argue that there was no change of circumstances or proper cause to merit modification of a custody order. Instead, plaintiff only argues that the court erred when it failed to make an explicit finding on the record. While the trial court did not explicitly state on the record that there was a change of circumstance or proper cause to modify custody, the trial court's expressed findings, without using the "proper cause" label, were nonetheless sufficient to meet this threshold.

The trial court adopted "in its entirety" the GAL report, which contained the following part:

> Plaintiff mother's conduct regarding custody and parenting time from the time the settlement was placed on the record in December, 2005, through present is disturbing. Her blaming others or circumstances for her deliberate violation of Court Orders is alarming. . . .
>
> Plaintiff mother also appears to be insensitive to the minor child and seemingly places her own needs above that of her daughter. Plaintiff mother's allegation of abuse that ended in a police investigation, CPS and CARE House interview and investigation is an appalling demonstration of how far Plaintiff mother will go to justify interfering with Defendant's parenting time.
>
> * * *
>
> In interviewing others that that are around the minor child, it does seem as if Plaintiff mother treats the minor child as if she were older than her young years. The minor child should not be placed in a care taking role. . . . Finally, interviews conducted in the course of this investigation revealed that the minor child apparently has voiced concerns that she is being "lied to" by Plaintiff mother.

The report also gave two more recent examples that "exemplify Plaintiff mother's placing of her needs above that of her daughter." We conclude that this express finding, that a parent continually places her needs above that of her child, constitutes a proper cause to modify a prior custody order. The fact that neither the trial court nor the GAL used the term "proper cause" or "change of circumstances" is not controlling. What is relevant is whether the "preponderance of the evidence" demonstrated the existence of appropriate grounds "relevant to at least one of the twelve statutory best interest factors," which "must be of such magnitude to have a significant effect on the child's well-being." *Vodvarka*, 259 Mich App at 512. There can be little doubt that the GAL's conclusion and the trial court's finding, that plaintiff continued to place her needs above the needs of her child, directly impacts at least some of the best-interest factors, including (b) (capacity to give the child love, affection, and guidance), (g) (mental and physical health of the individuals involved), and (l) (any other relevant factor), and has a significant effect on the child's well-being. Accordingly, the threshold requirement of *Vodvarka* was met.

B. DUE PROCESS

Plaintiff next argues that the trial court erred in awarding legal custody to defendant because that relief was beyond what defendant requested, which denied plaintiff her right to due process. We disagree.

For an issue to be preserved for appellate review, it must be raised, addressed, and decided by the lower court. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005). In the trial court, plaintiff never argued that she was denied her right to due process. Therefore, this issue is unpreserved. We review unpreserved constitutional issues for plain error affecting substantial rights. *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 381; 808 NW2d 511 (2011).

"The basic requirements of due process in a civil case include notice of the proceeding and a meaningful opportunity to be heard." *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). Here, plaintiff's argument revolves around a purported lack of notice. But plaintiff had ample notice that the proceedings involved a possible change in legal custody. While it is true that defendant initially only requested a modification of parenting time, the proceedings were later expanded to include custody. At the July 28, 2009, hearing on defendant's motion, the trial court stated that it was going to order make-up parenting time for defendant and hold plaintiff in contempt for her refusal to adhere to the prior order. And after hearing the extensive history between the parties since the entry of the judgment of divorce, the trial court stated,

> Further, I'm going to do this. There is a history here. The court is not satisfied . . . .
>
> I'm going to appoint a guardian ad litem for the child in this matter at the cost and expense of the two parties to make a recommendation to this Court regarding whether there is any difficulty or any reason for this court to send this matter to the Friend of the Court for investigation and recommendation as to *whether there should be a change in custody*. [Emphasis added.]

