

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SHAWN M. WIGGINTON, also known as  
SHAWNA M. WIGGINTON,

UNPUBLISHED  
June 19, 2018

Plaintiff-Appellant,

v

MICHAEL SCOTT WIGGINTON,

No. 339982  
Kalamazoo Circuit Court  
LC No. 2016-006886-DC

Defendant-Appellee.

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Before: MURRAY, C.J., and HOEKSTRA and GADOLA, JJ.

PER CURIAM.

Plaintiff-mother appeals as of right the trial court's order regarding custody, parenting time, and change of domicile with respect to her three children with defendant-father. Following a bench trial, the trial court granted primary physical custody of the children to defendant and granted joint legal custody to both plaintiff and defendant. We affirm.

**I. FACTUAL BACKGROUND**

Plaintiff and defendant were married in 2004 and had three children during their marriage. Because defendant was a member of the military and employed as a jet engine mechanic by the United States Air Force, the family frequently moved, both within the United States and abroad. The family ultimately relocated to Michigan in November 2013 to be near family and friends, and defendant retired from the Air Force in February 2014.

Though defendant obtained another job in March 2014, the family was struggling financially. In July 2014, in order to better support his family, defendant accepted a job offer at a substantial pay increase as a jet mechanic at Nellis Air Force Base in Las Vegas, Nevada. Consequently, defendant moved to Las Vegas and continued to support the family financially, while Plaintiff and the children remained in Michigan. Defendant ultimately filed for divorce in the fall of 2015 in Clark County, Nevada. Although the divorce was finalized in January 2016, the Clark County District Court declined to address custody of the children, determining that it lacked jurisdiction over them as Michigan residents.

In September 2016, plaintiff filed a complaint in Kalamazoo County, Michigan, seeking joint legal custody and sole physical custody of the children. Defendant subsequently filed a counterclaim also seeking joint legal custody and primary physical custody of the children, as

well as a change of the children's domicile to Nevada. Following a two-day bench trial, the trial court determined that an established custodial environment existed with plaintiff. However, the trial court concluded that clear and convincing evidence demonstrated that it was in the children's best interests to grant primary physical custody to defendant and joint legal custody to both parties. The trial court further ordered that the children be relocated from plaintiff's residence in Michigan to defendant's residence in Las Vegas, with plaintiff to have parenting time during school breaks and alternating holidays.

## II. STANDARD OF REVIEW

"[I]n child-custody disputes, 'all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or clear legal error on a major issue.' " *Dailey v Kloenhamer*, 291 Mich App 660, 664; 811 NW2d 501 (2011), quoting MCL 722.28. In accordance with MCL 722.28, three different standards of review are applied in child custody cases. *Id.* First, a trial court's findings of fact, including its findings relative to the statutory best interests factors, "are reviewed under the 'great weight of the evidence' standard." *Id.* (citation omitted). Second, "[d]iscretionary rulings, such as to whom custody is awarded, are reviewed for an abuse of discretion." *Id.* An abuse of discretion occurs in the child custody context when the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Fletcher v Fletcher*, 447 Mich 871, 879-880; 526 NW2d 889 (1994). Third, questions of law are reviewed for clear legal error. *Id.* at 877. A " 'clear legal error' occurs when a court incorrectly chooses, interprets, or applies the law." *Dailey*, 291 Mich App at 665 (citation omitted).

## III. DISCUSSION

### A. CHANGE IN DOMICILE

On appeal, plaintiff contends that the trial court abused its discretion because it inappropriately ordered a change in the children's domicile without a motion for such relief being properly before it.<sup>1</sup> We reject plaintiff's argument.

Defendant filed his counterclaim for custody, parenting time, and change of domicile on October 21, 2016. In his counterclaim, defendant sought primary physical custody of the children, alleging, "It is in the best interests of the children to change the children's legal residence to Nevada." During the bench trial, much of defendant's testimony was focused on the

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<sup>1</sup> To the extent that plaintiff argues in cursory fashion that the trial court failed to examine the change of domicile factors set forth in MCL 722.31(4), this Court has previously found that "the change-of-domicile factors specifically apply only to petitions for change of domicile in situations where there is already a custody order governing the parties' conduct." *Kessler v Kessler*, 295 Mich App 54, 58; 811 NW2d 39 (2011). In the present matter, no custody order had been issued at the time the trial court rendered its decision; accordingly, MCL 722.31(4) is inapplicable.

possibility of the children relocating to Nevada. Indeed, plaintiff's counsel acknowledged during the bench trial that it "appeared" as if defendant wished to relocate the children to Nevada. Given the counterclaim's express request to change the children's domicile, as well as the extensive discussion during the bench trial regarding the children's relocation to Nevada, we conclude that the issue was properly before the trial court.

