STATE OF MICHIGAN

COURT OF APPEALS

SHARON THOMPSON GOODRICH, a/k/a SHARON T. DOWDY, Plaintiff-Appellee, v GREGORY MORRIS GOODRICH, Defendant-Appellant.	UNPUBLISHED July 18, 2006 No. 265816 Ingham Circuit Court LC No. 98-005999-DZ

Before: Donofrio, P.J., and O'Connell and Servitto, JJ.

PER CURIAM.

In this domestic relations action, defendant appeals as of right a trial court's award of custody, parenting time, and child support. We affirm.

I

Defendant first argues that the trial judge was biased. We disagree. Where a hearing under MCR 2.003 is conducted on the issue of a court's bias, the chief judge's findings are reviewed for an abuse of discretion. *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996). "[T]he party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality." *Id.* at 497. Unless the court improperly considers extrajudicial information, the court's words and actions must '"display a deep-seated favoritism or antagonism that would make fair judgment impossible.'" *Id.* at 496, quoting *Liteky v United States*, 510 US 540, 555; 114 S Ct 1147; 127 L Ed 2d 474 (1994). "[D]isqualification for bias or prejudice is only constitutionally required in the most extreme cases." *Cain*, *supra* at 498.

In support of his claims of bias, defendant only points to the various rulings made by the circuit court. Defendant has failed to demonstrate personal bias rooted in extrajudicial circumstances, *Cain*, *supra* at 495-496, and has also failed to establish any other scenario demonstrating extreme, deep-seated antagonism. *Cain*, *supra* at 495-496.

For example, defendant argues that the trial court's "punishment" of him by suspending his parenting time, without determining the best interests of the children, evinces bias. However, this "punishment" was actually the court's response to defendant's decision to repeatedly ignore the trial court's order that the parties undergo psychological evaluation. Because the court's

action was directly related to defendant's disobedience, it does not demonstrate bias, and the chief circuit judge did not abuse his discretion in concluding likewise.

Defendant further argues that the court was biased by virtue of its sua sponte order of a custody hearing, but the custody hearing was initially scheduled at defendant's behest. Despite defendant's withdrawal of his objections, MCL 552.507(4) empowered the court to conduct a de novo custody hearing on its own motion. The court explained its exercise of discretion as an attempt to give finality to what otherwise had been lengthy and tortured proceedings. We agree with the chief judge's conclusions that the hearing did not evidence bias.

Finally, defendant argues that the trial court's opinion illustrates its bias. After reviewing the opinion, we disagree. The trial court carefully and clearly reflected its factual findings, which were based upon the record evidence and nothing more. Defendant simply fails to demonstrate any "deep-seated" antagonism, or any adverse opinion of defendant that was not justified by the record.

II

Defendant next argues that the circuit court erred in its custody award. We disagree. In child custody disputes, we review the trial court's findings of fact regarding the best interest factors under the "great weight of the evidence" standard. *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 451; 705 NW2d 144 (2005). The court's ultimate determination as to custody is reviewed for an abuse of discretion. *Id*. The party proposing the modification bears the burden of proof by clear and convincing evidence. *Phillips v Jordan*, 241 Mich App 17, 22; 614 NW2d 183 (2000). Defendant challenges the trial court's findings on 11 of the 12 best interest factors. Each of the factors at issue will be considered in turn.

Best Interest Factor B: "The 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). Defendant argues that the circuit court erred in finding in plaintiff's favor. Plaintiff testified that the church she currently attends is the same church she attended as a child. She and the children attend regularly. Pursuant to the marital agreement, plaintiff has been consistent in the children's doctrinal upbringing, including with regard to their exposure to popular culture, their activities, and their clothing. Conversely, defendant no longer attends the parties' marital church, but operates his own out of the home in which he is currently living. Further, defendant testified that he exposes the children to popular culture, engages them in activities not allowed during his marriage to plaintiff, and dresses them differently. Defendant's new wife substantiated this testimony. Further, defendant acknowledged that he was charged with embezzlement arising out of his removal of funds from the children's school. Evidence indicated that defendant removed one of the children from this school during that same time period. This is sufficient to raise an inference that defendant was not motivated by the child's best interests in removing her from the school. Defendant fails to demonstrate that the trial court's finding on this factor was against the great weight of the evidence. *McIntyre*, *supra*.

Best Interest Factor C: "The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs." MCL 722.23(c).

Defendant argues that the circuit court improperly weighed the competing evidence on this factor. Defendant testified that he declared bankruptcy in 2003. He testified that he currently lives in and operates a church out of a friend's home, and, apart from that, he is voluntarily unemployed. This friend testified that, while in his home, defendant has paid him minimal rent and nothing in utilities. Defendant has borrowed thousands of dollars from friends without repayment and owes his former landlords thousands more.

Defendant's circumstances may reasonably be viewed as casting considerable doubt on his capacity and disposition to consistently meet the children's material needs, while plaintiff's household appears to be adequately supported. Therefore, the trial court's finding on this factor is not against the great weight of the evidence.

Best Interest Factor D: "The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(d). Defendant argues that the court's findings of fact on this factor were erroneous. Defendant's various landlords testified that defendant was repeatedly evicted from and changed residences during the preceding five years. He resided with a friend, having no home of his own. Defendant has offered his children no continuity of environment. Defendant correctly observes that plaintiff has moved three times since the parties' divorce. However, while plaintiff initially resided with her parents, she has lived with her husband since their marriage. They moved once during that time when they purchased a home. This home has remained their residence. In other words, while defendant's tenancies have expired upon his various evictions, plaintiff has created a stable environment for the children that will remain so for the foreseeable future. Further, a court-ordered psychologist testified that the children are uneasy in defendant's current residence, that they do not have a good relationship with defendant's wife, and are cognizant of and less comfortable living with an unrelated man. Therefore, the trial court's findings do not run contrary to the great weight of the evidence.

Best Interest Factor E: "The permanence, as a family unit, of the existing or proposed custodial home or homes." MCL 722.23(e). Defendant argues that the circuit court erred in stressing the acceptability rather than the permanence of the family unit. Defendant's characterization of the court's opinion is incorrect. Our Supreme Court has observed that this factor focuses on a "child's prospects for a stable family environment." *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996). It concerns the permanence rather than the acceptability of the family home. *Id.* at 464-465. The trial court's conclusion that plaintiff offers the children a stable home environment is supported by the record. Plaintiff's husband has two children from a prior marriage who live with them in a joint custodial arrangement. They recently purchased a home. Every indication suggests that plaintiff's custodial environment is stable as a family unit. Indeed, evidence indicated that the children view plaintiff, her husband, and his children as their family unit. Conversely, the record indicates that defendant has failed to provide a stable family unit, and his prospects for doing so are dubious. Defendant currently lives with a friend. There is no indication of the permanence of this relationship. Defendant has been evicted from every tenancy he has occupied in the prior five years, which further undermines the stability of the custodial home he provides. We find no error in the trial court's findings.

Best Interest Factor F: "The moral fitness of the parties involved." MCL 722.23(f). Defendant first argues that the court erred in failing to consider plaintiff's false allegations of

sexual abuse against him. However, the record does not substantiate defendant's claim. Defendant failed to present any evidence that plaintiff initiated the investigation.

Defendant also argues that the court failed to consider plaintiff's alleged racial bias. In fact, the court considered this allegation and concluded that it had not been proven. Testimony indicated that plaintiff precluded one of the children from participating in a multicultural school event, but circumstances indicate that this could have been based on religious, not racial, concerns. Further, plaintiff testified that she has had "close relationships" with African-Americans, Mexicans, other Hispanics and Filipinos. Because equally valid inferences about plaintiff's racial perspectives may be drawn from this evidence, the court's conclusion is not against the great weight of the evidence.

Defendant argues that the circuit court erred in considering his various financial difficulties, including the embezzlement charge, his borrowing money, and his failure to adhere to the obligations under his tenancies. We disagree.

In weighing this factor against him, the circuit court primarily relied on evidence that defendant was dishonest with his landlords, failed to meet his rental obligations, embezzled money from his child's school, and manipulated two acquaintances to his financial advantage. While the conduct relied on by the trial court was directed at third parties, the trial court correctly inferred a pattern of manipulative behavior that extended to defendant's dealings with the court and its officers. The record demonstrated defendant's attempts to bully and deceive plaintiff and court officials into allowing him more parenting time and other parenting benefits. This tendency also leaked into defendant's relationship with the children, because he often manipulated the children against their mother. Under the circumstances, the trial court correctly weighed this best interest factor in plaintiff's favor, because the moral considerations were relevant to defendant's role as a parent. *Fletcher v Fletcher*, 447 Mich 871, 887 n 6; 526 NW2d 889 (1994).

Best Interest Factor G: "The mental and physical health of the parties involved." MCL 722.23(g). Defendant argues that the court erroneously weighed his intermittent physical health issues against him. However, defendant testified that he has taken multiple extended periods of leave from his employment because he has "ongoing" issues with his ankle and sinus cavity, and has undergone "multiple surgeries" and weekly "physical therapy" as a result. Over the pendency of these and related proceedings, defendant has sought multiple adjournments, citing medical problems. Therefore, the trial court's findings were strongly supported by the record.

Defendant also argues that the court improperly concluded that his mental health would impact the children. We disagree. A psychologist performed an evaluation of the parties and children. Regarding plaintiff, the psychologist found nothing significant that was alarming regarding plaintiff's parenting, personality, or her capacity to maintain custody. Regarding defendant, however, the psychologist found characteristics including anxiety; an exploitative and manipulative nature; self-centeredness; sexual, behavioral and emotional impulsivity; indifference to others' needs; and anger. According to the expert's findings, defendant presents a socially acceptable exterior that erodes upon closer examination, resulting in "fairly shallow interpersonal relationships." The children view his home as "filled with a lot of anger." Therefore, defendant's claim of error lacks merit.

Best Interest Factor H: "The home, school, and community record of the child." MCL 722.23(h). Defendant argues that the court improperly concluded that his home causes the children to feel insecure. However, the psychologist testified that the children view plaintiff's home as safe and secure and that this is not true of defendant's home. According to the psychologist, the children experience nightmares more frequently while in defendant's home and view it as "filled with a lot of anger." They are cognizant of and less comfortable with living with an unrelated man. Nevertheless, defendant argues that the court failed to acknowledge certain evidence in assessing the children's school and community record However, the court was not required to "comment upon every matter in evidence or declare acceptance or rejection of every proposition argued." *Baker v Baker*, 411 Mich 567, 583; 309 NW2d 532 (1981). The court's findings were supported by the record evidence.

Best Interest Factor I: "The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference." MCL 722.23(i). The court interviewed the children and declined to weigh this factor. Defendant argues that the court did not rate this factor because the children expressed a preference to live with both parents. Defendant's argument is meritless. The trial court's failure to rate this factor is the functional equivalent of its having rated this factor equally, the precise outcome urged by defendant.

Best Interest Factor J: "The 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). Defendant argues that, because the court found that the parties' reciprocate animosity, this factor should be weighed equally. While this observation is accurate, the court's findings indicate that it considered defendant the cause of this animosity. Plaintiff and her husband testified that plaintiff often mollifies defendant concerning parenting time, the children's schooling, medical care, and extracurricular activities. They both testified to defendant's demeaning attitude and actions toward plaintiff. The court found their testimony credible, a determination afforded deference on appeal. MCR 2.613(C). Additionally, a FOC parenting time advocate testified that defendant exhibited confrontational and domineering behavior during parenting time meetings. The court's findings on this factor comported with the great weight of the evidence.

Defendant further challenges the court's failure to acknowledge evidence indicating that plaintiff and defendant are civil toward one another. However, the court's disregard of this evidence was proper. Evidence supporting defendant's capacity to reciprocally facilitate strong parental relationships came from witnesses who, as the court observed, had not known defendant at great length or in depth. As the trier of fact, the court was obligated to determine the weight and credibility warranted by the evidence presented. *Gorelick v Dep't of State Hwys*, 127 Mich App 324, 333; 339 NW2d 635 (1983).

Best Interest Factor K: "Domestic violence, regardless of whether the violence was directed against or witnessed by the child." MCL 722.23(k). Defendant argues that the court erred in considering an isolated incident in which he attacked plaintiff's husband in the children's presence. However, nothing in MCL 722.23(k) indicates that a single incident of domestic violence cannot support a finding under this factor. Accordingly, the court did not err in considering it.

Best Interest Factor L: "Any other factor considered by the court to be relevant to a particular child custody dispute." MCL 722.23(l). Defendant argues that the court utilized this factor as an opportunity to disparage and belittle him. However, substantial evidence supported the trial court's conclusion that defendant was contentious, belittling, abrasive, controlling, and domineering. Thus, the court's findings as to this best interest factor are not against the great weight of the evidence. *MacIntyre*, *supra* at 451.

Ultimate Custody Determination: The court's ultimate custody determination awarded plaintiff sole legal and physical custody. Defendant has not successfully challenged the court's findings as to a single factor. The court correctly concluded that plaintiff established, by clear and convincing evidence, that a change in the custodial environment was in the children's best interest. *Phillips*, *supra*. Because at least nine of the twelve factors favored plaintiff, while none favored defendant, the court's custody award was not an abuse of discretion. *MacIntyre*, *supra* at 451.

III

Defendant next argues that the court erred in its parenting time order. We disagree. Parenting time orders are reviewed de novo. *Brown v Loveman*, 260 Mich App 576, 591; 680 NW2d 432 (2004). However, such orders will not be reversed "unless the trial court made findings of fact against the great weight of the evidence, committed a palpable abuse of discretion, or committed a clear legal error." *Id.* at 591-592. In determining an appropriate parenting time schedule, the court may consider, in addition to statutorily enumerated factors, any factor it deems relevant. MCL 722.27a(6)(i). "The controlling factor in determining visitation rights is the best interests of the child." *Deal v Deal*, 197 Mich App 739, 742; 496 NW2d 403 (1993).

As discussed, the court's findings regarding the children's best interests were not against the great weight of the evidence. The ultimate parenting time award was based on the court's discretion in its analysis of the children's best interests. The psychologist recommended "limited" parenting time, "no more than every other weekend." This recommendation is supported by the record. The evidence indicated defendant's willingness to be verbally and even physically confrontational in the presence of the children. It demonstrated his abrasiveness, his propensity to be domineering and controlling, and to act on his anger. Further evidence indicated these characteristics are manifest in many of his relationships. Evidence of the children's perception that defendant's home is "filled with a lot of anger" is buttressed by this additional evidence. The court's adoption of the psychologist's recommendation is supported by the record and, as has been established, was in the best interests of the children. *Deal*, *supra*.

Defendant argues that the court's order is not of "a frequency, duration, and type" likely to promote a relationship between him and the children. MCL 722.27a(1). However, upon his completion of a parenting class, defendant is entitled to exercise overnight stays with the children. Further, upon his compliance in full with the court's order, defendant is entitled to petition for an increase in his parenting time. Under the circumstances, defendant's parenting time was reasonably calculated to promote his relationship with his children, particularly given his opportunity to increase his time when he complies with the court's order. MCL 722.27a(1).

IV

Finally, defendant argues that the court erred in its child support award, but relies on a misreading of the record. "Modification of a child support order is a matter within the trial court's discretion," and is reviewed for an abuse of that discretion. *Burba v Burba*, 461 Mich 637, 647; 610 NW2d 873 (2000). Defendant argues that the trial court failed to hold a de novo hearing on defendant's objections to the referee's recommendation, but it did. In fact, the objections defendant initially raised to the recommendation were not directed at child support or its underlying basis, but at the referee's recommendation on custody and parenting-time issues. During the de novo hearing, defendant personally testified that his income was at least $3,000 more than he argues on appeal. Defendant's arguments regarding arrearages are likewise unsupported by the record. In the end, the only objections to the financial basis for the recommendation came from plaintiff, who argued that it was unfair to impute income to her, so defendant's arguments are tardy and ultimately unfounded. Although defendant argues that the trial court failed to properly calculate the guidelines, he offers no citation to authority or the record to support his contention. An appellant may not simply "announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Under the circumstances, the trial court's opinions and orders sufficed to reflect its valid findings regarding child support issues. See *Varga v Varga*, 173 Mich App 411, 416; 434 NW2d 152 (1988).

Affirmed.

/s/ Pat M. Donofrio
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto