STATE OF MICHIGAN

COURT OF APPEALS

ROGER F. BRAINARD and ELLEN M. BRAINARD,

Plaintiffs-Appellants,

v

ANGELA L. BRAINARD,

Defendant-Appellee,

and

TIMOTHY J. BRAINARD,

Defendant.

UNPUBLISHED
March 19, 2013

No. 312336
St. Clair Circuit Court
LC No. 11-000553-DC

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order awarding permanent legal and physical custody of three of their minor grandchildren to defendant, the children's mother. We affirm because the trial court applied the correct legal standard, and did not clearly err in its findings of fact.

I. FACTS

In 2007, the minor children were living with their parents, defendant mother and her husband, Timothy Brainard. In March 2007, the Tennessee Department of Children's Services (DCS) removed the children and placed them in foster care because Timothy had sexually assaulted one of the children and defendant had allegedly failed to protect her daughter from the sexual abuse. Defendant gave birth to a fourth child in 2008; that child has never been removed from defendant's custody.[1] In August 2008, the Tennessee DCS filed a petition to terminate the

[1] We use the term "minor children" to refer only to the three children whose custody is at issue in this case, excluding the fourth child over whom defendant has always had custody.

parental rights of defendant and Timothy with respect to the minor children. That petition was eventually withdrawn, and a consent order signed by defendant's attorney was entered by a Tennessee court granting custody of two of the minor children to plaintiffs. The third minor child was originally sent to other relatives, but soon ended up living with plaintiffs as well. The order provided that defendant could seek to regain custody in the future in Tennessee or another court of competent jurisdiction.

Plaintiffs lived in Jackson County, Michigan. Defendant soon moved with her fourth child to Jackson, as well. Timothy remained in Tennessee, and defendant did not allow him to have contact with their fourth child. Defendant and Timothy were divorced in April 2009. Plaintiffs then moved to St. Clair County, Michigan. On March 11, 2011, plaintiffs filed a custody complaint seeking full legal and physical custody of the third minor child—at that point plaintiffs had custody of the first two minor children, but were only recognized as guardians of the third child. Defendant, who was not represented by counsel, indicated in her response that, with respect to the Tennessee consent order, defendant had understood that she was agreeing to grant *temporary* custody to plaintiffs, and that otherwise she would never have agreed to the order.

The trial court indicated that it intended to resolve custody so that all three minor children would be in the same situation. Over the course of several months, the trial court granted defendant parenting time for all three minor children and slowly increased the amount of allotted time. Defendant also participated in individual and family counseling sessions.

After the friend of the court prepared a report and recommendation, the trial court held an evidentiary hearing beginning August 8, 2012. The court found that most of the best interest factors did not favor either party, and that two or three factors favored defendant. The trial court then applied a presumption that custody with defendant, as the natural mother of the minor children, was in the best interests of the minor children, such that plaintiffs would not receive custody unless there was clear and convincing evidence to overcome the presumption. The court instead found that the evidence favored custody with defendant, and awarded her full legal and physical custody.

II. STANDARD OF REVIEW

"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) (internal

quotation marks, punctuation, and citation 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. Issues of constitutional law are reviewed de novo, *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006), as are issues of statutory construction, *Nash v Salter*, 280 Mich App 104, 108; 760 NW2d 612 (2008).

III. THE PARENTAL PRESUMPTION

Plaintiffs first argue that the trial court erred by requiring them to "defend" by clear and convincing evidence an order entered by a Tennessee court awarding custody of two of the children to plaintiffs. We disagree. The trial court correctly required plaintiffs, who are the paternal grandparents rather than natural parents of the children, to establish by clear and convincing evidence that it was in the children's best interest not to award custody to defendant, the natural mother of the children. "A natural parent possesses a fundamental interest in the companionship, custody, care, and management of his or her child, an element of liberty protected by the due process provisions in the Fourteenth Amendment of the United States Constitution and article 1, § 17, of the Michigan Constitution." *Frowner v Smith*, 296 Mich App 374, 381; 820 NW2d 235 (2012), citing *In re Rood*, 483 Mich 73, 91-92; 763 NW2d 587 (2009) (opinion by Corrigan, J.). See also *Troxel v Granville*, 530 US 57, 69; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (noting "the traditional presumption that a fit parent will act in the best interest of his or her child."). After citing *Troxel* and *Rood*, the *Frowner* Court noted that "[t]he preeminence of a parent's precious right to raise his or her child is so firmly rooted in our jurisprudence that it needs no further explication." *Frowner*, 296 Mich App at 381.

"In enacting the Child Custody Act, MCL 722.21 *et seq*., our Legislature recognized that a parent's right to custody rests on a constitutional foundation." *Frowner*, 296 Mich App at 381. MCL 722.25(1) codified the presumption in favor of a fit parent by prescribing the following burden of persuasion in a child custody dispute between a parent and a third person:

> If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.

Although MCL 722.27(1)(c) establishes a presumption in favor of a child's established custodial environment, this presumption must yield to the parental presumption. In *Heltzel v Heltzel*, 248 Mich App 1, 27-28; 638 NW2d 123 (2001), this Court explained:

> The Legislature has decreed that in any custodial dispute the child's best interests, described within MCL 722.23, must prevail. In every custody dispute involving the natural parent of a child and a third-person custodian, the strong presumption exists, however, that parental custody serves the child's best interests. We hold that, to properly recognize the fundamental constitutional

> nature of the parental liberty interest while at the same time maintaining the statutory focus on the decisive nature of an involved child's best interests, custody of a child should be awarded to a third-party custodian instead of the child's natural parent only when the third person proves that all relevant factors, including the existence of an established custodial environment and all legislatively mandated best interest concerns within [MCL 722.23], taken together clearly and convincingly demonstrate that the child's best interests require placement with the third person. Only when such a clear and convincing showing is made should a trial court infringe the parent's fundamental constitutional rights by awarding custody of the parent's child to a third person. [Citation and footnotes omitted.]

In *Hunter v Hunter*, 484 Mich 247, 263; 771 NW2d 694 (2009), our Supreme Court agreed with the *Heltzel* holding:

> In *Heltzel*, our Court of Appeals recognized *Troxel*'s mandate: In order to protect a fit natural parent's fundamental constitutional rights, the parental presumption in MCL 722.25(1) must control over the presumption in favor of an established custodial environment in MCL 722.27(1)(c). We agree.

In *Frowner*, 296 Mich App at 376, after the death of the child's mother, the child's father and the maternal grandparents signed a consent order agreeing to joint legal custody and stating that the child's primary residence would remain with the maternal grandparents until further order of the court. The father later filed a motion to change custody, which the trial court denied because the father had not demonstrated proper cause or a change of circumstances to warrant revisiting the custody determination, as required by MCL 722.27(1)(c). *Frowner*, 296 Mich App at 377-380. In reversing, this Court noted that the reason for the proper cause or change of circumstances requirement was to erect a barrier against removing a child from an established custodial environment and to minimize disruptive changes of custody orders. *Id*. at 384. But the parental "presumption requires that any opposing presumption, shielding the child from a custodial change absent a showing of proper cause or changed circumstances, must yield. Thus, the circuit court clearly erred by applying MCL 722.27(1)(c) in this case." *Id*.

Moreover, the *Frowner* Court held that the father in that case did not relinquish his fundamental liberty interest in raising his child by stipulating to an order granting custody to the maternal grandparents. *Id*. at 385. "This Court has emphatically stated that a parent who voluntarily and temporarily relinquishes custody to foster his or her child's best interests should not suffer a penalty for this election. Indeed, we encourage such a practice." *Id*. (internal quotation marks, brackets, ellipses, and citations omitted). The father in *Frowner* was "no less fit to parent because he elected to permit the [maternal grandparents] to have 'primary custody' of the child for a time, during which [the father] enjoyed an opportunity to gradually bond with his son." *Id*.

Here, defendant is the natural mother of the children, whereas plaintiffs, the paternal grandparents, are third-party custodians. Although the Tennessee Department of Children's Services had at one point filed a petition to terminate defendant's parental rights, the petition was withdrawn and defendant's parental rights were never terminated. Therefore, the trial court

properly followed the above case law in placing the burden on plaintiffs to establish, by clear and convincing evidence, that the best interests of the children required placement with plaintiffs rather than with defendant. Only upon such a showing could defendant's fundamental constitutional right to parent her children be infringed. *Heltzel*, 248 Mich App at 27-28.

