STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff, and ROBYN JESSICA LAUBENTHAL, Plaintiff-Appellant, v BRETT NEAL BETTS, Defendant-Appellee.	UNPUBLISHED September 18, 2018 No. 342040 St. Clair Circuit Court Family Division LC No. 2009-001326-DP

Before: O'CONNELL, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Plaintiff, Robyn Jessica Laubenthal, appeals as of right the trial court's custody and parenting time order granting defendant, Brett Neal Betts, sole physical and legal custody of the parties' minor child, HAB, in this child custody action. We affirm.

This custody case has a long and contentious history. In brief, early in this proceeding plaintiff had primary physical custody of HAB, although the parties shared legal and physical custody. Plaintiff lived in Virginia and was in the Navy. In July 2016, defendant filed a motion to enforce parenting time and requested the court to issue a specific parenting time schedule, which it did in November 2016. In January 2017, defendant filed an emergency motion for temporary change of custody because HAB disclosed to him that plaintiff's neighbor, Joshua Ray, touched her in an inappropriate, sexual manner. While that matter was pending, plaintiff advised defendant that she moved to Mississippi with HAB, which prompted defendant to file a motion in March 2017 for the immediate return of HAB to him. At a hearing in April 2017, the court noted plaintiff's repeated misrepresentations and violations of court orders, and ordered HAB to be returned to defendant in Michigan pending a future evidentiary hearing regarding custody. In preparation for that hearing, the wife of Joshua Ray—Emily Ray—was deposed. Subsequently, plaintiff filed motions to strike Ray's testimony, appoint an expert witness, and

disqualify the trial judge who had presided over this case since its inception. Plaintiff's motions were denied. During the evidentiary hearing, Emily's Ray's deposition testimony was admitted over plaintiff's objection. Following the evidentiary hearing, the trial court issued an opinion and order awarding defendant sole physical and legal custody of HAB and allowing plaintiff supervised visits. This appeal followed.

Plaintiff first argues that the trial court abused its discretion in admitting the deposition testimony of Emily Ray. We disagree. "A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010) (citations omitted).

"The burden of establishing admissibility [of a deposition] rests on the party seeking admission." *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 502; 421 NW2d 213 (1988). Deposition testimony is generally considered hearsay, which is defined by MRE 801(c) as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." See also *Barnett v Hidalgo*, 478 Mich 151, 173-174; 732 NW2d 472 (2007); *Shields v Reddo*, 432 Mich 761, 766; 443 NW2d 145 (1989). Under MRE 802, hearsay is inadmissible except as provided by the rules of evidence.

MRE 804(b)(5) allows the admission of deposition testimony where (1) the deposed individual is unavailable as a witness; (2) the deposition was "taken in compliance with law in the course of the same or another proceeding"; and (3) "the party against whom the testimony is now offered . . . had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." For purposes of this appeal, only the third requirement is at issue: plaintiff's opportunity to question the witness. We conclude that plaintiff "had an opportunity and similar motive to develop" Ray's testimony by cross-examination. See MRE 804(b)(5).

On direct examination, defendant's attorney asked Ray about the care she provided to HAB when plaintiff's work prevented her from being with HAB. Defendant's attorney also inquired into the various events that transpired throughout the time Ray provided that childcare. The direct examination of Ray by defendant covered topics such as: Ray taking HAB to various appointments, assisting HAB with school work and talking with her teachers, a conversation in which plaintiff discussed suicide, counseling for HAB, plaintiff's romantic life, a trip to a Busch Gardens amusement park, Ray cleaning plaintiff's apartment and Ray's subsequent discovery of plaintiff's sex toys, discussions about defendant, periods of time where HAB was in someone else's care, as well as the last time Ray saw HAB and plaintiff.

On cross-examination, plaintiff's attorney asked Ray about the care she provided to HAB, as well as the power of attorney plaintiff obtained for Ray, and received answers to these questions. Plaintiff also inquired into Ray's concerns about HAB, including whether HAB should have been in counseling and if she had Attention Deficit Hyperactivity Disorder (ADHD), and Ray's conversation with plaintiff regarding suicide. Plaintiff received answers to these questions as well. Plaintiff also asked about Ray's trip to Busch Gardens with HAB, the cleaning of plaintiff's apartment and the discovery of the sex toys, obtaining money from plaintiff for food that was purchased for and provided to HAB, and Ray's last contact with HAB

and plaintiff. With respect to the last conversation between plaintiff and Ray, plaintiff told Ray that "something had happened to" HAB and that it would be best if plaintiff and Ray did not have any further communication.

Plaintiff contends that her attorney did not have the opportunity to develop Ray's testimony because Ray "eventually refuse[d] to continue testifying." We disagree. Plaintiff's attorney had an opportunity to cross-examine Ray and, based on the questions asked and answered on cross-examination, built upon the questions that had been asked and answered on direct examination. It is true that Ray refused to answer several of plaintiff's questions, including those related to a Virginia CPS investigation; HAB's ADHD; the circumstances of HAB's alleged sexual abuse; whether plaintiff mentioned HAB during a phone call Ray had with plaintiff; and the circumstances surrounding Ray's last contact with plaintiff and HAB. However, some of those questions were either eventually answered and allowed to stand, or were eventually answered and stricken by the trial court as irrelevant. Although Ray eventually cut off questioning completely, the testimony she provided on cross-examination was sufficient to satisfy the requirement that plaintiff have an opportunity and similar motive to develop Ray's testimony on cross-examination. See MRE 804(b)(5). Simply because plaintiff did not receive answers to all of her questions, or that Ray terminated the deposition before plaintiff was able to ask additional questions, does not mean that plaintiff did not have an opportunity to develop Ray's testimony. Therefore, the trial court did not abuse its discretion in admitting Ray's deposition testimony. See *Edry*, 486 Mich at 639.

Plaintiff next argues that the trial court erred when it denied her motion for judicial disqualification because the trial judge was biased against her or her attorney. We disagree. The issue of judicial disqualification is reviewed de novo as a question of law. *Kloian v Schwartz*, 272 Mich App 232, 244; 725 NW2d 671 (2006); *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 596; 640 NW2d 321 (2001).

MCR 2.003(C)(1) provides, in relevant part, that disqualification of a judge is warranted when:

> (a) The judge is biased or prejudiced for or against a party or attorney.
>
> (b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v [AT] Massey [Coal Co, Inc]*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

"[A] party challenging the impartiality of a judge must overcome a heavy presumption of judicial impartiality." *Van Buren Twp v Garter Belt Inc*, 258 Mich App 594, 598; 673 NW2d 111 (2003) (quotation marks and citation omitted). "In general, the challenger must prove a judge harbors actual bias or prejudice for or against a party or attorney that is both personal and extrajudicial." *Id*. "Thus, the challenged bias must have its origin in events or sources of information gleaned outside the judicial proceeding." *Cain v Dep't of Corrections*, 451 Mich 470, 495-496; 548 NW2d 210 (1996).

"[J]udicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a 'deep-seated favoritism or antagonism that would make fair judgment impossible[.]' " *Armstrong*, 248 Mich App at 597, quoting *Cain*, 451 Mich at 496. Even "[r]epeated rulings against a litigant, no matter how erroneous, and how vigorously and consistently expressed, are not disqualifying." *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 155; 532 NW2d 899 (1995), quoting *Mahlen Land Corp v Kurtz*, 355 Mich 340, 350; 94 NW2d 888 (1959). And "judicial remarks during the course of a trial that are 'critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.' " *Schellenberg v Rochester, Mich, Lodge No 2225 of the Benevolent & Protective Order of Elks*, 228 Mich App 20, 39; 577 NW2d 163 (1998), quoting *Cain*, 451 Mich at 497 n 30. Moreover, the trial court has the inherent authority to direct and control the proceedings before it "to achieve the orderly and expeditious disposition of cases." *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006); see also MRE 611(a) (mandating that the court "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.").

Plaintiff identifies nine instances of alleged judicial bias, four of which are premised on "repeated hostility and rudeness." First, plaintiff claims that the trial court suggested plaintiff's attorney, Steven Heisler, was engaging in witness intimidation with the following statement:

> [W]ould you please sit down, Mr. Heisler.
>
> * * *
>
> And quit pacing. It's very distracting to the Court. And if you're trying, and if it's meant for any other reason other than . . . perhaps . . . a force of habit then I would suggest you not do it for any other reason either.

These remarks do not demonstrate actual bias or prejudice against plaintiff or her attorney. Plaintiff's counsel was standing and pacing around the courtroom as defendant's counsel was about to begin questioning defendant and the trial judge found it "very distracting." The trial judge's comments suggest that she was simply exercising her duty to control the proceedings before her and do not demonstrate bias or a deep-seated antagonism against plaintiff's counsel. See *Maldonado*, 476 Mich at 376; *Armstrong*, 248 Mich App at 597.

Second, plaintiff claims that the trial court questioned the professionalism of plaintiff's attorney with the following statement:

> I'm not going to keep on repeating myself. You know, . . . I'm getting the feeling . . . that by constantly asking me the same question that I've already answered you're either trying to get a different answer out of me or you're trying to do something else and I'm not sure what, but I've already told you what is necessary. I've already told you things. [Defendant's attorney] knows how to practice law. I'm not going to tell him how to do that. I'm not. So, we'll deal with it in the appropriate way. You as professionals can figure that out.

These remarks do not demonstrate actual bias or prejudice against plaintiff or her attorney. Plaintiff's attorney repeatedly asked the same question after the trial judge had made her decision regarding the report of Dr. Frederick Roberts, a proposed witness who would testify regarding post-traumatic stress disorder, and the taking of his deposition. By instructing plaintiff's attorney to stop repeating the same question and to figure things out with defendant's attorney, the trial judge was simply controlling the proceedings in an effort to achieve the orderly and expeditious disposition of this case by eliminating unnecessary questioning and does not demonstrate bias or a deep-seated antagonism against plaintiff's counsel. See *Maldonado*, 476 Mich at 376; *Armstrong*, 248 Mich App at 597.

Third, plaintiff claims that the trial judge's suggestion of legal strategy to defense counsel demonstrated bias against plaintiff. Plaintiff points to the trial judge asking defense counsel whether he wished to call plaintiff as an adverse witness. Although plaintiff objected because defendant had "closed his proofs," the trial court asked defense counsel, "Do you anticipate there is rebuttal evidence that you could present from this witness? He is entitled to present rebuttal evidence through her. I agree. He can not [sic] call her as a witness in his case in chief." The trial court then gave defense counsel a brief recess to "mull that over." However, plaintiff takes the trial judge's actions out of context. Immediately preceding the trial judge asking defendant if he wished to call plaintiff as an adverse witness, examination of another witness had concluded. The trial judge then asked whether plaintiff had any other witnesses, including whether plaintiff herself intended to testify. Plaintiff's attorney conducted voir dire of plaintiff, at which time she indicated that she did not intend to testify. After asking whether plaintiff intended to testify, the trial judge then made the challenged statements to defendant's attorney.

The trial judge's remarks do not demonstrate actual bias or prejudice against plaintiff or her attorney. Rather, the trial judge's statements demonstrate her impartiality. The trial judge asked both parties whether they intended to call plaintiff as a witness. This was not a suggestion of legal strategy, but rather, the trial judge attempting to control the proceedings and determine whether there would be additional testimony, or if the proceedings would be concluded. See *Maldonado*, 476 Mich at 376.

Fourth, plaintiff's claims that the trial judge showed "hostility and rudeness" which demonstrated bias when she stated:

> Mr. Heisler, I've made my ruling so please sit down and quit interrupting so we can get this hearing over with. We need to move it along efficiently. We can be thorough and efficient and we should make objections just for the sake of. . . making objections and trying to prevent testimony for the Court to hear, which is what I'm seeing you do a lot of so far.

These remarks do not demonstrate actual bias or prejudice against plaintiff or her attorney. Rather, again, and as the trial judge stated, she was simply controlling the proceedings in an effort to achieve the orderly and expeditious disposition of this case by eliminating unnecessary interruptions which interfered with her ability to focus on the witness testimony and does not demonstrate bias or a deep-seated antagonism against plaintiff's counsel. See *id.*; *Armstrong*, 248 Mich App at 597.

Fifth, plaintiff challenges the following comments as so hostile and rude as to demonstrate bias:

> Okay Mr. Heisler. Let me make it clear. Once he had extended parenting time he was obligated to enroll the child in school. Now, that frankly is a ridiculous question. He didn't need anybody's permission to do that[,] that is what a responsible parent does. Now this is not a game, Mr. Heisler, I would suggest that you ask questions that are relevant and make sense.
>
> Now, if I need to put in every single order that in addition to having extended parenting time the parent has to do every single thing a responsible person does. Like enroll the child in school and do all these things, I will start doing that with you. I have no problem with that. Let me know if I need to be that . . . specific in the future, but, of course, . . . if I grant him extended parenting time and say the child is to be living with him of course he's going to enroll that child in school. And then there would be complaints because you know what[,] if he didn't, number one, he wouldn't be responsible and if he didn't you would be arguing to me that he wasn't being responsible and should not have extended parenting time with this child.
>
> So, please let's get to the point.

To properly understand the challenged comments by the trial judge, they must be considered in context. Before the trial judge made the challenged comments, plaintiff's attorney was questioning defendant regarding his decision to enroll HAB in school and whether he had contacted plaintiff and received her consent before doing so. Defendant indicated that he had enrolled HAB in the same school district that she was enrolled in when she previously lived with defendant and did so in compliance with the trial court's April 6, 2017 order granting him extended parenting time. Before enrolling HAB in school, defendant requested immunization records from plaintiff and informed her that he was enrolling HAB in the same school as she was previously enrolled. Immediately preceding the challenged comments by the trial judge, plaintiff's attorney asked, "Let me ask, sir, does the Court Order provide extended parenting time or does it provide . . . that you can specifically enroll the child in school?"

Considered in context, the trial court's comments demonstrate that it was exercising its duties to control the proceedings, limit the evidence to relevant issues, and control the mode of interrogating the witness so as not to waste time or harass the witness. See MRE 611(a); *Maldonado*, 476 Mich at 376. But even if the remarks were critical of plaintiff's counsel's interrogation of the witness, they do not demonstrate bias or partiality. See *Schellenberg*, 228 Mich App at 39. Further, the comments were made in response to the line of questioning by plaintiff's attorney, and thus, plaintiff has failed to demonstrate that the trial court's comments stem from a personal and extrajudicial bias. See *Cain*, 451 Mich at 495-496; *Van Buren Twp*, 258 Mich App at 598.

Sixth, plaintiff challenges the following exchange as demonstrating hostility and rudeness such that it establishes judicial bias:

> *Heisler*: Sir, did she indicate there was any form of penetration?

Trial Court: Oh Jesus Christ. Why is this relevant?

Heisler: Because a reasonable person would take certain steps if there was, your Honor.

Trial Court: No no. A reasonable person once they know, once the child gives an indication that, that there is some type of abuse takes certain steps, okay. We're not going to get into that. Period. I - - it is not relevant.

Please - - I'm going to strike the question and the witness will not have to answer it.

These remarks do not demonstrate actual bias or prejudice against plaintiff or her attorney. The trial court indicated that this line of questioning was "not relevant." Again, the trial court's comments demonstrate that it was exercising its duties to control the proceedings, limit the evidence to relevant issues, and control the mode of interrogating the witness so as not to waste time or harass the witness. See MRE 611(a); *Maldonado*, 476 Mich at 376. Further, plaintiff has not identified what she takes issue with in this exchange. We assume that plaintiff is arguing that the trial court's statement of, "Oh Jesus Christ," was inappropriate. Although the trial judge's statement was unnecessary, it did not show that the judge harbored actual bias or prejudice against plaintiff or her attorney. And even if considered hostile, such a remark is not sufficient to establish judicial bias or impartiality. See *Schellenberg*, 228 Mich App at 39.

Seventh, plaintiff claims that the following was hostile and rude demonstrating bias:

What you need to understand, Mr. Heisler, is this is not a jury trial, okay. We don't need histrionics. We don't need yelling, we don't need constant repetition and we don't need to hear the same answer from the witness twice. Please keep that in mind because I can hear and when I can't hear something I ask what they said and I let, and I tell them I can't hear it. I do not need things underscored. Please continue and please keep that in mind.

These remarks do not demonstrate actual bias or prejudice against plaintiff or her attorney. Plaintiff contends that "[t]his antagonism [was] not present when [plaintiff] was represented by other counsel in this matter, and only [came] to light after [plaintiff's] current attorney[, Heisler, began] work[ing] on the case," thus demonstrating that the bias is personal and not arising out of the proceedings. This contention is without merit. These comments, as with all of plaintiff's other instances of alleged judicial bias, were made in response to the actions of plaintiff's attorney during the judicial proceedings. See *Cain*, 451 Mich at 495-496; *Van Buren Twp*, 258 Mich App at 598. Further, the trial court's admonishment was merely the court exercising its right to control the proceedings and does not support a claim of deep-seated antagonism against plaintiff's counsel. See MRE 611(a); *Maldonado*, 476 Mich at 376; *Armstrong*, 248 Mich App at 597.

Eighth, plaintiff contends that the trial judge "ma[d]e objections for the other side," demonstrating her bias and antagonism towards plaintiff's attorney. In particular, plaintiff's attorney questioned defendant about the timeframe within which he notified plaintiff about the

sexual abuse after he learned about its occurrence. Plaintiff's attorney then asked, "And the reason you said you didn't tell [plaintiff] was because you didn't know if she was involved or not?" The following exchange between the trial judge and plaintiff's attorney then occurred:

> *Trial Court*: Wait a minute. This . . . didn't . . . come up on cross-examination[.]
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> *Plaintiff's Attorney*: I'll withdraw the question.
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> *Trial Court*: Yes you should. . . . [Y]ou are . . . constantly violating that basic rule. You don't get a second bite of the apple.
>
> *Plaintiff's Attorney*: In - -
>
> *Trial Court*: You must limit it to the . . . specific subjects[] that [defendant's attorney] covered in his redirect. You don't have a choice. Those are the rules and you know they're the rules and you appear to be intentionally breaking them.

The trial court has discretionary authority to limit the scope of cross-examination. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 632; 607 NW2d 100 (1999). Further, the trial court "may limit cross-examination with respect to matters not testified to on direct examination" and to matters relevant to the issues in the case. MRE 611(c). Defendant's attorney did not bring up the issue of defendant notifying plaintiff of the sexual abuse after HAB initially disclosed it to him. Although defendant's attorney elicited testimony from defendant regarding his attempts at requesting information about the status of the sexual abuse investigation in Virginia, there were no questions concerning defendant notifying plaintiff of the sexual abuse when he first found out about it from HAB. Therefore, the trial judge's admonishment of plaintiff's attorney did not demonstrate bias. Rather, the trial judge was simply exercising her discretionary authority to limit the scope of cross-examination to the topics discussed on direct examination, a fact of which the trial court explicitly informed plaintiff's attorney. See MRE 611(c); *Persichini*, 238 Mich App at 632.

Ninth, plaintiff argues that the trial judge's dismissal of Kimberly Richards, an outpatient therapist who treated HAB and a defense witness, before "arguments being heard on an adjournment for the evidentiary hearing" demonstrated the trial judge's bias because she "had decided the issue prior to any arguments being made." We disagree.

Plaintiff alleged in her motion for disqualification that during an off-the-record meeting between plaintiff, defendant, and the trial judge, defendant requested an adjournment to allow Ray to testify by video. Plaintiff further alleged that the trial judge indicated "that she was going to grant the request over" plaintiff's objection. During the hearing, after defendant argued that adjournment was necessary in light of Ray's willingness to testify, the trial judge asked, "Did you subpoena any professional witnesses to appear today?" After defendant indicated that he had subpoenaed Richards, the trial court stated, "You may dismiss her." The trial court reasoned, "[A]s a courtesy to a fellow professional[,] I don't need to have them standing in the hallway any longer than they have to when they can be doing more profitable things."

The dismissal of Richards does not demonstrate actual bias or prejudice against plaintiff or her attorney. Plaintiff argued that the dismissal suggested the trial judge made up her mind about the adjournment before arguments were made. But even if she had, that does not mean the trial judge was biased. The trial judge indicated that her decision to dismiss Richards was made in an effort to reduce costs for defendant because Richards was "no doubt" charging defendant "by the hour." The trial judge stated, "If she can do more profitable things, then I would rather have her do that then [sic] have [defendant] incur that cost." The dismissal of Richards demonstrated the trial judge's recognition that Richards's time and defendant's money were better spent on other things while the issue of the adjournment was decided and does not demonstrate a deep-seated favoritism for defendant or antagonism against plaintiff. See *Armstrong*, 248 Mich App at 597. Further, plaintiff's motion for disqualification indicates that the parties had an off-the-record meeting where defendant requested an adjournment and, although plaintiff objected to it, the trial judge intended to grant the motion. Thus, plaintiff was aware that the motion for an adjournment would be granted before the hearing on it was even conducted and plaintiff's argument that the dismissal gave the appearance of impropriety is without merit. Moreover, a ruling against plaintiff on the issue of adjournment does not demonstrate bias. See *Mahlen Land Corp*, 355 Mich at 350.

Finally, plaintiff argues that the trial court abused its discretion in refusing to transfer the case to the county in which defendant resides. We disagree. This Court reviews a trial court's resolution of issues concerning venue for an abuse of discretion. *Shock Bros, Inc v Morbark Indus, Inc*, 411 Mich 696, 698; 311 NW2d 722 (1981).

MCR 3.212 allows for a postjudgment transfer of domestic relations cases. A motion to transfer the case to a different venue may be granted only if:

> (a) the transfer of the action is requested on the basis of the residence and convenience of the parties, or other good cause consistent with the best interests of the child;
>
> (b) neither party nor the court-ordered custodian has resided in the county of current jurisdiction for at least 6 months prior to the filing of the motion;
>
> (c) at least one party or the court-ordered custodian has resided in the county to which the transfer is requested for at least 6 months prior to the filing of the motion; and
>
> (d) the county to which the transfer is requested is not contiguous to the county of current jurisdiction. [MCR 3.212(B)(1)(a)-(d).]

On January 3, 2018, plaintiff filed a postjudgment motion to transfer the case to Shiawassee County. At the hearing on her motion, plaintiff argued that the requirements of MCR 3.212 had been met because neither plaintiff nor defendant lived in St. Clair County. Plaintiff argued that it was more convenient to have the case in Shiawassee County in light of her residency in Mississippi because when she travels to Michigan for court appearances, she visits with HAB who lives in Shiawassee County with defendant. Plaintiff asserted that having the court hearings in St. Clair County was inconvenient because she had to then drive to Shiawassee County, which

is three counties to the west, to visit HAB. Moreover, plaintiff contended that because defendant lives in Shiawassee County, it was also convenient for him to have the proceedings there instead of St. Clair County.

Defendant disagreed, arguing that because this case involved a lengthy trial and the trial court was "totally familiar with the circumstances and the issues that were involved," transferring the case "to some other courtroom that had no background would be inequitable and not in the best interest of the child." Touching on the best interests of HAB, defendant noted that on January 7, 2018, plaintiff visited HAB, and on January 11, 2018, Child Protective Services (CPS) visited HAB at school to interview her. The allegations contained within the CPS complaint "were all issues that were brought up at the trial." As a result of the complaint, HAB was "traumatized again. She's crying in school. She won't leave dad's side because of what mother's done, because CPS has been out." Defendant asserted that a transfer of the case could work if the situation were a better one. However, because of plaintiff's actions, defendant argued that no other judge was "better suited to deal with this case" and that to transfer the case to another judge would not be in HAB's best interests.

As defendant argued below, this case has a lengthy and contentious history solely before this particular trial judge and we agree with defendant that it was in HAB's best interests for it to remain with the same court. Given the trial court's familiarity with the case, it is in the best position to provide proper and efficient decision-making with respect to the parties and HAB. Thus, considering the trial court's familiarity with the parties, issues, and history of the case, we conclude that the trial court did not abuse its discretion in denying plaintiff's motion to transfer the case to Shiawassee County. See *Shock Bros, Inc*, 411 Mich at 698.

Affirmed.

/s/ Peter D. O'Connell
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto