

STATE OF MICHIGAN
COURT OF APPEALS

SARAH SUE STUROS,

Plaintiff-Appellee,

v

MICHAEL ARNE STUROS,

Defendant-Appellant.

UNPUBLISHED

April 23, 2019

No. 344449

Houghton Circuit Court

LC No. 2016-016345-DM

Before: MURRAY, C.J., and SAWYER and REDFORD, JJ.

PER CURIAM.

Defendant appeals as of right the trial court’s judgment of divorce, which incorporated the trial court’s earlier order awarding plaintiff sole legal and physical custody of the parties’ minor children. In his sole issue on appeal, defendant argues that the trial court erred by failing to award him joint legal custody of the children. We affirm.

Following a custody hearing at which the trial court heard testimony from both parties and several other witnesses regarding the parties’ relationship with each other and the children, the court found that there was “overwhelming evidence” that an established custodial environment existed with plaintiff, but not with defendant, primarily due to the fact that plaintiff had historically cared for the children while defendant worked outside the home. After considering the best-interest factors under MCL 722.23, and the feasibility of joint custody under MCL 722.26a, the court found that it was “an absolute impossibility to have joint legal custody, based on what I’ve heard.” Accordingly, the court awarded plaintiff, in addition to physical custody, sole legal custody of the children. The court ordered, however, that defendant was to have access to the children’s records pursuant to MCL 722.30.¹

¹ Under this statute, records include, but are not limited to, “medical, dental, and school records, day care provider’s records, and notification of meetings regarding the child’s education.” MCL 722.30.

On appeal, defendant does not challenge any of the trial court's findings regarding the best-interest factors under MCL 722.23. He also does not challenge the trial court's finding that the children had an established custodial environment with plaintiff, but not with defendant. Rather, he maintains only that the court erred by finding that the parties could not co-parent to the extent necessary to share joint legal custody of the children. We disagree.

“[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 a clear legal error on a major issue.’ “ *Dailey v Kloenhamer*, 291 Mich App 660, 664; 811 NW2d 501 (2011), quoting MCL 722.28. The great weight of the evidence standard instructs that “the trial court’s determination will be affirmed unless the evidence clearly preponderates in the other direction.” *Mitchell v Mitchell*, 296 Mich App 513, 519; 823 NW2d 153 (2012). As applied to custody decisions, an abuse of discretion “is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias.” *Rains v Rains*, 301 Mich App 313, 324; 836 NW2d 709 (2013) (quotations omitted). Clear legal error occurs when the trial court chooses, interprets, or applies the law incorrectly. *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994).

The trial court did not err by finding that the parties were unable to agree on how to raise the children, thereby precluding an award of joint legal custody.

Legal custody refers to the “decision-making authority as to the important decisions affecting the welfare of the child.” MCL 722.26a(7)(b). For joint legal custody to work,

parents must be able to agree with each other on basic issues in child rearing—including health care, religion, education, day to day decision-making and discipline—and they must be willing to cooperate with each other in joint decision making. If two equally capable parents whose marriage relationship has irreconcilably broken down are unable to cooperate and to agree generally concerning important decisions affecting the welfare of their children, the court has no alternative but to determine which parent shall have sole custody of the children. The establishment of the right to custody in one parent does not constitute a determination of the unfitness of the noncustodial parent but is rather the result of the court’s considered evaluation of several diverse factors relevant to the best interests of the children. [*Fisher v Fisher*, 118 Mich App 227, 232-233; 324 NW2d 582 (1982) (citations omitted).]

MCL 722.26a provides:

(1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in [MCL 722.23]

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

The trial court based its decision on the parties' mutual animosity, including testimony that each of them had called the police on the other, and their inability to collaborate on medical decisions to the extent that they were changing their child's medical appointments without letting the other parent know. This Court has held that a decision regarding joint custody should not focus simply on whether personal animosity exists between parties, but rather whether that animosity affects the parties' ability to agree on basic, child-rearing issues. *Nielsen v Nielsen*, 163 Mich App 430, 434; 415 NW2d 6 (1987), citing *Fisher*, 118 Mich App at 233. In this case, the trial court's finding that the parties' animosity affected their ability to agree on basic child-rearing issues is not against the great weight of the evidence.

In addition to the numerous examples of the parties' dislike of each other, the testimony illustrating how the parties' animosity negatively impacted their child's ability to obtain medical treatment after an accident supports the trial court's decision. Defendant testified that plaintiff thwarted his ability to find out about his son's condition after the accident, changed doctor appointments to keep him from attending, had called the police on him when the two were at another doctor's appointment, and did not tell him about rehabilitation appointments. The trial court's finding that the parties could not agree on medical treatment for the children is also supported by plaintiff's testimony that defendant left medical decisions to her, but he and his family ridiculed her for taking her daughter to the emergency room for what later turned out to be a serious medical issue. Other evidence also supports that the parties were unable to agree on basic child-rearing issues. Plaintiff's testimony outlined the vastly divergent child discipline practices of the two. In addition, defendant testified that plaintiff did not permit the children to attend church or Sunday school, which ran contrary to defendant's belief in the importance of their religious education.

In sum, the trial court did not err by finding that joint legal custody was not practical in this case because of the parties' animosity and inability to cooperate in raising the children.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ James Robert Redford