

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES WRIGHT,

Plaintiff-Appellant,

v

MONICA MARIE WRIGHT,

Defendant-Appellee.

UNPUBLISHED

October 15, 2013

No. 314022

Washtenaw Circuit Court

LC No. 06-000800-DM

Before: SERVITTO, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Plaintiff-father appeals as of right from a circuit court order denying him custody of his minor child that he shares with defendant-mother, and permitting him only supervised parenting time with the child. We affirm.

Plaintiff first argues that the trial court abused its discretion when it refused to award plaintiff custody of the child and unsupervised parenting time. We disagree. With regard to child custody proceedings, which includes orders concerning parenting time, “all orders and judgments of the circuit court shall be affirmed on appeal unless the trial court made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.” MCL 722.28; *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005).

In this case, plaintiff does not dispute that the minor child had an established custodial environment with defendant. Accordingly, plaintiff was required to show by clear and convincing evidence that granting him physical custody of the minor child was in her best interests. *Phillips v Jordan*, 241 Mich App 17, 25; 614 NW2d 183 (2000). In determining whether a change of custody is in the child’s best interests, the trial court must consider the 12 factors listed in MCL 722.23. *Id.* at 26. Similarly, “[p]arenting time shall be granted in accordance with the best interests of the child.” MCL 722.27a(1). The best-interest factors listed in MCL 722.23 and the factors listed in MCL 722.27a(6) are relevant to determining a child’s best interests with regard to parenting time decisions. *Shade v Wright*, 291 Mich App 17, 31; 805 NW2d 1 (2010).

Here, the trial court methodically went through each of the factors in MCL 722.23 and MCL 722.27a(6) and found, based on those factors, that it was in the minor child’s best interests that she remain in defendant’s custody and that plaintiff receive supervised parenting time. On

appeal, plaintiff does not challenge the trial court's specific findings under the statutory factors. Instead, he challenges the trial court's findings that the minor child's older sister and older brother lacked credibility¹ and that plaintiff practiced parental alienation with regard to the older sister and older brother. The trial court often relied on those two findings in making its best interests determinations under MCL 722.23 and MCL 722.27a(6).

With regard to plaintiff's credibility arguments, given the trial court's superior position to make credibility determinations, we defer to the trial court's judgment. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). Based on the record, there is no indication that the trial court's factual findings regarding credibility clearly preponderate in the opposite direction to warrant us to substitute our judgment for that of the trial court. See *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994). Accordingly, we decline plaintiff's invitation to reassess the trial court's credibility determinations.

With regard to the finding of parental alienation, the trial court relied on the discrepancy between the older sister's very favorable description of defendant in a February 8, 2010 school paper² and the older sister's very negative testimony during the evidentiary hearing regarding defendant's parenting. The trial court found that the only identifiable influence that came into the older sister's life between February 8, 2010, and the time of the evidentiary hearing was that the older sister spent that time almost exclusively with plaintiff. Also, the older sister claimed that defendant's threat to poke her eye out with a fork scared her and made her live in fear, and the older brother testified that he felt unsafe in the neighborhood surrounding defendant's boyfriend's Detroit home. However, defendant testified that her threat to poke out the older sister's eye was said in a joking manner and that the older sister understood it as such, and both defendant and her boyfriend testified that the older brother played outside with friends in the boyfriend's Detroit neighborhood. Accordingly, the trial court found that the older sister's and the older brother's testimony inaccurately reflected the more positive reality of their environment with defendant, and that their testimony revealed that their memories had been distorted by plaintiff. Plaintiff fails to recognize the bases for the trial court's factual findings related to parental alienation. Instead, plaintiff claims that the trial court found that plaintiff practiced parental alienation based solely on defendant's statement at the April 8, 2011 hearing that plaintiff showed the minor child a recording depicting defendant in an unfavorable light. This argument has no support in the record. Based on the record before us, the evidence does not clearly preponderate against the trial court's finding that plaintiff practiced parental alienation. *Fletcher*, 447 Mich at 879.

Because plaintiff's substantive arguments fail, and he does not directly challenge the trial court's specific findings under the factors listed in MCL 722.23 and MCL 722.27a(6), there is no

¹ The minor child's older sister and older brother generally provided testimony favorable to plaintiff.

² The older sister's school paper described defendant's qualities in glowing prose, including favorable references to defendant's ability to provide physical necessities and emotional support. The older sister concluded by stating that defendant was the best mother in the world.

indication that the trial court's findings that it was in the minor child's best interests that she remain with defendant and that plaintiff receive supervised parenting time were against the great weight of evidence. MCL 722.28; *Pickering*, 268 Mich App at 5. The trial court did not abuse its discretion in maintaining the minor child's custody with defendant and granting plaintiff supervised parenting time.

Plaintiff also argues on appeal that the trial court demonstrated personal bias toward plaintiff and should be disqualified from handling further proceedings in this case. We disagree. Plaintiff did not move to disqualify the trial judge for the reasons asserted on appeal, which is generally required to preserve this issue for appellate review. See MCR 2.003; *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009). Pursuant MCR 7.216(A)(7), this Court has the authority to reassign the case to a different judge in situations where substantial prejudice to a party has resulted from the trial court's rulings. See *Hawkins v Murphy*, 222 Mich App 664, 674; 565 NW2d 674 (1997). However, we do not find that substantial prejudice to defendant has resulted from the trial court's ruling.

Plaintiff must show that the rulings displayed "a deep-seated favoritism or antagonism that would make fair judgment impossible," and plaintiff has failed to meet this burden. *Henry*, 282 Mich App at 680 (quotation marks and citation omitted). Plaintiff argues that animosity toward him is apparent from statements that trial court made regarding his character. However, the statements that plaintiff references were either conclusions based on the facts presented to the trial court, or a statement of the trial court's role in determining the best interests of the child, and they do not display a "deep-seated favoritism or antagonism." Plaintiff also argues that the trial court's rulings regarding hearsay evidence demonstrated bias toward plaintiff. However, plaintiff does not argue that the trial court's rulings were erroneous, and even if they were, that fact alone would be insufficient to show bias or prejudice. Finally, plaintiff briefly suggests that the trial court's final judgment should be reversed because of the personal bias shown toward plaintiff. However, plaintiff offers no meaningful argument on this issue; thus, we consider it abandoned. *Reed v Reed*, 265 Mich App 131, 163; 693 NW2d 825 (2005). Accordingly, we find that the trial court was not biased toward defendant.

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

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Donald S. Owens