Thus, the parties were fully apprised that in appointing the GAL, and referring the matter to the friend of the court the trial court was seeking a recommendation concerning a potential change in custody – not just a change in parenting time. Additionally, the GAL's report, which the parties stipulated to, stated at the outset that the purpose of her appointment was to determine the following:

> A. To determine whether parental alienation has occurred.
>
> B. Whether the issue of custody should be referred to the Friend of the Court for investigation and recommendation.
>
> C. The GAL shall determine whether or not the minor child's best interests are being met in the current custodial environment.
>
> D. Whether there are parenting issues that required intervention.

And in the "recommendations" section, the GAL recommended that "[t]he issue of *custody* should be referred to the Friend of the Court." (Emphasis added.) Therefore, a careful reading of the GAL report makes it clear that the entire purpose of referring the matter to the FOC was for a determination of *custody, and* we hold that plaintiff has failed to establish any error, much less plain error, regarding notice of the nature of the subsequent proceedings.

C. MCL 722.26a

Plaintiff next argues that the trial court erred in terminating joint legal custody because there was insufficient evidence concerning the ability of the parties to cooperate and agree on major decisions in the child's life and that the court failed to make a finding pursuant to MCL 722.26a. We disagree.

MCL 722.26a(1) provides:

> (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.[6]
>
> (b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child. [MCL 722.26a(1).]

Assuming arguendo that the trial court erred by not explicitly addressing the factors, any error is harmless. There was substantial evidence that the parents could not cooperate and agree regarding important decisions related to the child. There was extensive testimony that the parties had disputes over the child's extracurricular activities, medical appointments and treatment, religion, childcare, and education. In fact, plaintiff's counsel in closing argument at the evidentiary hearing admitted, "These people can't co-parent." And in further support of that assertion, plaintiff's counsel recounted the following:

> [T]he point I'm trying to make is, even over the simplest issue of a child who has an allergic reaction to a mosquito bite, and these parents can't come together to agree how to appropriately treat that condition which causes the skin to erupt significantly is, is a problem that has to be addressed by the Court.

Plaintiff on appeal cannot now take the contrary view that there was no evidence that the parties could not cooperate and agree on major decisions regarding the child. *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008). Accordingly, we find no error requiring reversal.

[6] "Section 3" refers to MCL 722.23, which lists the factors for determining the best interests of the child.

E. REQUEST FOR DE NOVO HEARING AND ADDITIONAL TESTIMONY

Plaintiff next argues that the trial court abused its discretion in denying her request for a de novo hearing and an opportunity to present additional testimony because the evidence from the evidentiary hearing was stale. We disagree.

In this case, the parties entered into an agreement regarding the format and procedure for a de novo hearing by the judge in this matter. On August 3, 2010, the parties entered into a stipulated order referring the issue of custody to an evidentiary hearing to be held before the FOC referee. The parties further stipulated that, "A judicial hearing on any objection(s) shall be based solely on the record of the Referee hearing, which shall include the transcript of testimony, exhibits, and other evidence introduced before the Referee; provided, however, the Court may direct additional testimony and evidence considered necessary for entry of a judgment or order." In this case, the court held a de novo hearing in accordance with the stipulation, despite plaintiff's contention that the court denied her a de novo hearing. In addition, the court did not abuse its discretion when it denied plaintiff's request to present additional testimony after the evidentiary hearing concluded. The stipulation specifically stated that while the trial court *may* direct additional testimony and evidence be considered, it did not require that the court consider additional evidence. "A party cannot stipulate a matter and then argue on appeal that the resultant action was error." *Id.* at 588. Although plaintiff contends that the evidence was stale, she does not set forth what new additional evidence was available that would have challenged the evidentiary hearing testimony. Therefore, the trial court did not deny plaintiff's request for a de novo hearing, and the court did not abuse its discretion when it denied plaintiff's request to present additional testimony after the evidentiary hearing.

F. BEST-INTEREST FACTORS

Plaintiff next argues that the trial court's finding that a change in custody was in the minor child's best interests was against the great weight of the evidence. We disagree.

In a child custody dispute, a court determines a child's best interests by considering the following factors:

> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (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. [MCL 722.23.]

The trial court analyzed each best interest factor and found that factors (a), (b), (c), (d), (g), (h), (j), and (l) favored defendant. The trial court found that factors (e), (f), and (k) were weighted equally between the parties. The trial court did not state which party factor (i) favored, but noted that factor (i) was considered.

On appeal, plaintiff challenges the trial court's findings in regard to factors (a), (b), (c), (d), (g), (h), and (l). Challenges to the trial court's findings related to the best-interest factors are reviewed under the great weight of the evidence standard and are affirmed unless the evidence clearly preponderates in the opposite direction. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008).

Under factor (a), the trial court found that, while both parties testified to their love, affection, and emotional ties with the minor child, there was also testimony that raised concerns about plaintiff's emotional bond with the child. Specifically, there were concerns that plaintiff was involving the child in plaintiff's emotional and physical needs, placing her needs before the child's needs, and that the child and plaintiff were bonded over the theme of illness. These issues put the child at risk for future harm, so the factor weighed in favor of defendant. The court's findings were not against the great weight of the evidence. Dr. Patrick Ryan, a psychologist who performed testing on the parties, testified at the evidentiary hearing that plantiff's emotional bond with the child was a serious concern, that the child was already harmed, and that there was a possibility that the child would face additional harm if she continued to reside with plaintiff. Moreover, Pamukov's testimony corroborated Dr. Ryan's testimony regarding the unhealthy nature of the child's bond with plaintiff.

Plaintiff argues that the trial court's analysis of factor (a) relied on reports by Pamukov and Dr. Ryan, which were based on minimal contact with the child and were outdated at the time of the court's decision. Plaintiff's argument relates to questions of credibility and the weight of the evidence. This Court may not substitute its judgment for that of the trial court. *McIntosh v McIntosh*, 282 Mich App 471, 478; 768 NW2d 325 (2009). Moreover, "[t]his Court must defer to the trial court on issues of credibility." *Gagnon v Glowacki***,** 295 Mich App 557, 565; 815 NW2d 141 (2012). As a result, the trial court's finding with regard to factor (a) was not against the great weight of evidence, and we will not disturb it.

Under factor (b), the trial court found that despite plaintiff's testimony that she had the capacity and disposition to give the minor love, affection, and guidance, further testimony

revealed that plaintiff repeatedly disobeyed court orders, disregarded the child's needs, and deliberately attempted to manipulate and control the child's life. Plaintiff's refusal to recognize the harm she caused to the child's development raised questions about plaintiff's capacity and disposition. The court's findings were not against the great weight of the evidence. There was substantial evidence that plaintiff continually denied defendant parenting time. Dr. Ryan and Pamukov testified that plaintiff put her own needs before those of the child and both expressed concerns about the inappropriate bond between plaintiff and the child.

Plaintiff argues that the trial court erroneously relied on the minor child's past absences and tardies, which were all excused for valid reasons. Plaintiff fails to recognize that the trial court's holding was not focused on the number of the child's actual tardies and absences, but the fact that plaintiff refused to recognize that such a high number of absences and tardies in one school year was a concern. Even on appeal, plaintiff continues to contend that the high number was not problematic because the absences were excused by a doctor. Plaintiff also asserts that she was the primary parent involved in the child's religious training, education, and extracurricular activities, and that defendant did not participate in such activities. There was testimony by both plaintiff and defendant that they were both active in the child's religious training, education, and activities. This Court must defer to the trial court on issues of credibility. *Id.* Moreover, there was testimony that plaintiff continually tried to disrupt defendant's ability to play a part in the child's life by denying him parenting time, attempting to thwart his access to the child's school and medical records, and failing to give him information about the child's extracurricular activities. Therefore, the finding that factor (b) favored defendant was not against the great weight of the evidence.

The trial court found that factor (c) favored defendant because plaintiff was in debt, her house had been foreclosed on, and she had filed for bankruptcy. The court stated that these facts indicated financial irresponsibility by plaintiff, whereas defendant was gainfully employed and could support the minor child. A parent's poor financial judgment is a valid consideration under this factor. *Fletcher v Fletcher*, 229 Mich App 19, 27; 581 NW2d 11 (1998). Plaintiff asserts that she has a "constitutional right" to file bankruptcy and that no negative inference should be taken from such a filing. However, in the context of child custody proceedings, the bankruptcy of a parent indicates poor financial judgment and properly is considered when determining the capacity and disposition of the parent to provide for the child's material needs. Therefore, the trial court did not err in considering plaintiff's bankruptcy when analyzing factor (c).

The trial court found that factor (d) favored defendant because he could provide a stable environment for the child, whereas plaintiff's home was in foreclosure and she would be moving. Plaintiff argues that the trial court failed to consider that defendant chose to move 60 miles away from the marital residence. Plaintiff's argument is unconvincing. At the evidentiary hearing, defendant testified that he owned a home and had lived there for three years. Plaintiff testified that she and the child had lived in the marital residence since the divorce, but that the house was in foreclosure and they would be moving. Plaintiff's argument, once again, goes to the weight of the evidence, as the court chose to weigh defendant's move three years before less than plaintiff's imminent move from the marital home. This Court may not substitute its judgment for that of the trial court. *McIntosh*, 282 Mich App at 478. Therefore, the trial court's finding that factor (d) favored defendant was not against the great weight of the evidence.

The trial court found that factor (g) favored defendant because plaintiff had issues with anxiety and depression, and those issues could affect the child's development and put the child at risk to develop those issues herself. The court's finding was supported by Dr. Ryan's testimony. Plaintiff argues that she had the same issues when the court entered the original custody order. However, plaintiff is conflating the temporal requirement relating to establishing a change in circumstances necessary to modify an existing custody order with the best-interest factors. While a change in circumstances must exist since the entry of the last custody order in order to modify that custody order, no such time requirement exists for evaluating a proper cause or the best-interest factors. See *Vodvarka*, 259 Mich App at 514-515. In fact, limiting the evaluation of the best-interest factors to *only* the time since the previous custody order would hardly be in the child's best interest.[7] Therefore, the court's finding on factor (g) was not against the great weight of the evidence.

The court found that factor (h) favored defendant because plaintiff was primarily responsible for the minor child's attendance at school, and the child's attendance and tardiness showed plaintiff's inability to place the proper importance on the child's attendance. Plaintiff argues that while the child had absences and tardies in school, neither party addressed those concerns. The court acknowledged that defendant also shared a responsibility to address the absences and tardies, but noted that because plaintiff was primarily responsible for the child during the school week, plaintiff was more at fault. The evidence did not clearly preponderate in the opposite direction. Therefore, the trial court's findings on factor (h) were not against the great weight of the evidence.

The trial court also included an analysis on factor (l), and found that the factor favored defendant. The court found that the minor child had been harmed by plaintiff, and that the harm was caused by plaintiff's and the child's preoccupation and bonding over illness. The court stated that plaintiff's style of parenting had not changed and was likely to cause the child additional harm in the future. Plaintiff asserts that the court's findings under this factor are merely a reiteration of other evidence already considered in other factors. Plaintiff's argument, however, is incorrect. While the court references plaintiff and the child bonding over illness in other factors, the court elected to consider that issue separately as a factor. Clearly, the court found this issue very concerning, as did Pamukov and Dr. Ryan. Under the Child Custody Act, in determining the best interest of a child a court must consider certain enumerated factors, and may consider any other factor relevant to a particular child custody dispute. *LaFleche v Ybarra*, 242 Mich App 692, 701; 619 NW2d 738 (2000). Moreover, this Court has previously held that "the factors will have natural overlap." *Fletcher*, 229 Mich App at 25. The court's decision to emphasize its concern about the child's preoccupation with health issues under factor (l) was not erroneous, and its findings were not against the great weight of the evidence.

[7] For example, it would not be in a child's best interest for a trial court to disregard a parent's history of abusing that child on the basis that any abuse occurring before the entry of the prior custody order is not properly considered. The absurdity of limiting the best-interest evaluation in this fashion is patent.

Affirmed. Defendant, the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher