STATE OF MICHIGAN

COURT OF APPEALS

HOLLY AMROMIN, also known as HOLLY MCMULLEN, Plaintiff-Appellant, v YURIY AMROMIN, Defendant-Appellee.	UNPUBLISHED July 19, 2018 No. 341804 Macomb Circuit Court Family Division LC No. 2012-004161-DM

Before: CAMERON, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for a change of custody of plaintiff and defendant's minor children, DEA and DOA ("the minor children"). On appeal, plaintiff contends that the trial court erred by accepting the referee's recommendation without conducting its own independent analysis, and that the referee erred by considering evidence that plaintiff did not follow court orders and that plaintiff contacted Child Protective Services ("CPS"). We affirm.

Plaintiff and defendant divorced in 2013. An initial consent order regarding custody and parenting time was entered in August 2014 after defendant returned to the United States from active duty with the United States Navy, wherein plaintiff was awarded primary physical custody of the minor children and the parties were awarded joint legal custody. A consent order was entered in May 2015 after defendant requested a change of custody for the minor children based on plaintiff's repeated unsubstantiated reports of abuse to CPS. Following the entry of that consent order, CPS received two additional complaints regarding the minor children, however, CPS ultimately concluded that the claims were unsubstantiated.

Defendant filed a motion for a change of custody in February 2016 based in part on the unsubstantiated CPS complaints, as defendant contended that plaintiff initiated those investigations, and that plaintiff attempted to involve other third parties, including defendant's employers, regarding her claims that defendant was abusing the minor children. After an initial order finding that there was a change of circumstances warranting a change of custody, an evidentiary hearing was held before a referee regarding defendant's motion. The referee ultimately drafted a report of her findings and her recommendation following the evidentiary

hearing, wherein the referee concluded that it was in the minor children's best interest for defendant to be awarded primary physical custody, and that the parties should maintain joint legal custody of the minor children.

Plaintiff objected to the referee's findings and recommendation, and therefore, a de novo hearing was held in the trial court, wherein plaintiff presented additional testimony regarding her concerns that defendant was abusing the minor children. The trial court entered an order following the de novo evidentiary hearing. In its order, the trial court explained that it found that plaintiff's "testimony was not credible." And ultimately, the trial court noted that it had reviewed "the transcript from the evidentiary hearing" conducted by the referee, and that it "adopt[ed]" the referee's report regarding defendant's motion for a change in custody.

Plaintiff argues that the trial court erred when it failed to make independent findings regarding the best interest factors provided by MCL 722.23 following the de novo hearing, and that the trial court erred when it adopted the referee's findings and recommendation because the referee considered evidence regarding plaintiff's violations of court orders and her contacts with CPS. We disagree.

"A custody order '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 a clear legal error on a major issue.' " *Butler v Simmons-Butler*, 308 Mich App 195, 200; 863 NW2d 677 (2014), quoting MCL 722.28. Under the great weight of the evidence standard, the trial court's findings of fact will be affirmed "unless the evidence clearly preponderates in the opposite direction." *McIntosh v McIntosh*, 282 Mich App 471, 474; 768 NW2d 325 (2009), citing *Fletcher v Fletcher*, 447 Mich 871, 877-878; 526 NW2d 889 (1994). "In reviewing the findings, this Court defers to the trial court's credibility determinations." *Butler*, 308 Mich App at 200, citing *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011).

A trial court's decision on whether to change custody is reviewed for an abuse of discretion. *Yachcik v Yachcik*, 319 Mich App 24, 31; 900 NW2d 113 (2017), citing *Fletcher*, 447 Mich at 879-880, and *Sulaica v Rometty*, 308 Mich App 568, 577; 866 NW2d 838 (2014). "An abuse of discretion, for purposes of a child custody determination, exists when the result 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." *Butler*, 308 Mich App at 201, citing *Fletcher*, 447 Mich at 879-880, and *Mitchell v Mitchell*, 296 Mich App 513, 522; 823 NW2d 153 (2012).

"Questions of law, such as the applicability and interpretation of a statute, are reviewed de novo." *Kessler v Kessler*, 295 Mich App 54, 57; 811 NW2d 39 (2011), citing *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009).

As MCL 722.28 provides:

> To expedite the resolution of a child custody dispute by prompt and final adjudication, 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 a clear legal error on a major issue.

"Accordingly, absent error in the lower court proceedings, we may not substitute our judgment for that of the trial court." *McIntosh*, 282 Mich App at 478.

MCL 552.507 provides, in pertinent part:

> (4) The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. The request of a party shall be made within 21 days after the recommendation of the referee is made available to that party.
>
> (5) A hearing is de novo despite the court's imposition of reasonable restrictions and conditions to conserve the resources of the parties and the court if the following conditions are met:
>
> (a) The parties have been given a full opportunity to present and preserve important evidence at the referee hearing.
>
> (b) For findings of fact to which the parties have objected, that parties are afforded a new opportunity to offer the same evidence to the court as was presented to the referee and to supplement that evidence with evidence that could not have been presented to the referee.
>
> (6) Subject to subsection (5), de novo hearings include, but are not limited to, the following:
>
> (a) A new decision based entirely on the record of a previous hearing, including any memoranda, recommendations, or proposed orders by the referee.
>
> (b) A new decision based only on evidence presented at the time of the de novo hearing.
>
> (c) A new decision based in part on the record of a referee hearing supplemented by evidence that was not introduced at a previous hearing.

Similarly, under MCR 3.215(E)(4), a party can obtain a judicial hearing "on any matter that has been the subject of a referee hearing and that resulted in a statement of findings and a recommended order by filing a written objection . . . ." Further, MCR 3.215(F)(2) provides:

> (2) To the extent allowed by law, the court may conduct the judicial hearing by review of the record of the referee hearing, but the court must allow the parties to present live evidence at the judicial hearing. The court may, in its discretion:
>
> > (a) prohibit a party from presenting evidence on findings of fact to which no objection was filed;

> (b) determine that the referee's finding was conclusive as to a fact to which no objection was filed;
>
> (c) prohibit a party from introducing new evidence or calling new witnesses unless there is an adequate showing that the evidence was not available at the referee hearing;
>
> (d) impose any other reasonable restrictions and conditions to conserve the resources of the parties and the court.

As explained by the Michigan Supreme Court, "the Friend of the Court Act," MCL 552.501 *et seq*., does not relieve "the circuit court of its duty to review a custody arrangement once the issue of a child's custody reaches the bench." *Harvey v Harvey*, 470 Mich 186, 193; 680 NW2d 835 (2004). A trial court must "determine independently what custodial placement is in the best interests of the children, emphasizing that the statutory best-interest factors control whenever a court enters an order affecting child custody." *Rivette v Rose-Molina*, 278 Mich App 327, 332-333; 750 NW2d 603 (2008), citing *Harvey*, 470 Mich at 193. However, a trial court may consider a referee's report and recommendation if "if it also allows the parties to present live evidence." *Dumm v Brodbeck*, 276 Mich App 460, 465; 740 NW2d 751 (2007) (citations omitted). And, as observed by this Court:

> It would stand to reason that, if an analysis of the best interest-factors is required in the circuit court to assure that the custody determination is based on an informed decision about the child's best interest, a referee's custody recommendation—which the circuit court may uphold without making any independent findings concerning the child's best interests—likewise should include consideration of the best-interest factors. [*Rivette*, 278 Mich App at 330.]

Plaintiff contends that the trial court erred when it adopted the referee's report and recommendation regarding defendant's motion for a change in custody following the de novo hearing concerning plaintiff's objections to the referee's report and recommendation. Specifically, plaintiff argues that the trial court erred when it "did not state its findings of fact and conclusions for each and every one of the contested child custody best interest factors on the record," and when it "ruled, in effect, that it was adopting the Friend of the Court's Recommendation." Further, plaintiff asserts that the trial court erred when it did not whatsoever make findings of fact concerning whether a custodial environment exists—and if so, with which parent—or whether a change of circumstances or proper cause exists to revisit the issue of child custody." Plaintiff's contentions are without merit.

In the order the trial court entered following the de novo hearing, the trial court indicated that it found that plaintiff's testimony during the de novo hearing was not credible, that it had reviewed "the transcript from the evidentiary hearing" conducted by the referee, and that it "adopt[ed]" the referee's report regarding defendant's motion for a change in custody. Notably, plaintiff does not raise any contentions regarding the referee's findings concerning the best interests of the minor children, which the trial court adopted.

Regardless, plaintiff contends that the trial court erred when it adopted the referee's findings and recommendation regarding the best interests of the minor children. Plaintiff relies on MCR 3.210(D)(1), which provides that "findings of fact and conclusions of law are required on contested postjudgment motions to modify a final judgment or order[.]" Yet, plaintiff does not explain why the friend of the court's findings, as adopted by the trial court after it reviewed the transcripts for the evidentiary hearing on defendant's motion for a change in custody, does not satisfy MCR 3.210(D)(1). Moreover, to the extent that plaintiff presented new evidence during the de novo hearing, which only consisted of plaintiff's testimony, the trial court expressly stated that it found plaintiff's testimony to be incredible.

Plaintiff has failed to provide any binding authority in support of her contention that the trial court erred by adopting the referee's findings and recommendation. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted). Therefore, plaintiff has abandoned that specific contention. And as discussed above, the trial court was free to adopt the referee's findings. See *Rivette*, 278 Mich App at 330.

Likewise, plaintiff contends, in a cursory fashion, that the trial court failed to address whether a change in custody for the minor children was warranted based on a change of circumstances. Beyond failing to articulate any actual argument pertaining to this issue, plaintiff disregards the fact that she did not object the trial court's March 2016 interim order finding that defendant "established proper cause" for a change of custody, and that the order became final near the end of March 2016, after plaintiff failed to object to it. "A party may not claim as error on appeal an issue that the party deemed proper in the trial court because doing so would permit the party to harbor error as an appellate parachute." *Hoffenblum v Hoffenblum*, 308 Mich App 102, 117; 863 NW2d 352 (2014) (quotation marks and citation omitted). Therefore, plaintiff has not only abandoned any arguments relating to whether there was proper cause for a change in custody, but plaintiff also failed to object to the relevant order pertaining to that determination in the trial court.

Plaintiff asserts that the trial court erred when it adopted the referee's findings and recommendations because the referee considered "improper proofs" relating to the best interests of the minor children. Plaintiff's assertion fails.

First, plaintiff argues that "it is not legally permissible for a trial court to modify a custody order based upon allegations of violations of court orders by the offending parent." In support of her argument, plaintiff merely provides a string of citations, and beyond one brief explanatory parenthetical statement, no further explication of her position. Three of the decisions that plaintiff relies upon are decisions of this Court that were decided before November 1, 1990, and therefore, are not binding on this Court under MCR 7.215(J)(1). See *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012), citing *Auto-Owners Ins Co v Martin*, 284 Mich App 427, 444 n 4; 773 NW2d 29 (2009) (noting that while "cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), they nevertheless can be considered persuasive authority"). Plaintiff has failed to advance any argument as to why these

decisions should be considered persuasive, and therefore, plaintiff has abandoned that argument on appeal. *Houghton*, 256 Mich App at 339.

Plaintiff also merely provided a citation to the Michigan Supreme Court's decision in *Kaiser v Kaiser*, 352 Mich 601; 90 NW2d 861 (1958), without any further explanation or argumentation as to how that decision supports her position. Once again, plaintiff has abandoned her argument by failing to advance her position beyond providing a single citation to a binding decision with nothing more. *Houghton*, 256 Mich App at 339. Regardless, in *Kaiser*, the Michigan Supreme Court held that a change of custody for a minor child was "not the proper means for enforcing the court's decree or punishing the [plaintiff] for contempt for its violation," where there was no showing that there was a change of circumstances that would warrant a change in custody or that a change of custody was in the minor child's best interests. *Id*. at 603-604. *Kaiser* provides no support to the plaintiff argument that it was "not legally permissible" for the referee to consider evidence that plaintiff violated court orders, where the referee concluded that a change of custody was in the best interests of the minor children after fully considering the best interest factors provided by MCL 722.23. Nor does *Kaiser* provide any support for the proposition that it was error for the referee or the trial court to even consider any evidence that plaintiff violated court orders.

Second, plaintiff contends that the referee erred when it "fault[ed]" plaintiff for contacting CPS because plaintiff "enjoys absolute privilege to contact" CPS, and therefore, the referee "erred by holding this, [i.e., contacting CPS,] against" plaintiff. Plaintiff's contention is without merit.

"The Child Protection Law, MCL 722.621 *et seq*., outlines various requirements regarding the reporting and investigation of suspected child abuse. One section of the statute grants immunity from tort liability in relation to such reporting and investigation." *Lavey v Mills*, 248 Mich App 244, 251; 639 NW2d 261 (2001). MCL 722.625 provides, in relevant part:

> A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith. This immunity from civil or criminal liability extends only to acts done according to this act and does not extend to a negligent act that causes personal injury or death or to the malpractice of a physician that results in personal injury or death.

This Court has characterized MCL 722.625 as "an immunity provision," and it has explained that MCL 722.625, when read in conjunction with MCL 722.623, "clarifies that the grant of immunity applies only to acts required by the Child Protection Law," specifically, "reporting, cooperating, or assisting as required by the act[.]" *Lee v Detroit Med Ctr*, 285 Mich App 51, 63-64; 775 NW2d 326 (2009).

The investigating CPS worker, Patricia Closs, testified during the evidentiary hearing that plaintiff contacted a "therapist" and a Madison Heights Police Detective regarding her claims that defendant was abusing the minor children, and that the "therapist" and the police detective

respectively made reports to CPS. In fact, Closs testified that plaintiff explained to her that plaintiff took the minor children to the "therapist" so "that the therapist could call the complaint in," because "she was told the complaint ha[d] to come from a mandated-reporter to be taken seriously."

Plaintiff does not explain how it was error for the referee to consider evidence regarding her conduct, other than the fact that plaintiff has read MCL 722.625 to provide her with an "absolute privilege" to contact CPS. Regardless, MCL 722.625 only provides immunity to "civil or criminal liability" for "a person in good faith who makes a report[.]" Plaintiff provides no explanation pertaining to how the trial court's order constituted a form of civil liability based on that testimony.

Moreover, "[t]he purposes of the Child Custody Act, MCL 722.21 *et seq*., are to promote the best interests of the child and to provide a stable environment for children that is free of unwarranted custody changes." *Lieberman v Orr*, 319 Mich App 68, 78; 900 NW2d 130 (2017) (quotation marks and citation omitted). The trial court's decision to award defendant physical custody was based on the best interests of the minor children, as was its decision to maintain the status quo of joint legal custody of the minor children, and to award plaintiff with parenting time with the minor children. Therefore, it is entirely unclear how precisely plaintiff was subject to civil "liability" where the trial court only ordered a change of custody, which itself was concerned only with the best interests of the children, and not imposing any form of "liability" upon plaintiff.

And further, plaintiff herself consented to the presentation of evidence regarding her contacts with CPS during the evidentiary hearing, and in fact, plaintiff stipulated to the admission of Closs's reports, regarding the complaints made by the "therapist" and the police detective, as exhibits to be considered by the referee. "A party may not claim as error on appeal an issue that the party deemed proper in the trial court because doing so would permit the party to harbor error as an appellate parachute." *Hoffenblum*, 308 Mich App at 117 (quotation marks and citation omitted). Even if plaintiff were entitled to any form of immunity under MCL 722.625, plaintiff has waived that immunity because she consented to the referee considering evidence regarding her contacts with CPS.

Affirmed.

/s/ Thomas C. Cameron
/s/ Kathleen Jansen
/s/ Peter D. O'Connell