STATE OF MICHIGAN

COURT OF APPEALS

SHEILA BRADFORD, Plaintiff-Appellant,	UNPUBLISHED June 28, 2007
v	No. 274065 Washtenaw Circuit Court
JOHNNY WAYNE BRADFORD, Defendant-Appellee.	LC No. 04-000088-DM

Before: Talbot, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's denial of her motion to change custody of the parties' children. We affirm.

The parties were divorced in July 2004. During their marriage, they had three children: Daniel, born December 20, 1988; Elizabeth (Liz), born September 8, 1993; and Luke, born April 6, 1996. The judgment of divorce awarded the parties joint legal and physical custody of the three minor children. The parties agree that the court-ordered parenting schedule was confusing and stressful for the entire family.

In March 2005, plaintiff filed a motion for sole custody of the parties' three children. Defendant opposed plaintiff's motion and, in May 2005, he filed a counter-motion for sole physical custody. Following an evidentiary hearing, the trial court ordered the parties to retain joint legal custody of all three children. The trial court awarded defendant primary physical custody of Daniel, but ordered that the parties continue to share joint physical custody of Liz and Luke. The trial court also ordered the parties to simplify the parenting schedule, to confer about major parenting decisions, and to complete a training program for joint custodians.

On appeal, plaintiff claims that the trial court should have granted her request for sole custody of Liz and Luke. We disagree. Three standards of review apply in custody cases. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003), citing *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). Questions of law are reviewed for clear legal error, findings of fact are reviewed under the great weight of the evidence standard, and discretionary rulings, such as custody decisions, are reviewed for an abuse of discretion. *Vodvarka*, *supra* at 507-508.

A custody award may be modified on a showing of proper cause or the showing of a change of circumstances that establishes that the modification is in the child's best interest. MCL 722.27(1)(c); *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000). When modification of a custody order would change the established custodial environment of a child, as is the case here, the moving party must show that the change is in the child's best interest by clear and convincing evidence. MCL 722.27(1)(c); *Mason v Simmons*, 267 Mich App 188, 195; 704 NW2d 104 (2005). Generally, a trial court determines the best interests of a child by weighing the 12 statutory factors set out in MCL 722.23. But, when contemplating whether joint custody is in the best interest of a child, a trial court must also consider whether "the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." MCL 722.26a(1)(b).

Plaintiff claims that the trial court committed clear legal error by misinterpreting and misapplying best interest factor (j). We disagree. Factor (j), MCL 722.23(j), considers 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." In addressing factor (j), the trial court stated that:

> Each of these parents is willing to share the children with, and foster and encourage a relationship with, the other parent. . . . . They are each willing to foster and encourage a type of relationship. Most importantly, they both appear to be willing to follow the court orders; therefore, the Court finds that they will equally serve the best interest of the children . . . .

Plaintiff complains that, in addressing factor (j), the trial court failed to discuss the "ability" of the parties to facilitate and encourage a "close and continuing" relationship between the children and the other party. While plaintiff is correct that the trial court did not quote MCL 722.23(j) verbatim on the record, there is no evidence that the court misinterpreted or misapplied the language in factor (j). The record showed that there were occasions when both parents were unwilling to cooperate with the other and there was conflicting evidence as to plaintiff's claim that defendant disparaged plaintiff's relationship with the children. The trial court concluded, however, that the parties were equally willing to foster and encourage a relationship between the children and the other party and were equally willing to follow court orders in that regard. Deferring issues of credibility to the trial court, *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000), we cannot conclude that the trial court committed legal error in regard to factor (j).

Plaintiff next argues that the trial court erred when it postponed making its conclusions in regard to best interest factor (h). We disagree. In rendering a custody determination, a trial court must state its factual findings and conclusions as to each best interest factor. *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 451-452; 705 NW2d 144 (2005). The findings and conclusions need not include consideration of every piece of evidence entered and every argument raised by the parties, but the record must be sufficient for an appellate court to determine whether the evidence clearly preponderated against the trial court's findings. *Id*. at 452.

Factor (h), MCL 722.23(h), considers the home, school, and community record of the child. The trial court stated that, while Liz's home and school records were complimentary, both

parties "committed to address . . . the concerns about Luke's diffuse and somewhat violent fantasies and the vagaries of his school performance. And the Court considers that both of [the parties] are capable of managing that on an individual basis." While the trial court further indicated that the children's best interest in regard to this factor would be easier to discern after the parties completed joint custody training, it did not postpone stating its conclusions on factor (h). It clearly did so. Moreover, we note that the trial court could have been more explicit in its findings, but we find that its statements on the record are nevertheless sufficient for us to conclude that factor (h) did not weigh in favor of either party.

Plaintiff additionally argues that the trial court erred when it postponed making a finding on the parties' ability to cooperate with one another on major parenting issues. See MCL 722.26a(1)(b). Again, we disagree. The trial court indicated that it was concerned with each party's ability to cooperate and come to agreement on important decisions affecting the children's welfare. After discussing each party's previous attempts at cooperation, the trial court instructed the parties to confer about major decisions affecting the children. While the trial court referred to the parties' future willingness to cooperate, i.e., to complete joint custody training, etc., it did not defer its conclusions on the issue to a future date. The trial court clearly articulated its concerns with regard to both parties and it instructed the parties accordingly.

Plaintiff next claims that the trial court inappropriately weighed several of the best interest factors equally or in favor of defendant, when the great weight of the evidence indicated that she had an advantage over defendant with regard to those factors. Plaintiff specifically challenges the trial court's findings with respect to factors (b), (f), (g), (h), (j), and (k).

The trial court found that factor (b), MCL 722.23(b), 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 children in his or her religion or creed, if any, weighed in favor of defendant. The trial court indicated that both parties desired to provide the children with love, affection, and guidance and that defendant is capable of doing so. The trial court further indicated, however, that it was concerned with plaintiff's ability to manage anger. While plaintiff points to evidence that she is a good parent and disciplines the children appropriately, the record reveals that she has, at times, reacted to the children in anger. Plaintiff admitted to hitting Daniel and there is evidence that she hit Liz in the head with a hairdryer. Plaintiff further admitted that she has occasionally allowed her "buttons [to be] pushed beyond having self-control." Furthermore, a Friend of the Court (FOC) referee recommended that plaintiff receive anger management therapy. Taken together, this evidence supports the trial court's conclusion that factor (b) slightly favors defendant.

Factor (f), MCL 722.23(f), considers the moral fitness of the parties involved. The trial court found the parties to be equal in regard to factor (f). Plaintiff disputes the trial court's finding, claiming that defendant is morally unfit because he disparages her in front of the children and encourages them to reject her. We disagree. While there was ample evidence that all of the children treat plaintiff with disrespect, there was little evidence that defendant encourages the children's behavior, other than plaintiff's testimony to that effect. Because we defer to a trial court's ability to judge witness credibility, *Mogle, supra*, we conclude that the trial court's findings with regard to factor (f) are not against the great weight of the evidence.

The trial court found that factor (g), MCL 722.23(g), the parties' mental and physical health, did not favor either party. The trial court indicated that, while the mental health of both parties is flawed, they both displayed a willingness to work hard and overcome their problems. The record establishes that both parties have emotional difficulties. Defendant admitted that he has, in the past, sought treatment for depression and there is evidence that he is overly sensitive, suspicious, and covertly angry. On the other hand, plaintiff acts out in anger and is a candidate for anger management therapy. Therefore, we find that the trial court's findings and conclusions in regard to factor (f) are not against the great weight of the evidence.

The trial court found that factor (h), the home, school, and community records of the children, did not weigh in favor of either party with regard to Liz and Luke. While plaintiff disputes the trial court's finding, she failed to present any evidence indicating that she has an advantage over defendant on this factor. The record does not reveal anything negative in Liz's school records. Luke's records reveal a "preoccupation with violence," but there is no evidence, other than plaintiff's own testimony, that defendant is primarily to blame in that regard. Furthermore, both parties testified that they assist the children with their homework and participate in their extra-curricular activities. The trial court's findings with regard to factor (h) are not against the great weight of the evidence.

The trial court found the parties to be equal in regard to factor (j), the parties' willingness and ability to facilitate and encourage a close and continuing relationship between the children and the other parent. Both parties have expressed frustration with the established parenting schedule and admitted that many of the conflicts between them arise as a result of the schedule's complexity. Both parties suggested that the other party invades on their parenting time. But, both parties also indicated that they feel it is important for the children to spend adequate time alone with the other party. In fact, defendant testified that he is willing to continue sharing joint physical custody of Liz and Luke with plaintiff. Therefore, we find that the great weight of the evidence supports the conclusion that the parties are equally willing and able to facilitate the children's relationship with the other party.

The trial court found that factor (k), MCL 722.23(k), domestic violence, weighed in favor of defendant. In evaluating factor (k), the trial court must consider any domestic violence directed against or witnessed by the child. MCL 722.23(k); *MacIntyre*, *supra* at 459. Contrary to plaintiff's argument on appeal, the record indicates that she has a history of occasional violent outbursts, involving defendant, Daniel, and Liz. The evidence supports the trial court's conclusion that factor (k) favored defendant.

Plaintiff next argues on appeal that, because defendant demonstrated an inability to cooperate with her on important issues, the trial court should have abandoned the established joint custody arrangement. We disagree. The trial court stated that it was concerned with the ability of both plaintiff and defendant to cooperate and come to agreement on major parenting issues. The record reveals that both parties have, at times, failed to cooperate with the other. Plaintiff claimed that defendant frequently makes educational and medical choices regarding the children without consulting her. On the other hand, defendant claimed that plaintiff intentionally withholds the children's school records from him and that she is increasingly rigid and demanding in regard to the parenting schedule. Accordingly, we find that the trial court's conclusion that the parties are equal in their ability to cooperate is not against the great weight of the evidence. Regardless, we note that cooperation is only one of the factors for a trial court to

consider in its decision to grant or deny joint custody. *Nielsen v Nielsen*, 163 Mich App 430, 434; 415 NW2d 6 (1987).

Plaintiff finally argues on appeal that the trial court abused its discretion in ordering that the parties retain joint custody of Liz and Luke. We disagree. Our Legislature intended, under the Child Custody Act, MCL 722.21 et seq., that children only be removed from an established custodial environment "'*in the most compelling cases*.'" *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001), quoting *Baker v Baker*, 411 Mich 567, 577; 309 NW2d 532 (1981) (emphasis added in *Foskett*). Here, the trial court did not find clear and convincing evidence that either Liz or Luke's best interest would be served by a change in custody. See *Mason*, *supra* at 195. The trial court's decision to continue the parties' joint custody arrangement is consistent with its evaluation of the best interest factors and the parties' ability to cooperate on major issues affecting the children's welfare. The trial court's custody order did not constitute an abuse of discretion.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter