STATE OF MICHIGAN

COURT OF APPEALS

LEANDER RICHMOND, Plaintiff-Appellant,	UNPUBLISHED October 24, 2013
v	No. 312322 Wayne Circuit Court Family Division
CANDY RICHMOND, Defendant-Appellee.	LC No. 01-138612-DM

Before: SERVITTO, P.J., and CAVANAGH and WILDER, JJ.

PER CURIAM.

Plaintiff appeals as of right an opinion and order denying his motion for change of custody of the parties' minor child ("the minor child") and modifying plaintiff's parenting time. We affirm the denial of plaintiff's motion for change of custody but vacate the portion of the opinion and order modifying plaintiff's parenting time.

I. BEST INTEREST FACTORS

Plaintiff first argues that the trial court's findings on several of the child-custody best interest factors in MCL 722.23 are against the great weight of the evidence. We disagree.

"In custody cases, all orders and judgments by the trial court shall 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.'" *Parent v Parent*, 282 Mich App 152, 154; 762 NW2d 553 (2009), quoting MCL 722.28. "The court's factual findings are against the great weight of the evidence if the evidence clearly preponderates in the opposite direction." *In re AP*, 283 Mich App 574, 590; 770 NW2d 403 (2009). The trial court's credibility choices are entitled to deference given its superior position to make such determinations. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). "The trial court's discretionary decisions, such as its custody awards, are reviewed for an abuse of discretion." *In re Anjoski*, 283 Mich App 41, 50; 770 NW2d 1 (2009). "An abuse of discretion exists when the trial court's decision is palpably and grossly violative of fact and logic." *Dailey v Kloenhamer*, 291 Mich App 660, 664-665; 811 NW2d 501 (2011) (quotation marks omitted). "This standard continues to apply to a trial court's custody decision, which is entitled to the utmost level of deference." *Berger v Berger*, 277 Mich App 700, 705-706; 747 NW2d 336 (2008). Questions of law are reviewed for

clear legal error. *Id.* at 706. Clear legal error "occurs when the trial court incorrectly chooses, interprets, or applies the law." *Shann*, 293 Mich App at 305.

Custody disputes are to be determined on the basis of the best interests of the child, as measured by the 12 factors set forth in MCL 722.23. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Generally, the trial court must explicitly state its findings and conclusions regarding each factor. *Rivette v Rose-Molina*, 278 Mich App 327, 330; 750 NW2d 603 (2008). However, the court is not required to comment on every piece of evidence entered and every argument raised. *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 452; 705 NW2d 144 (2005). A single circumstance can be considered in determining more than one child custody factor. *Fletcher v Fletcher*, 229 Mich App 19, 25-26; 581 NW2d 11 (1998). "A court need not give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances." *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006). "[T]he record must be sufficient for this Court to determine whether the evidence clearly preponderates against the trial court's findings." *MacIntyre*, 267 Mich App at 452.

If a modification of custody would change the child's established custodial environment, the moving party must demonstrate that the change is in the child's best interests by clear and convincing evidence. MCL 722.27(1)(c); *Hunter v Hunter*, 484 Mich 247, 259; 771 NW2d 694 (2009). Thus, where a joint established custodial environment exists, neither parent's custody may be disrupted absent clear and convincing evidence. *Powery v Wells*, 278 Mich App 526, 529; 752 NW2d 47 (2008). Evidence is clear and convincing if it produces in the trier of fact a firm conviction regarding the truth of the precise facts at issue. *Hunter*, 484 Mich at 265. Here, plaintiff does not dispute the trial court's determination that an established custodial environment exists with both parties and that the clear and convincing evidence standard thus applies to plaintiff's motion to change custody.

Plaintiff challenges the trial court's findings regarding factors (b), (d), (e), (f), (g), (h), (j), and (k). We will address each factor separately.

FACTOR (b)

Factor (b) is "[t]he 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 trial court found that this factor favors both parties equally. Plaintiff argues that this factor should favor him because only he is actively involved with the minor child's efforts and academic achievements; the minor child has had numerous absences from school and earned an F; and defendant has a history of misconduct, including repeated denials of plaintiff's parenting time, failure to follow medical directives for the minor child, and lying to a Child Protective Services (CPS) worker about her attempt to draw blood from the minor child.

We conclude that the evidence does not clearly preponderate in the opposite direction of the trial court's finding on this factor. Although plaintiff claims that only he was actively involved with the minor child's efforts and academic achievements, there was ample testimony that defendant regularly helped the minor child with his homework. Defendant also has sent the minor child to tutoring sessions every day after school. The minor child's homeroom, math, and

science teacher, Monique Dooley, had observed defendant come to school and interact with the minor child six or seven times; Dooley stated that defendant is a caring and concerned parent, has exhibited no negative behavior, and has amiable interactions with the minor child. Dooley was not concerned about the minor child's reported attendance and indicated that there have been glitches in the school's attendance system because it is a new school. Defendant denied that the minor child missed school when he was with defendant and stated that the school designates a student as "absent" if the student is 10 minutes tardy. Also, Dooley indicated that the minor child is a great student, earning four A's in the second quarter and showing an interest in math and science. Although the minor child earned an F in social studies in the second quarter of the 2011-2012 school year, Dooley saw no cause for concern, and his F in social studies subsequently improved to a C.

While plaintiff asserts misconduct by defendant in denying parenting time to plaintiff, the evidence is conflicting. Contrary to plaintiff's allegations, defendant testified that she did not deny plaintiff parenting time, that Halloween 2011 was not plaintiff's holiday, and that the parties had a mutual history of not following the precise times and schedules stated on the trial court's order providing for parenting time.

Regarding defendant's alleged failure to give the minor child his asthma medicine, while the child's pediatrician, Dr. Todd Marcus, did file child neglect reports against defendant in 2007 and 2008 because he believed that the child was not getting his medications at defendant's house, there is no evidence that CPS concluded that defendant had failed to give the minor child his medicine or that CPS took any action against her. Further, Dr. Marcus acknowledged that CPS took no action with respect to his first referral, that he did not know the outcome of the second referral, and that he saw no need for a CPS referral when he last saw the minor child six months earlier. Defendant denied that she failed to give the minor child his medicine and testified that she took the minor child to a different pediatrician to get the same medicine because Dr. Marcus would give the minor child's medicine only to plaintiff and would not work with her. Moreover, it is undisputed that the minor child's asthma condition has improved dramatically in recent years. There was evidence that his medication dosage had recently been cut in half and that he has had no asthma attacks for approximately two years.

Regarding defendant's purported lie to a CPS worker related to her attempt to draw blood from the minor child to practice for her job as a medical assistant, defendant admitted that she attempted to draw the blood only one time for 15 seconds, but claims that she did not actually draw any blood and that the minor child was not hurt. Defendant also admits that she did not volunteer additional information to the CPS worker about her *attempt* to draw blood when the CPS worker asked her whether she *drew* blood from the minor child. While defendant should have been more forthcoming in volunteering information to the CPS worker, we conclude that the fact she recognizes she exercised very poor judgment and has promised not to do this again was sufficient for the trial court to find that this incident alone would not require finding that this factor favors plaintiff.

We conclude that, overall, the evidence does not clearly preponderate against the trial court's finding that the parties are equal on factor (b).

FACTOR (d)

Factor (d) is "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(d). The trial court found that this factor favors defendant. Plaintiff argues, however, that defendant's home is unstable and unsafe. He says that the home was condemned by the city of Detroit on September 15, 2010, for various code violations and that defendant previously had allowed the utilities to be shut off once. Plaintiff also, again, relies on the blood-drawing attempt. Plaintiff further notes that defendant has been married four times and that she lived with and conceived a child with her current husband before divorcing her previous husband.

The evidence does not clearly preponderate against the trial court's finding that this factor favors defendant. The alleged code violations to which plaintiff refers pertained to defendant's former home. Defendant testified that the family moved from that address to their current home in August 2010. No evidence exists that the alleged code violations at the former home threatened the minor child's safety or harmed him in any way. In fact, her former neighbor, Rozenia Johnson, testified that the home was clean and adequate and that the minor child had healthy interactions with defendant, her current husband, and two younger children in the home. The record does not establish that the property was condemned or that the family was ordered to move out of the house while they lived there. The trial court recognized that defendant had once allowed her utilities to be shut off but that it was for a brief period. As discussed above, defendant has expressed remorse for her single attempt to draw blood from the minor child and assured the trial court that it will never happen again. The fact that defendant has been married four times and conceived a child with her current husband before she was divorced from her previous husband does not require disturbing the trial court's finding on this factor, particularly given the evidence that plaintiff himself has engaged in acts of marital infidelity while still married to defendant. The trial court's finding that the minor child's current home environment is stable and satisfactory is not against the great weight of the evidence.

FACTOR (e)

Factor (e) is "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes." MCL 722.23(e). The trial court found that this factor favor defendant. The court noted that plaintiff lives with his wife and three children, while defendant lives with her husband and their two younger children. The minor child is bonded and attached to defendant's husband and is acclimated to living in defendant's home. The court stated that the minor child has his own bedroom at defendant's home but "has" to share bedroom accommodations with other individuals at plaintiff's residence. The court correctly noted that this factor focuses on the stability and permanence of the home rather than its acceptability. See *Ireland v Smith*, 451 Mich 457, 464-466; 547 NW2d 686 (1996). Plaintiff argues that the trial court incorrectly found that the minor child "has" to share a bedroom with his stepbrothers at plaintiff's house because the record shows that the minor child has his own bedroom at plaintiff's house but often *chooses* to sleep with his stepbrothers instead.

The trial court's finding on this factor is not against the great weight of the evidence. Plaintiff testified that the minor child has his own room in plaintiff's house but that the minor child will not sleep in it and instead wants to sleep with his stepbrothers in their room, which plaintiff allows. Thus, the essence of the trial court's finding was correct; plaintiff allows the minor child to share a bedroom with his stepbrothers at plaintiff's house even though another

bedroom is available to him, while the minor child uses his own bedroom at defendant's house. Although the trial court did not fully explain the evidence on this point, the trial court was not required to comment on every piece of evidence. *MacIntyre*, 267 Mich App at 452. Overall, the evidence does not clearly preponderate against the trial court's finding.

FACTOR (f)

Factor (f) is "[t]he moral fitness of the parties involved." MCL 722.23(f). "[Q]uestionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function *as a parent*." *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994) (emphasis in original). Morally questionable conduct relevant to one's moral fitness as a parent includes, but is not limited to, "verbal abuse, drinking problems, driving record, physical or sexual abuse of children, and other illegal or offensive behaviors." *Id*. at 887 n 6. We conclude that the evidence does not clearly preponderate against the trial court's finding that this factor favors defendant.

First, there was evidence that plaintiff verbally, emotionally, and sexually abused defendant. According to defendant, during the parties' marriage, plaintiff told her that her "job was to f--- him and stay home and take care of [the minor child]; that was my job." Defendant further testified that against her will, plaintiff often took her "to a swingers club to have sexual encounters and/or sometimes watch other people have sexual encounters with each other." Defendant testified that she was required to have sex with "[w]hoever [plaintiff] picked out depending on if he wanted to have sex with that person's partner," that she and plaintiff each had sex with both men and women at the club, and that she once tried to avoid having sexual relations with a man whose partner plaintiff wanted to have relations with by hiding out in a bathroom, but plaintiff followed and told her to come out of the stall. Defendant also testified that, in the parties' home, plaintiff initiated "threesome type relations with" defendant's female friends approximately four times. Defendant consented to this, but when she later confronted plaintiff "and gave him the ultimatum about the clubs and the open marriage he told me there was nothing I could do about it. He owned me. I wasn't going anywhere. I wasn't taking [the minor child] anywhere. That was it." Plaintiff reportedly told defendant, "I own you."

Wells, the FAME supervisor, also testified that, based on her interview with and observations of plaintiff, she was concerned that he was aggressive[1] and overly controlling. Wells opined that this could make the minor child subservient and inhibit him from expressing himself and exercising free will. Indeed, defendant testified that she has noticed plaintiff exhibit controlling behavior directed at the minor child and that she believes the minor child is intimidated by plaintiff.

All of this evidence was properly considered as relevant to plaintiff's moral fitness as a co-parent.

[1] Plaintiff's aggressive behavior was displayed at one point during the evidentiary hearing proceedings, when plaintiff physically charged at defense counsel in the courtroom and had to be physically restrained by his attorney.

Further, there was evidence that defendant's views of women, in general, and black women, particularly, negatively influenced his ability to parent. Defendant testified that the minor child sometimes hears plaintiff screaming at defendant from outside her house. The minor child has heard plaintiff outside defendant's house calling her names such as "c---," and on one occasion the police came. Defendant further testified that plaintiff has expressed the opinion that "black b-----s . . . are all ghetto and you can take them out of the ghetto but you can't take the ghetto out of them and white women are better simply because of their hair and eyelashes and fingernails and things like that." Defendant expressed concern about what the minor child will think of black women based on what he hears from plaintiff and how plaintiff talks to and treats defendant. According to defendant, the minor child had a crush on "a little black girl," and when defendant asked why the child did not tell plaintiff about the girl, he replied, "[W]ell, she looks like you." Defendant took this to mean that the minor child was not telling plaintiff about the girl because she was black. This evidence supports the trial court's finding that plaintiff has made disparaging and offensive remarks about defendant and other types of females to or in front of the minor child. Despite plaintiff's claims that defendant's testimony on this matter was not credible, "[t]his Court will defer to the trial court's credibility determinations." *Berger*, 277 Mich App at 705. Also, there is no evidence to support plaintiff's speculative and baseless assertions that defendant's testimony was meant to "inflame" the trial court against plaintiff and that defendant succeeded in doing so. Further, although plaintiff asserts that defendant's testimony contained "inadmissible hearsay," he fails to develop an argument or cite authority in support of this assertion, which is thus deemed abandoned. *Id*. at 712, 715. In any event, plaintiff's offensive statements were not offered to prove the truth of the matters asserted, MRE 801(c), and were made by a party-opponent, MRE 801(d)(2).

Finally, plaintiff asserts that the trial court failed to consider evidence of various acts of misconduct by defendant. However, the trial court was not required to comment on every piece of evidence. *MacIntyre*, 267 Mich App at 452. Also, contrary to plaintiff's argument, the trial court did not fail to consider defendant's admission that she drove the minor child to school while she had a suspended license; the court expressly referred to this admission when analyzing this factor but then noted that defendant had subsequently complied with the court's order that she clear the suspensions and obtain a valid license by a specific date. Therefore, we conclude that the evidence does not clearly preponderate in the opposite direction of the trial court's finding on factor (f).

FACTOR (g)

Factor (g) is "[t]he mental and physical health of the parties involved." MCL 722.23(g). The trial court found that this factor does not favor either party.

We conclude that the evidence does not clearly preponderate in the opposite direction of the trial court's finding on this factor. Wells testified that plaintiff is aggressive and overly controlling and that he would benefit from a course in anger management. Wells also testified that defendant would benefit from mental health treatment focused on anxiety and depression. Wells opined that documentation of participation in such programs should be provided monthly and talked to both parties about these recommendations. Furthermore, the trial court specifically recognized that neither party's health condition affected his or her ability to parent, and there is no evidence that defendant's anxiety or depression affects her ability to care for the minor child.

Therefore, we conclude that the trial court's finding on this factor is not against the great weight of the evidence.

FACTOR (h)

Factor (h) is "[t]he home, school, and community record of the child." MCL 722.23(h). The court found that this factor favors defendant. Plaintiff challenges the court's finding on this factor by again noting that the minor child has had several absences and earned an F on a report card.

The evidence does not clearly preponderate against the trial court's finding on this factor. The minor child's homeroom, math, and science teacher, Dooley, was not concerned about the minor child's attendance and indicated that there have been glitches in the school's attendance system because it is a new school. Defendant denied that the minor child missed school when he was with defendant and stated that the school designates a student as "absent" if the student is 10 minutes tardy. Also, Dooley indicated that the minor child is a great student, earning four A's in the second quarter and showing an interest in math and science. Although the minor child earned an F in social studies in the second quarter of the 2011-2012 school year, Dooley saw no cause for concern, and his F in social studies subsequently improved to a C. Defendant now discusses social studies with the minor child every day, and the child understands the material better. Thus, we cannot conclude that the evidence clearly preponderates in the opposite direction.

FACTOR (j)

Factor (j) is "[t]he 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 trial court found that this factor does not favor either party, noting the parties' difficulty in getting along over the years, the numerous custody battles, and the various complaints to CPS. The trial court observed that defendant testified that plaintiff was controlling, uncooperative, and had intimidated her in the past, and that plaintiff views the minor child as a possession. The trial court also found that plaintiff admitted during the evidentiary hearing that the present parenting time/custody order was "wonderful" and that he merely wanted compliance from defendant. Plaintiff challenges the trial court's finding by noting that defendant has a history of refusing to follow court orders resulting in make-up parenting time being granted to plaintiff. Plaintiff also states that the record does not support the trial court's finding that plaintiff described the present custody/parenting time order as "wonderful."

We have found no indication in the record that plaintiff described the present custody/parenting time order as "wonderful" during the evidentiary hearing, and it is not clear whether the trial court meant that plaintiff made this statement while testifying in court or off the record. In any event, assuming that the court's finding on this point is erroneous, the error was harmless. MCR 2.613(A). The evidence supports the trial court's finding that the parties have had difficulty getting along over the years, as reflected in the extremely contentious nature of the litigation that has occurred in this case for most of the minor child's life. As discussed above, the evidence also supports the trial court's finding that plaintiff is overly controlling and has

intimidated defendant in the past. Overall, when reviewing the record as a whole, the evidence does not clearly preponderate in the opposite direction of the trial court's finding that this factor does not favor either party.

FACTOR (k)

Factor (k) is "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." MCL 722.23(k). The trial court found that this factor does not favor either party, concluding that there was evidence that both parties engaged in domestic violence. The trial court noted that there was evidence that plaintiff has entered defendant's home without permission and that plaintiff engaged in numerous acts of domestic violence over the years, including intimidation and physical acts of violence against defendant. But, favoring plaintiff, the court also noted that defendant was involved in a domestic violence incident at defendant's home that resulted in police being called. Plaintiff argues that this factor should favor him because, contrary to the trial court's finding, defendant admitted to Wells and another FAME clinician, Angela K. Asteriou, that plaintiff never physically assaulted her. Also, plaintiff argues that the record shows that he has no history of domestic violence in his home, whereas there are multiple instances of domestic violence in defendant's home.

The evidence does not clearly preponderate against the trial court's finding on this factor. Plaintiff focuses on the fact that there was little to no evidence suggesting that he ever "physically assaulted or touched" defendant. However, plaintiff fails to appreciate that "domestic violence" encompasses more than physical strikes. See MCL 768.27b(5) (defining "domestic violence" in a criminal context to include, in part, instances of causing or attempting to cause *mental* harm and instances of causing a household member to engage in involuntary sexual activity by force, threat of force, or duress). As discussed earlier, the record was replete with instances of plaintiff emotionally and mentally abusing defendant. Further, there was evidence that plaintiff forced defendant against her will to engage in involuntary sexual activity. Accordingly, since there was evidence of each party engaging in domestic violence, the trial court finding that this factor is neutral was not against the great weight of evidence.

II. CONSTITUTIONAL ARGUMENTS[2]

Next, plaintiff asserts that the trial court violated his constitutional rights. Plaintiff's argument on this issue is contained in a single sentence asserting that "the trial court violated Plaintiff's constitutional rights of freedom of speech, his right not [sic] to due process and notice of proceedings, as well as his right to not be compelled to testify against himself, and then used these violations against Plaintiff in its determination of factor (f)." We conclude that this issue has been abandoned because plaintiff has failed to develop a meaningful legal argument or to

[2] In his argument on this issue, plaintiff again asserts that in analyzing factor (f), "[t]he moral fitness of the parties involved," MCL 722.23(f), the trial court considered conduct that was not known to the minor child or relevant to the determination of plaintiff's moral fitness as a parent. This argument is duplicative of his argument regarding factor (f) above and lacks merit for the reasons already discussed.

cite legal authority supporting his position. *Berger*, 277 Mich App at 712, 715. "[T]his Court need not address an issue that is given only cursory consideration by a party on appeal." *Eldred*, 246 Mich App at 150.

III. ULTIMATE CUSTODY DECISION

Plaintiff next argues that the trial court abused its discretion by denying his motion to modify custody. We disagree.

As noted earlier, the trial court's best interest findings were not against the great weight of evidence. And because plaintiff had the burden to establish by clear and convincing evidence that a custody modification was in the child's best interest, the trial court did not abuse its discretion in denying his motion.

Plaintiff also generally avers that the trial court's decision evidences an exercise of bias against him. However, plaintiff has identified no basis to conclude that the trial court was biased. The only thing that plaintiff relies on for his argument is the fact that the trial court denied his motion. But the mere fact that a judge ruled against a litigant, even if the ruling is later determined to be erroneous, is not sufficient to establish bias. *In re Contempt of Henry*, 282 Mich App 656, 680; 765 NW2d 44 (2009); *In re Susser Estate*, 254 Mich App 232, 237; 657 NW2d 147 (2002). "[T]he challenged bias must have its origin in events or sources of information gleaned outside the judicial proceeding." *Cain v Dep't of Corrections*, 451 Mich 470, 495-496; 548 NW2d 210 (1996). Accordingly, plaintiff's argument has no merit.

IV. MODIFICATION OF PARENTING TIME

Plaintiff's final argument is that the trial court committed clear legal error when it modified the parenting time order without making any findings establishing that such a modification was in the minor child's best interests. We agree. "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*, 277 Mich App at 716.

In order to modify a parenting time schedule, where the modification does not constitute a change in the established custodial environment, the change must be shown to be in the child's best interest by a preponderance of the evidence. *Rains v Rains*, 301 Mich App 313, 340; 836 NW2d 709 (2013). "Both the statutory best interest factors in the Child Custody Act, MCL 722.23, and the factors listed in the parenting time statute, MCL 722.27a(6), are relevant to parenting time decisions." *Shade v Wright*, 291 Mich App 17, 31; 805 NW2d 1 (2010). But, while custody decisions require findings under all of the best interest factors, parenting time decisions may be made with findings on only the contested issues. *Id.* at 32.

In *Shade*, this Court upheld a modification of parenting time even though the trial court did not explicitly address the best interest factors in MCL 722.23 or the factors in MCL 722.27a(6). This Court concluded that "it was clear from the trial court's statements on the record that the trial court was considering the minor child's best interests in modifying defendant's parenting time." *Id.* This Court explained:

> A finding that the modification in parenting time was in the child's best interests in this case can . . . be drawn from the trial court's statements on the record. The trial court chastised the parties on the record for making an agreement that was not in the best interests of the minor child. The trial court's modification of defendant's parenting time, which was minimal and did not significantly alter the number of defendant's parenting time days, was in the minor child's best interests because it allowed the child to participate in social activities and extracurricular activities in which she desired to participate in high school. Under these circumstances, we cannot conclude that the trial court made factual findings against the great weight of the evidence, committed a palpable abuse of discretion, or made a clear legal error on a major issue. [*Id.*]

Here, at the end of its written opinion and order denying plaintiff's motion to change custody, the trial court sua sponte modified the existing parenting time order, effectively reducing some of the parenting time granted to plaintiff in the court's earlier orders. In modifying plaintiff's parenting time, the trial court did not make any findings regarding the factors listed in MCL 722.27a(6) or enunciate any reliance on the MCL 722.23 factors it considered earlier in the opinion in the context of the motion to modify custody. Further, the trial court did not make any statements in its findings that would support a conclusion that a modification of parenting time was in the minor child's best interests.[3] For example, the trial court's order reduced plaintiff's parenting time during the summer from six weeks down to two weeks, but it is not clear from the record why the trial court thought that this reduction was in the child's best interests. This situation is distinguishable from what occurred in *Shade*, where it was easily inferred that the modification to parenting time was based on the child's best interests because the trial court "chastised the parties on the record for making [a parenting time] agreement that was *not* in the best interests of the minor child." *Id.* (emphasis added). Because it is not clear from the trial court's opinion and order whether or how the court was considering the minor child's best interests in modifying plaintiff's parenting time, we vacate the portion of the trial court's opinion and order modifying plaintiff's parenting time.

Affirmed in part and vacated in part. No costs are taxable pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder

[3] We acknowledge the trial court's findings under factor (f) that the minor child was intimidated by plaintiff and that plaintiff made disparaging remarks about defendant and other females in front of the minor child. Nevertheless, we cannot conclude without more specific enunciation from the trial court that these findings motivated the trial court's sua sponte modification of parenting time.