## B. ESTABLISHED CUSTODIAL ENVIRONMENT

Next, plaintiff argues that the trial court's determination that an established custodial environment exists with both parties is contrary to the great weight of evidence. Consequently, plaintiff contends, the trial court failed to apply the heightened clear and convincing standard in determining that it was in the children's best interests to grant defendant primary physical custody. We reject plaintiff's argument, as it is premised on a mischaracterization of the trial court's determination.

"Whether an established custodial environment exists is a question of fact that [this Court] must affirm unless the trial court's finding is against the great weight of the evidence." *Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 336 (2008). A trial court must determine whether an established custodial environment exists with one or both parents before making a custody determination. *Kessler v Kessler*, 295 Mich App 54, 61; 811 NW2d 39 (2011). "[A] party who seeks to change an established custodial environment of a child is required to show by clear and convincing evidence that the change is in the child's best interests." *Id.*

Regarding the established custodial environment, the trial court concluded on the record: "I think it has been joint, a shared custodial environment except for when dad moved to Las Vegas. *So most recently, I find that the established custodial environment exists with mom, with the Plaintiff.*" (Emphasis added). Subsequently, the trial court issued its written order, which states, "The Court finds that for the last three years, there has been an Established Custodial Environment with Plaintiff-Mother." (Emphasis omitted). The written order also indicates the trial court's finding that clear and convincing evidence supports its conclusions with respect to the best interests factors and that these factors weigh in favor of granting primary physical custody to defendant. Thus, it is evident that the trial court not only found that an established custodial environment existed with plaintiff but also applied the correct legal standard in granting defendant primary physical custody of the children.

## C. BEST INTERESTS FACTORS

Finally, plaintiff contends that the trial court's decision that it is in the children's best interests to grant defendant primary physical custody is contrary to the great weight of evidence.<sup>2</sup> Specifically, plaintiff maintains that the trial court failed to consider several best interests factors

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<sup>2</sup> Though plaintiff also claims that she was denied due process, she does not describe how she was denied a meaningful opportunity to participate or be heard. Because parties may not rely on the Court to develop arguments that are inadequately argued, *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995), plaintiff has waived any due process argument.

and that defendant has not participated in any manner in the children's lives over the past three years. Again, we reject plaintiff's arguments.

When making a custody determination, a trial court is required to evaluate each of the statutory best interests factors set forth in MCL 722.23. *Id.* at 63. The trial court's credibility determinations in this regard are entitled to deference, and "the trial court has discretion to accord differing weight to the best-interest factors." *Id.* at 64, quoting *Berger*, 277 Mich App at 705. A trial court's findings with respect to the best interests factors must be affirmed unless the great weight of evidence clearly preponderates in the opposite direction. *Berger*, 277 Mich App at 706.

Plaintiff has not identified which best interests factors she claims the trial court failed to consider. Indeed, the trial court properly addressed and made factual findings relative to each of the best interests factors on the record during the bench trial. These determinations were then reiterated in the trial court's written order. Specifically, the trial court determined that factors (a), (c), (f), (g), and (h) were equally favorable to both parties; that factors (b), (i), (j), and (l) favored defendant; that factors (d) and (e) favored neither party; and that factor (k), domestic abuse, did not apply in this case. Therefore, we conclude that plaintiff's argument is unsupported by the record.

Next, plaintiff contends that the trial court's findings regarding the best interests factors are contrary to the great weight of evidence, given defendant's alleged lack of participation in the children's lives. Initially, we note that plaintiff fails to specify which of the trial court's best interests findings she claims were erroneously made. We decline to make those arguments for her or to engage in lengthy evaluation of each of the best interests factors. Nonetheless, our review of the record does not reveal that the great weight of evidence clearly preponderates against the trial court's findings.

Though plaintiff testified during the bench trial that defendant was uninvolved with the children's schooling and medical care, defendant testified that he was actively involved in these matters when he and plaintiff were living together. Defendant also testified that his mother attended a parent teacher conference on his behalf and that he contacted the children's teachers regarding their progress. Further, both plaintiff's and defendant's testimony established that the children regularly visited defendant during school breaks and holidays and that defendant called the children on the telephone three to five times per week. Moreover, defendant testified that, were the children to reside with him, his work schedule would permit him to pick up the children from school at 4:00 p.m., transport them to their afterschool activities, and generally provide them with care.

In contrast, when in plaintiff's custody, the parties' twelve-year-old son cared for his seven- and nine-year old sisters for hours until plaintiff was able to leave work at 7:00 p.m. or 8:00 p.m. Although plaintiff testified that she frequently prepared meals for the children to heat up in the microwave, plaintiff's half sister and defendant's mother both testified to the lack of appropriate food in the home, while the children indicated to the trial court that they ate cereal every night. Finally, testimony elicited from defendant, plaintiff's former landlord, and plaintiff's half sister consistently described plaintiff's home as unsanitary and covered in excrement from pets. In light of this testimony and because this Court defers to the trial court's

credibility determinations, *id.* at 705, we conclude that the trial court's decision granting defendant primary physical custody of the children was not contrary to the great weight of evidence.

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Michael F. Gadola