In addition, defendant should not suffer a penalty for having consented to the Tennessee order granting custody to plaintiffs. *Frowner*, 296 Mich App at 385. Defendant was no less fit to parent because she agreed to allow plaintiffs to have custody of the children for a time. Plaintiffs contend that the Tennessee order effectuated a *permanent* transfer of custody to them, rather than a temporary relinquishment of custody as described in *Frowner*. However, plaintiffs have failed to establish that the language of the Tennessee order effectuated a permanent transfer of custody. As discussed, defendant's parental rights were never terminated. Moreover, custody arrangements are always subject to modification. MCL 722.27(1)(c).

A copy of the Tennessee order is not in the lower court record, but plaintiffs have attached a copy of the order to their brief on appeal, and defendant has not objected. The copy of the order that plaintiffs have provided on appeal supports the trial court's conclusion that the relinquishment of custody was not permanent or irrevocable. After decreeing that legal and physical custody of two of the children was granted to plaintiffs, the order stated that plaintiffs "shall not return legal and/or physical custody to [defendant or the children's father] without first returning to this Court or another court of competent jurisdiction and obtaining an order granting [plaintiffs] the authority to return legal and/or physical custody to [defendant or the children's father]." The order contained an identical provision regarding the third child's custody granted to other relatives. The order thus expressly contemplated that, upon order of the Tennessee court or "another court of competent jurisdiction[,]" legal and physical custody of the children could be returned to defendant. Also, defendant indicated in her answer to plaintiffs' custody complaint in Michigan that, in consenting to the Tennessee order, she understood that she was agreeing to grant only temporary custody to plaintiffs and would not have agreed to it otherwise. Accordingly, defendant should not be penalized because she relinquished custody to plaintiffs. *Frowner*, 296 Mich App at 385.[2]

IV. EFFECT OF ORAL REQUEST FOR CUSTODY

Plaintiffs also suggest that the trial court erred in changing the custody of two of the children because there was no "child custody dispute" under MCL 722.27(1) in that no motion for change of custody was filed with respect to those two children. It is true that defendant did not file a *written* motion for change of custody. However, defendant did state *orally* that she wanted her children back. When asked by the court at the first hearing in St. Clair Probate Court, on March 2, 2011, whether she was okay with the children staying with plaintiffs,

[2] We note that *Hunter* states that the presumption in favor of natural parents does not allow a parent to do an end run around a previous order removing children from her custody, and that collateral estoppel may prevent this. 484 Mich at 276-277. That is not the case here. The trial court found (and we agree) that the Tennessee order was never meant to prevent defendant from seeking custody at a later time, so collateral estoppel does not apply here.

defendant, who was then proceeding in propria persona, said, "No, I'm not." Defendant stated that she loved her children, that she was not going to stop fighting for them, and that she "would like another review[.]"

The trial court repeatedly made clear that it was going to consider all three children together by taking jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*., with respect to the Tennessee order awarding custody of two children to plaintiffs and by deciding the custody action initiated by plaintiffs regarding the other child. Plaintiffs never objected to the trial court's exercise of jurisdiction. Later, at a June 2, 2011, hearing, defendant again made clear that she was seeking custody of her children: "I had the understanding that I would see my kids, you know, signing over custody to [plaintiffs], that I would see my kids and that would work on me getting them back and that has not happened, nor do they [plaintiffs] want that to happen. So, I have a huge concern." The court again made clear that it was considering all three children together, stating that it wanted the Friend of the Court (FOC) "to also kind of consolidate this case [regarding the oldest child's custody] with the cases on [the other two children] so that I've got all three cases, no matter where I end up on this one, in one ball. Because I want it, I want to know what's going on with everybody." At the August 23, 2011, hearing, the court again made clear that it was considering the custody of all three children:

> The custody Complaint is really just for [the oldest child] because he's the only one they left off the custody order that they made in Tennessee. We're also talking about if there's going to be any modification to custody orders that Tennessee made for [the other two children]. That's where we're at.

Throughout the proceedings, the court gradually increased defendant's parenting time for all three children as a group, thus reinforcing that the court was considering issues of custody or parenting time regarding all of the children together.

Plaintiffs have cited no authority stating that a parent's in-court, unequivocal oral request to get her children back from a third-party custodian is insufficient to constitute a motion for a change of custody. "This Court will not search for authority to sustain or reject a party's position. The failure to cite sufficient authority results in the abandonment of an issue on appeal." *Hughes v Almena Twp*, 284 Mich App 50, 71-72; 771 NW2d 453 (2009) (citations omitted). Therefore, this aspect of plaintiffs' argument is deemed abandoned. In any event, plaintiffs' argument lacks merit. The statute permitting a court to change custody does not state that a written motion to change custody is required. The statute merely provides that if a child custody dispute has been submitted as an original action or has arisen incidentally from another action, the court may "[m]odify or amend its previous judgments or orders for proper cause shown or because of change of circumstances. . . ." MCL 722.27(1)(c).[3] Here, a child custody

[3] As discussed above, this Court held in *Frowner*, 296 Mich App at 384, that the requirement of showing proper cause or a change of circumstances must yield to the presumption that a natural parent is the proper caretaker for a child. Thus, although the trial court here found that proper cause or a change of circumstances existed, such a finding was not required given that defendant

dispute was submitted to the court through plaintiffs' custody complaint with respect to the oldest child, through the Tennessee custody action over which the court took jurisdiction under the UCCJEA, and through defendant's oral requests. The record reflects that plaintiffs were in court when defendant made her oral requests, and were thus on notice that custody was at issue.

V. GUARDIANSHIP VERSUS CUSTODY

Plaintiffs next argue that the trial court improperly assimilated the oldest child's guardianship status with the custody statuses of the other two children, and that the court thus failed to accord meaning to the distinction between custody and guardianship by requiring plaintiffs to meet the same burden with respect to all three children. This argument lacks merit because the trial court recognized the distinction between guardianship and custody, and determined the custody of all three children through the custody complaint filed by plaintiffs with respect to the oldest child and by assuming jurisdiction under the UCCJEA of the custody determination with respect to the other two children. Moreover, plaintiffs' suggestion that a different burden of proof should apply to some of the children contravenes the case law discussed above. Under *Hunter*, *Frowner*, and *Heltzel*, in a custody dispute between a natural parent and a third person, the third person must prove by clear and convincing evidence that the children's best interests require placement with the third person rather than with the natural parent. *Hunter*, 484 Mich at 260, 263; *Frowner*, 296 Mich App at 384; *Heltzel*, 248 Mich App at 27-28. And, as discussed, custody is always subject to modification under MCL 722.27(1)(c), and defendant's parental rights were never terminated. Thus, plaintiffs' argument that the distinction between custody and guardianship status requires imposing different burdens for different children in this case is unavailing.

VI. FULL FAITH AND CREDIT FOR TENNESSEE ORDER

Plaintiffs argue that the trial court failed to accord full faith and credit to the Tennessee custody order, and asserts that the Tennessee court had jurisdiction over the parties. In response, defendant asserts that the trial court properly modified the Tennessee custody order under the UCCJEA. The Full Faith and Credit Clause, US Const, art IV, § 1, provides, in relevant part: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The UCCJEA, like the Full Faith and Credit Clause, requires Michigan courts to recognize other states' judgments. *Nash*, 280 Mich App at 119. Plaintiffs assert generally that the trial court failed to give full faith and credit to the Tennessee order but fail to state how the trial court failed to accord the appropriate recognition to the Tennessee order and fail to explain why the trial court lacked authority under the UCCJEA to modify the Tennessee order. "An appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position. Insufficiently briefed issues are deemed abandoned on appeal." *Blackburne & Brown Mtg Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004) (internal quotation marks and citations omitted).

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is a natural parent and plaintiffs are third persons; indeed, the trial court itself recognized that its finding of proper cause or a change of circumstances was unnecessary in light of the holding in *Frowner*.

Moreover, it is undisputed that plaintiffs themselves initiated the proceedings in Michigan by seeking guardianships for all three children in Jackson Probate Court, requesting that the cases be transferred to St. Clair Probate Court, and then filing a custody complaint with respect to one of the children in St. Clair Circuit Court. Plaintiffs therefore waived this claim because they expressly acquiesced in Michigan courts' exercise of jurisdiction to determine guardianship and custody issues regarding the children. See *LME v ARS*, 261 Mich App 273, 277; 680 NW2d 902 (2004) (holding that the petitioners waived a challenge to the Michigan trial court's exercise of jurisdiction to determine child support under Michigan law because "it was petitioners who petitioned the Michigan trial court to determine the appropriate amount of child support. This intentional resort to the Michigan courts waives their appellate claim that child support should have been decided by the New York court.").

It is true that "[s]ubject-matter jurisdiction is not subject to waiver because it concerns a court's abstract power to try a case of the kind or character of the one pending and is not dependent on the particular facts of the case." *Id*. (internal quotation marks omitted). However, plaintiffs have not presented a challenge to the trial court's abstract power to decide child-custody disputes. It is beyond dispute that Michigan courts possess the authority to decide child custody matters. Cf. *id*. at 278 ("It is uncontested that Michigan courts have jurisdiction to award child support."). Circuit courts "have original jurisdiction in all matters not prohibited by law[.]" Const 1963, art 6, § 13. "The circuit court's subject-matter jurisdiction will be presumed unless denied by constitution or statute." *LME*, 261 Mich App at 279. MCL 722.26(2) provides that a child custody "action shall be submitted to the circuit court. . . ." "[T]he Child Custody Act governs all child custody disputes and gives the circuit court continuing jurisdiction over custody proceedings. MCL 722.26." *Harvey v Harvey*, 470 Mich 186, 189; 680 NW2d 835 (2004). Because circuit courts possess the abstract power to determine custody matters, any argument that the trial court lacked authority under the UCCJEA to modify the Tennessee custody order would be specific to the facts of this case. Cf. *People v Kiyoshk*, 493 Mich 923; 825 NW2d 56 (2013) (holding that the defendant's age when an offense was committed did not present an issue of subject-matter jurisdiction because Michigan circuit courts are courts of general jurisdiction and possess subject-matter jurisdiction over felony cases, and because the "[d]efendant's age when the offense was committed does not pertain to the kind or character of the case, but rather constitutes a defendant-specific, particular fact.") (internal quotation marks omitted).

Accordingly, plaintiffs here have not presented a challenge to the trial court's abstract power to decide cases of the kind or character of the one pending, and their appellate argument thus does not amount to a claim that the trial court lacks subject-matter jurisdiction. Hence, plaintiffs' initiation of the proceedings in Michigan waives their appellate claim on this issue. *LME*, 261 Mich App at 277.

VII. TRIAL COURT'S FACTUAL FINDINGS

Plaintiffs also challenge various factual findings of the trial court. First, plaintiffs assert that the trial court's finding that defendant had demonstrated her ability and willingness to be involved in a regular and sustained relationship with the children over the preceding 18 months was not supported by the record because defendant had been having parenting time with the

children for only a few months. However, the evidence does not clearly preponderate in the opposite direction of the trial court's finding. *In re AP*, 283 Mich App at 590.

The record reflects that defendant was afforded gradually increasing parenting time with the children for nearly a year before the trial court's custody decision and that she acted responsibly throughout. Defendant testified at the evidentiary hearing that she has always cared for her fourth child over whom she has always had custody, and that she would have no problem providing the same level of care to her other three children. Defendant said that she loves her children dearly and wants to raise them with her fourth child. The court also interviewed the children in chambers. Moreover, from the first hearing in St. Clair Probate Court, in March 2011, defendant demonstrated her emphatic interest in reestablishing her relationship with her children. When asked by the court whether she was okay with the children staying with plaintiffs, defendant said, "No, I'm not." Defendant stated that she loved her children, that she was not going to stop fighting for them, and that she "would like another review[.]" Thus, the trial court's finding that defendant had demonstrated an ability and willingness to be involved in a regular and sustained relationship with the children is supported by the record and the trial court's credibility choices, to which this Court must defer. *Shann*, 293 Mich App at 305.

Next, plaintiffs argue that the trial court failed to consider the children's established custodial environment with plaintiffs. In particular, plaintiffs argue that the trial court erred in stating that although the children had an established custodial environment with plaintiffs, that fact "does not matter in this instance. . . ." As discussed above, however, the statutory presumption in favor of the established custodial environment must yield to the statutory parental presumption. *Hunter*, 484 Mich at 260, 263; *Frowner*, 296 Mich App at 384; *Heltzel*, 248 Mich App at 27-28. The court correctly explained this point to plaintiffs in the portion of the transcript cited by plaintiffs on appeal.

Plaintiffs further assert that the trial court improperly refused to consider the established custodial environment when analyzing the best interest factors in MCL 722.23 and making its custody determination. The record reflects, however, that the trial court carefully and comprehensively analyzed the best interest factors, explaining what evidence it had considered and how that evidence supported the trial court's findings. Moreover, when analyzing factor (d), the length of time the children have lived in a stable and satisfactory environment and the desirability of maintaining continuity, the court noted that the children had lived with plaintiffs since 2009, though it expressed concern that plaintiffs had moved several times during that time period, and concluded that the children had lived in a safe and satisfactory environment. Likewise, in analyzing factor (e), the permanence, as a family unit, of the existing or proposed custodial home or homes, the court again acknowledged that plaintiffs "have certainly made a home for themselves and the children in different locations, but still a home." The court was concerned, however, by plaintiffs' failure to include the fourth child in the family unit. Thus, the trial court did not fail to consider relevant facts regarding the established custodial environment when making its custody determination.

Finally, plaintiffs argue that the trial court's findings regarding various best interest factors lacked factual support and reflected bias emanating from the FOC report. The record does not support this contention. To support this argument, plaintiffs make various assertions.

Plaintiffs state that the trial court refused to allow the fact that the children had lived with plaintiffs since 2009 to gravitate in favor of plaintiffs with respect to factor (d), the length of time that the children have lived in a stable and satisfactory environment and the desirability of maintaining continuity. However, in analyzing this factor, the trial court noted that plaintiffs had moved several times, which made it more difficult for defendant to reestablish her relationship with the children, that defendant's fourth child had lived in a stable and satisfactory environment with defendant, and that it was important for the children to maintain their relationships with everyone. Given these additional facts cited by the trial court, the evidence did not clearly preponderate in the opposite direction of the trial court's finding that factor (d) did not favor either party.

Plaintiffs assert that the trial court offered conjecture that defendant did not have much of an opportunity to provide guidance and support for the children, but that she would do so if granted that opportunity. However, this finding was not based on conjecture but on defendant's testimony that she has always cared for her fourth child and that she would have no problem providing the same level of care to the other three children, and that she loves her children dearly and wants to raise them with the fourth child. And as discussed, defendant had successfully participated in gradually increasing parenting time for nearly a year. There is no basis to upset the trial court's finding on this point. *Shann*, 293 Mich App at 305.

Plaintiffs contend that the trial court "[i]nexplicably" found that factor (e), the permanence, as a family unit, of the existing or proposed custodial home or homes, favored defendant because she would include her fourth child in the family unit with the other children. However, the trial court adequately explained its reasoning on this point, noting its concern that plaintiffs had excluded the fourth child from the family unit, even though he is their biological grandchild and a whole sibling of the other children, and that defendant was more willing to acknowledge that fact and include him in the family unit. The trial court's finding that this factor favored defendant was not against the great weight of the evidence.

Plaintiffs assert, without citing any particular portion of the record, that the trial court's decision "closely parrot[ed]" the FOC report. However, the trial court's analysis is not identical to the FOC report, and the trial court engaged in its own comprehensive analysis of the best interest factors. The fact that the trial court largely agreed with the FOC's findings and its ultimate recommendation to award custody to defendant does not establish that the trial court's decision lacked factual support or that the trial court or the FOC were biased against plaintiffs. An unfavorable ruling by itself does not support the existence of bias. *Cain v Dep't of Corrections*, 451 Mich 470, 495-496; 548 NW2d 210 (1996). Accordingly, plaintiffs' argument on this point lacks merit.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Douglas B. Shapiro