

STATE OF MICHIGAN
COURT OF APPEALS

GARY F. WILLIAMS

Plaintiff-Appellee,

v

MARIJEAN WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

August 27, 1996

No. 187128

LC No. 97-75232-DM

Before: Doctoroff, C.J., and Wahls and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from an order awarding physical custody of the parties' children to plaintiff father. On appeal, she argues that there was insufficient evidence to justify the trial court's findings. We affirm.

The trial court's findings of fact in child custody cases should be affirmed unless those findings are against the great weight of the evidence. This means that this Court should not substitute its judgment for the judgment of the trial court on questions of fact unless the evidence clearly preponderates in the opposite direction. *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994). In custody disputes, a court's main concern is the best interest of the child. *Heid v AAASulewski (Aft Rem)*, 209 Mich App 587, 595; 532 NW2d 205 (1995). In determining the best interest of the child, a court uses the factors listed in MCL 722.23; MSA 25.312(3). *Wiechmann v Wiechmann*, 212 Mich App 436, 439; 538 NW2d 57 (1995).

The trial court addressed all eleven factors in the "best interest of the child" determination. The trial court found the parties equal on five of the factors and found that three other factors had no bearing on this case. The trial court found factor (b) favored plaintiff and factors (a) and (i) favored defendant. The trial court placed dispositive weight on factor (b) and determined that plaintiff had shown by clear and convincing evidence that he could serve the best interests of the children. Based on factor (b), the trial court awarded physical custody to plaintiff.

Factor (b) is the capacity and disposition of the parties involved to give the children 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); MSA 25.312(3)(b). The trial court focused on the guidance prong of this factor, because it determined that the children needed guidance and discipline to work at their potential in school and to graduate. See *Harper v Harper*, 199 Mich App 409, 414-415; 502 NW2d 731 (1993). The trial court found that although defendant did contact the children's teachers, those contacts did not translate into the guidance and discipline necessary to have the children work at their potential, and that she accepted the children's poor performance.

Although defendant testified about her efforts to help her children, testimony from the teachers and counselor of each child establishes that each child did not turn in homework assignments and that the children were not working at their academic potential. Furthermore, both parties expressed concern for their children's performance, but the trial court found that plaintiff provided the custodial environment most likely to ensure that the children would perform better in school and graduate.

First, "the trial court's failure to address the myriad facts pertaining to a factor does not suggest that the relevant among them were overlooked." *Fletcher, supra* at 883-884. Second, "[o]n review, considerable deference is given to the superior vantage point of the trial judge respecting issues of credibility and preferences under the statutory factors." *Thames v Thames*, 191 Mich App 299, 305; 477 NW2d 496 (1991). Hence, we are not convinced that the evidence clearly preponderates in the opposite direction. *Fletcher, supra* at 878. Therefore, the trial court's finding of fact regarding the best interest of the children is not against the great weight of the evidence.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Myron H. Wahls
/s/ Michael R. Smolenski