

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KENDRA PAIGE SHARPE,  
Plaintiff-Appellee,

UNPUBLISHED  
November 19, 2013

v

MARCUS AARON SHARPE,  
Defendant-Appellant.

No. 310526  
Oakland Circuit Court  
LC No. 2011-787861-DP

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Before: M. J. KELLY, P.J., and CAVANAGH and SHAPIRO, JJ.

PER CURIAM.

In this dispute arising from a paternity suit, defendant Marcus Aaron Sharpe appeals of right the trial court's opinion and order setting parenting time and child support. Because we conclude there were no errors warranting relief, we affirm.

**I. BASIC FACTS**

Plaintiff Kendra Paige Sharpe married Marcus Sharpe in March 2009, just 15 days after she gave birth to a daughter. Marcus Sharpe was in the Air Force and stationed in Georgia. Kendra and Marcus Sharpe lived together in Georgia from July 2009 to November 2009. Kendra Sharpe stated that she left her husband and moved back home to Michigan in November 2009.

In August 2011, Kendra Sharpe sued Marcus Sharpe to establish his paternity of the child and obtain child support. After a bench trial, the trial court entered an order of filiation and awarded Kendra Sharpe physical custody of the child. The court ordered joint legal custody and granted reasonable parenting time to Marcus Sharpe. Finally, using the Michigan Child Support Formula (MCSF),<sup>1</sup> the court ordered Marcus to pay child support and entered a uniform support order to that effect.

Marcus Sharpe now appeals.

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<sup>1</sup> The trial court applied the 2008 MCSF, which was then in force.

## II. PARENTING TIME

Marcus Sharpe first argues that this Court must reverse the trial court's parenting time order because it was against the great weight of the evidence. He also argues that the trial court erred by not referring the parenting time issue to the Friend of the Court and granting him a full hearing on the issue in the event that he disagreed with the Friend of the Court's recommendation. "Although appellate review of parenting time orders is *de novo*, this Court must affirm the trial court unless its findings of fact 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." *Berger v Berger*, 277 Mich App 700, 716; 747 NW2d 336 (2008).

Under MCR 3.217(D)(1), either party to a paternity suit may petition the court to provide for "such reasonable visitation by the noncustodial parent as the court deems justified and in the best interests of the child" in its order of filiation. The Legislature provided that the trial court "may also refer the matter to the friend of the court for a report and recommendation . . . ." MCL 722.717b. Similarly, the court rules provide that a judge in a domestic relations action *may* refer a matter to a referee. MCR 3.215(B)(2). Thus, although the court had the authority to refer the matter, it was not required to do so. And, after reviewing the record, we cannot conclude that the trial court abused its discretion when it elected to resolve the parenting issue without a referral.

Marcus Sharpe also argues that he was entitled to a full hearing on the issue of parenting time. In this case, the trial court held a hearing on the matter of child support. During Kendra Sharpe's testimony, the court learned about a possible history of domestic violence. The trial court then questioned the parties about parenting time and they informed the court that they had reached an agreement on reasonable parenting time. The court responded that it nevertheless had an obligation to determine whether the agreed upon parenting time was in the best interests of the child. On several occasions, the trial court clarified that parenting time was at issue and both parties appeared to agree by putting on proofs regarding the issue of domestic violence. The court mentioned the possibility of a referral, but elected to directly address parenting time in its opinion and order without a referral. Because Marcus Sharpe did not object to the trial court's decision to proceed on the issue of parenting time at the hearing, he cannot now complain that the trial court's decision to consider this issue along with the support issue was error.

The trial court made very careful and detailed findings with regard to the best-interest factors enumerated in MCL 722.23. With regard to factors (a) (emotional ties between parent and child), (b) (capacity and disposition to give the child love, affection, and guidance, continue the child's education, and raise the child in his or her religion), (c) (capacity and disposition to provide the child with material needs), (d) (length of time the child has been in a stable, satisfactory environment), (e) (permanency of existing or proposed custodial home), (h) (home, school, and community record of child), and (l) (other relevant factors), the court found that the factors favored Kendra Sharpe. The court found that she had been a continuous presence in the child's life, her home was stable, she had been solely responsible for the child's care since returning to Michigan, and she had worked two jobs to provide for herself and the child. The court found that Marcus Sharpe had not consistently supported the child financially, had had only limited parenting time and phone contact with the child, and did not acknowledge paternity until trial.

With regard to factors (f) (moral fitness of parent) and (g) (mental and physical health of parent), the trial court credited both parents. The court found that the young child could not express a preference with regard to factor (i) (reasonable preference of child). With regard to factor (j) (willingness and ability of parent to encourage close relationship between the child and other parent), the court noted that Kendra Sharpe had previously allowed Marcus Sharpe to have phone contact with the child, but there was a recent falling out between the parents, which had limited phone contact. With regard to factor (k) (domestic violence), the court found Kendra Sharpe's testimony to be credible and determined that this factor favored her.

The trial court also found that only factors (d) (reasonable likelihood of abuse of parent resulting from exercise of parenting time), (e) (inconvenience to, and burdensome impact on, the child of traveling for parenting time), (g) (whether parent has frequently failed to exercise reasonable parenting time), and (i) (other relevant factors) under the parenting statute, MCL 722.27a(6), applied to this case. With respect to factor (d), the court noted the two incidents of domestic violence. Referring to factors (e) and (i), the trial court also found that Marcus Sharpe lacked insight into the burden and hardship that the child would suffer in traveling between Michigan and Georgia. With regard to factor (g), the court acknowledged that Marcus Sharpe visited the child in Michigan on several occasions and maintained phone contact with her.

On the basis of these findings, the trial court ordered that the child should primarily reside with Kendra Sharpe. However, it ordered that Marcus Sharpe could exercise parenting time any time he was in Michigan with two weeks' notice and under Kendra Sharpe's supervision. The trial court also permitted phone contact with the child on Sundays after 7:00 p.m. and Wednesdays after 7:30 p.m.

After reviewing the record, we cannot conclude that the trial court's findings were against the great weight of the evidence or that it committed a palpable abuse of discretion by electing to expand the proofs at the hearing to include the best interest factors and to do so without first referring the matter to the Friend of the Court. *Berger*, 277 Mich App at 716.

We also do not agree with Marcus Sharpe's contention that the trial court only had the authority to enter a temporary order. It is true that, under MCL 722.717b, the trial court shall order a temporary order if there is a dispute pending a hearing to resolve that dispute. However, nothing within that statute precludes a trial court from holding an immediate hearing to resolve the dispute without the need to first enter a temporary order. Here, the trial court expanded the support hearing to include testimony concerning the parenting time dispute; and Marcus Sharpe has not established that the trial court erred by doing so.

### III. CHILD SUPPORT

Marcus Sharpe also challenges the trial court's decision to include his military housing allowance in determining his monthly income. He also argues that the award of child support is unjust and inappropriate under the Michigan Child Support Formula. Specifically, he maintains that the court should have considered his net salary rather than his gross salary in determining his income. A trial court must follow the MCSF when determining a parent's child support obligations. *Ewald v Ewald*, 292 Mich App 706, 714; 810 NW2d 396 (2011). This Court reviews de novo whether the trial court properly applied the formula to the facts of the case.

*Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007). The proper interpretation of the MCSF and relevant statutes also involves a question of law that this Court reviews de novo. *Id.* Where the MCSF commits a matter to the discretion of the trial court, this Court reviews the exercise of that discretion for abuse. *Id.* This Court reviews the trial court’s factual findings for clear error. *Id.*; MCR 2.613(C).

A trial court has the authority to order support after an order of filiation in a paternity suit. MCL 722.717(1). Under MCL 722.717(2), the trial court must apply the MCSF in accord with MCL 552.605, which provides that “the court shall order child support in an amount determined by application of the child support formula” but “may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate.” MCL 552.605(2).

Marcus Sharpe argues that his military housing allowance should not have been included in his income for purposes of determining his support obligation. In addition, although his base pay is \$2,157.30 each month, he contends that the trial court could only consider his net pay, which is \$1,800 each month.

The trial court included Marcus Sharpe’s housing allowance—referred to as BAH—in calculating his obligation. Under 2008 MCSF 2.01(C)(4), a parent’s “[i]ncome includes, but is not limited to. . . [m]ilitary specialty pay, allowance for quarters and rations, BAH-II, veterans’ administration benefits, G.I. benefits (other than education allotment), or drill pay.” Because the MCSF specifically provides for the inclusion of a housing allowance, or BAH, in a parent’s income, the trial court did not err when it included this sum. *Borowsky*, 273 Mich App at 672.<sup>2</sup>

Moreover, Marcus Sharpe has not cited any authority for his argument that the trial court erred when it considered his gross pay, rather than his take home pay, in calculating his total income. The MCSF specifically provides for the inclusion of “all income” minus the deductions and adjustments permitted in the manual for purposes of determining net income. 2008 MCSF 2.01(A). He also does not cite any persuasive reason for deviating from the child support guidelines. His only argument is that the support obligation imposed on him by the trial court is more than half of his take home pay. But the MCSF specifically notes that the parent’s income used to calculate support is not the same as the parent’s take home pay. 2008 MCSF 2.01(A). Therefore, this consideration does not, by itself, establish that the trial court improperly calculated his net income.

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<sup>2</sup> On appeal, Marcus Sharpe also briefly notes that his BAH was for a serviceman with dependents. He suggests that the trial court should have adjusted his BAH to what it would be for a serviceman without dependents. If, however, his BAH is lowered at some point, nothing precludes him from seeking a modification of his support order.

The trial court did not clearly err in its factual findings regarding Marcus Sharpe's income and did not err in applying the formula to his income. Finally, to the extent that Marcus Sharpe argues that the trial court should have deviated from the formula, he has not demonstrated that the trial court abused its discretion when it ordered support in accordance with the MCSF.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

/s/ Douglas B. Shapiro