STATE OF MICHIGAN

COURT OF APPEALS

COREY JAMES OSBORNE,

Plaintiff-Appellee,

v

BESMIRA OSBORNE,

Defendant-Appellant.

UNPUBLISHED
August 13, 2020

No. 352257
Ottawa Circuit Court
LC No. 18-089270-DM

Before: FORT HOOD, P.J., and JANSEN and TUKEL, JJ.

PER CURIAM.

Defendant Besmira Osborne, appeals as of right the trial court's order granting a motion for a change of custody and parenting time in favor of plaintiff, Corey James Osborne. On appeal, defendant raises several claims, including that the trial court erred in awarding full physical and legal custody to plaintiff even after finding that the established custodial environment existed with defendant and that the trial court improperly allowed or disallowed evidence. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1). We affirm.

I. UNDERLYING FACTS

This case arises out of the parties' tumultuous divorce proceedings and child-custody dispute. The parties had two children during their marriage. Plaintiff filed his complaint for divorce in September 2018. The trial court issued the judgment of divorce in July 2019. According to the judgment, the parties shared joint legal custody of the children, and defendant had physical custody. The judgment required both parties to participate in a "Capacity to Parent" evaluation, which would be evaluated by the friend of the court. Plaintiff had parenting time on Sundays for 12 consecutive weeks. In addition, plaintiff also had parenting time every Thursday. Parenting time during holidays followed the friend-of-the-court schedule. The judgment also required plaintiff to take a 12-hour online parenting skills class. The judgment provided that the friend-of-the-court investigator would conduct a review of parenting time in 12 weeks.

The parties' custody disputes continued. Defendant sought to suspend plaintiff's parenting time because she believed that plaintiff was abusing the children. However, the trial court denied these requests. The trial court found that defendant violated the parenting-time order, and plaintiff

was given parenting time every weekend until Thanksgiving 2019. The parties were then to have the children on alternate weekends, and plaintiff would continue to have parenting time on Thursday afternoons. Defendant also was facing possible felony eavesdropping charges for recording conversations of plaintiff's parenting time, as a result of having used an audio recording device which had been surreptitiously placed in her daughter's coat. In November 2019, plaintiff filed a motion for a change of custody, arguing that defendant continued to violate parenting-time orders. The trial court granted that motion following a hearing, awarding sole legal and physical custody of the children to plaintiff and supervised parenting time to defendant. This appeal followed.

II. CHANGE OF CUSTODY

Defendant argues that the trial court erred by awarding plaintiff primary custody after determining that the established custodial environment existed with defendant. We disagree.

An issue raised in the trial court and pursued on appeal is preserved even if the trial court failed to address or decide the issue. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). The issue of changing who had custody of the children was raised in and addressed and decided by the trial court. Thus, the issue is preserved. See *id*.

This Court applies "three standards of review in custody cases." *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). "The great weight of the evidence standard applies to all findings of fact. A trial court's findings regarding the existence of an established custodial environment and regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction." *Id*. Further, the "abuse of discretion standard applies to the trial court's discretionary rulings such as custody decisions." *Id*. "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). "An error of law necessarily constitutes an abuse of discretion." *Denton v Dep't of Treasury*, 317 Mich App 303, 314; 894 NW2d 694 (2016). Finally, this Court reviews questions of law for clear legal error. *Phillips*, 241 Mich App at 20. "A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law." *Id*.

Under MCL 722.27(1)(c), a trial court may modify its previous child-custody judgments or orders "for proper cause shown or because of change of circumstances . . . ." Under that statute, "The court shall not modify or amend its previous judgment or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child." MCL 722.27(1)(c).

Defendant does not allege any error concerning the trial court's finding of proper cause or its conclusion that the established custodial environment existed with defendant. Instead, defendant argues that the trial court's findings in determining that it was in the children's best interests to award plaintiff primary physical custody were against the great weight of the evidence.

In making a custody determination, "a trial court is required to evaluate the best interests of the children under the 12 statutorily enumerated factors" listed in MCL 722.23. *Kessler v Kessler*, 295 Mich App 54, 63; 811 NW2d 39 (2011). In doing so, a "trial court must consider and

explicitly state its findings and conclusions with regard to each [best interest] factor" enumerated by MCL 722.23. *Thompson v Thompson*, 261 Mich App 353, 357; 683 NW2d 250 (2004). "A court need not give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances." *Sinicropi v Mazurek (On Remand)*, 273 Mich App 149, 184; 729 NW2d 256 (2006). By entering a custody order, the trial court implicitly establishes that it has properly considered the best interests factors, engaged in "profound deliberation" about its discretionary custody ruling, and is satisfied that the custody order is in the child's best interests. *Harvey v Harvey*, 470 Mich 186, 192-193; 680 NW2d 835 (2004). "It is presumed to be in the best interests of a child for the child to have a strong relationship with both . . . parents." MCL 722.27a(1); *Shade v Wright*, 291 Mich App 17, 29; 805 NW2d 1 (2010).

Under MCL 722.23, the child's best interests are evaluated on the basis of the following factors:

> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
>
> (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
>
> (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
>
> (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
>
> (f) The moral fitness of the parties involved.
>
> (g) The mental and physical health of the parties involved.
>
> (h) The home, school, and community record of the child.
>
> (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
>
> (j) 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 or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.
>
> (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(*l*) Any other factor considered by the court to be relevant to a particular child custody dispute.

In this case, the trial court determined that factors (a), (c), (e), (g), and (h) favored both parties equally. The trial court found that factors (b), (d), (f), (j), (k), and (*l*) favored plaintiff. The trial court did not consider factor (i) due to the young age of the children. On appeal, defendant expressly argues that the trial court erred in its findings regarding factors (b), (c), (d), (f), and (h). Defendant did not provide argument concerning the other factors, and as a result, we will not consider those factors. See *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015) ("An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority."). Regarding the challenged factors, we do not believe that the trial court's findings were against the great weight of the evidence. See *Phillips*, 241 Mich App at 20.

For factor (b)—the capacity and disposition of the parties to give the child love, affection, and guidance—the trial court concluded that this factor favored plaintiff. The trial court explained that defendant inspected the children after parenting time, recorded their conversations, and questioned them regarding perceived injuries. The trial court opined that these actions did not provide proper guidance and were not an expression of love and affection. Instead, the trial court concluded that defendant's actions were the result of her disdain for plaintiff. On appeal, defendant argues that this factor favors her because the children's paternal grandmother did most of the parenting during plaintiff's time with the children, while defendant did not require assistance. Even accepting this as true, the friend-of-the-court investigator expressed significant concerns that defendant was exposing the children to unnecessary questioning and examination by doctors, Child Protective Service (CPS) workers, and law enforcement officials with her unfounded abuse allegations. The friend-of-the-court investigator also noted that she was unsure how defendant was properly caring for the children because she was listening to 10 hours of audio recording from plaintiff's parenting time. On the other hand, plaintiff and his residence had been investigated by CPS, which concluded that there was no reason for concern. Considering the investigator's and trial court's concerns regarding the guidance that defendant was providing to the children in her attempts to disrupt plaintiff's parenting time, the trial court's finding that this factor favored plaintiff was not against the great weight of the evidence. See *id*.

For factor (c), the trial court determined that both parties could provide for the material needs of the children. Defendant argues that the trial court erred by not finding that this factor favored defendant because plaintiff was not involved in the children's medical appointments. However, plaintiff testified that he provided the children with diapers, food, shelter, and other necessities. He explained that he was employed fulltime as a phlebotomist at Holland Hospital, and that he provided health insurance for the children. Plaintiff acknowledged that he had not needed to take the children to the doctor, but he could take them if it was necessary. He also cared for the children when they were sick. Although defendant disputed some of plaintiff's testimony in this regard, the trial court was tasked with determining the credibility of witnesses. See *H J Tucker & Assocs, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 569; 595 NW2d 176 (1999) (stating that this "Court should defer to the trial court's assessment of credibility . . . ."); MCR 2.613(C). As a result, defendant has not shown that the trial court's

conclusion that this factor favored both parties equally was against the great weight of the evidence. See *Phillips*, 241 Mich App at 20.

In regard to factor (d)—the length of time the child had lived in a stable, satisfactory environment—the trial court determined that this factor favored plaintiff. The trial court explained that defendant's questioning of the children after parenting time and her inability to co-parent with plaintiff made the environment in her home unsatisfactory. On the other hand, all reports regarding plaintiff's home were positive. This finding was supported by the friend-of-the-court investigator's testimony. The friend-of-the-court investigator questioned how much stability defendant provided to the children because she was unwilling to stop contacting CPS and law enforcement officials until she could prove that the children were being mistreated, even though there was no evidence to support her belief and much evidence to refute it. According to the investigator, she noted in her July report that defendant's home was a chaotic environment, and that had likely continued or become worse. The investigator believed that defendant would further drive a wedge between the children and plaintiff and that it would become more difficult over time for the court and mental health professionals to intervene. Consequently, the evidence established that defendant was not providing a stable environment for the children. Accordingly, the trial court's conclusion that this factor favored plaintiff was not against the great weight of the evidence. See *id.*

For factor (f)—the moral fitness of the parties—the trial court found that this factor clearly favored plaintiff. The trial court noted the eavesdropping incident and defendant's failure to accurately explain how she obtained the recording when asked by the trial court. This finding was not against the great weight of the evidence. See *id.* To begin with, the friend-of-the-court investigator found that this factor favored plaintiff. The investigator testified at the hearing in this case that she believed that the factor continued to favor plaintiff, on the basis of the Capacity to Parent evaluation and defendant's current criminal matters. Indeed, the evidence established that defendant often misstated facts and exaggerated even when truthful. She placed an audio recording device in her daughter's coat to record plaintiff's parenting time, and there was a possibility that she would face criminal charges for doing so. Defendant initially also was unwilling to tell the trial court how she obtained the recording. She told the court that a friend obtained the recording, but she refused to name the friend. She also consistently thwarted or sought to thwart plaintiff's parenting time. Accordingly, the evidence supported the trial court's conclusion that the moral fitness factor favored plaintiff, and this conclusion was not against the great weight of the evidence. See *id.*

Finally, defendant disputes the trial court's determination that factor (h)—the home, school, and community record of the child—equally favored both parties. The trial court explained that the children were doing well and that both parents loved the children. Defendant argues that she enrolled the children in activities, such as music class, but that plaintiff did not participate. But the children are still fairly young, at two and three years old. There was not much testimony offered in this regard. At any rate, considering the lack of evidence concerning this factor and the children's ages, the trial court's conclusion that this factor favored both parties equally was not against the great weight of the evidence. See *id.*

Ultimately, the trial court determined that defendant's hatred for plaintiff "interfered with everything." The trial court believed that defendant never would be able to put plaintiff in a

positive light for the children. The trial court concluded that plaintiff had proven by clear and convincing evidence that it was in the children's best interests for plaintiff to receive physical and legal custody. This finding was supported by the testimony provided at the hearing. Even acknowledging that the established custodial environment existed with defendant, considering the other factors as discussed above, we cannot find that the trial court's findings were against the great weight of the evidence. See *id*. Because the trial court's findings in regard to the statutory best-interest factors were not against the great weight of the evidence, the trial court did not abuse its discretion in awarding primary physical custody of the children to plaintiff but also providing parenting time to defendant. See *id*.

III. HEARSAY

Defendant argues that the trial court erred by allowing hearsay testimony regarding statements made by medical personnel. We disagree.

To preserve an evidentiary issue, the party objecting to the admission of the evidence must make a timely objection in the trial court on the same ground that the party raises on appeal. *Genna v Jackson*, 286 Mich App 413, 423; 781 NW2d 124 (2009). Defendant, acting *in propria persona*, failed to object in the trial court to any testimony regarding the out-of-court statements made by medical personnel. As a result, this issue was not preserved for appeal.

Unpreserved issues are reviewed for plain error. *Hogg v Four Lakes Ass'n, Inc*, 307 Mich App 402, 406; 861 NW2d 341 (2014). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Kern v Blethen-Coluni*, 240 Mich App 333, 335-336; 612 NW2d 838 (2000) (quotation marks omitted), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 443; 906 NW2d 482 (2017) (alteration in original, citation and quotation marks omitted). The appellant bears the burden of persuasion with respect to prejudice. See *Carines*, 460 Mich at 763 ("It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.") (quotation marks and citation omitted).

Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c); see also *Merrow v Bofferding*, 458 Mich 617, 626; 581 NW2d 696 (1998). "Hearsay evidence is inadmissible unless it comes within an established exception." *Merrow*, 458 Mich at 626; see also MRE 802.

In this case, several witnesses provided testimony regarding statements made by medical personnel concerning defendant's attempts to prove that plaintiff was abusing the children. A CPS worker testified that defendant showed a doctor a video of defendant's daughter, which showed the daughter's hand in her diaper; according to the CPS worker's testimony, the doctor told defendant that it was normal child behavior. The friend-of-the-court investigator also testified that defendant spoke to a nurse regarding a mass on the son's neck; again, according to the friend of the court's testimony, the nurse reported that there was no reason to believe that the mass was the

result of plaintiff's parenting time. Plaintiff also testified that he spoke to medical personnel regarding the mass, and was told that his son had been seen for the mass.

Defendant did not object to any of these statements. The trial court is not obligated to strike testimony sua sponte in the absence of any objection. See *People v Jones*, 66 Mich App 223, 232-233; 238 NW2d 813 (1975).[1]

By all indications the testimony at issue was offered for the truth of the matter asserted, not merely to establish that the testifying witnesses heard the information, and also did not fall within MRE 803(4) as a statement made for medical treatment or diagnosis. As such, the testimony was inadmissible hearsay. See MRE 801; *Merrow*, 458 Mich at 626.[2] But the complained of testimony ultimately was not prejudicial, considering the other, properly-admitted testimony. Several witnesses testified that defendant's abuse allegations had not been substantiated. The actual statements made by medical personnel were immaterial. The investigator explained that doctors were mandatory reporters of suspected child abuse, and as a result, if they had had any concerns, they would have contacted CPS. But the doctors did not contact CPS about any suspected child abuse. Instead, CPS's concern in the case involved defendant's continuing complaints to law enforcement officials, CPS, and medical personnel, seeking to prove that plaintiff was abusing the children. Further, the trial court did not appear to rely on any of these out-of-court statements in its ruling. Rather, the trial court emphasized defendant's disdain for plaintiff, her continued attempts to prove abuse, and her consistent denial of his parenting time. As a result, the recounting of these statements did not constitute plain error affecting defendant's substantial rights. See *Hogg*, 307 Mich App at 406.

IV. TESTIMONY OUTSIDE WITNESS EXPERTISE

Defendant argues that the trial court erred by allowing two witnesses, a CPS worker and a friend-of-the-court investigator, to testify regarding matters not within their expertise. We disagree.

Defendant failed to raise this issue before the trial court. Thus, the issue is unpreserved. See *Genna*, 286 Mich App at 423. As explained earlier, unpreserved issues are reviewed for plain error affecting substantial rights. See *Hogg*, 307 Mich App at 406.

---

[1] "Although cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), they nevertheless can be considered persuasive authority." *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012) (citation omitted).

[2] Plaintiff fails to make any argument on appeal that the testimony at issue was admissible under an exception to the general rule prohibiting hearsay or for any other reason, and we have noted that none of the statements fell within Rule 803(4). Thus, any such argument is abandoned. See *Cheesman*, 311 Mich App at 161 ("An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority.").

Defendant failed to include any citation to legal authority regarding why the complained of testimony was inadmissible. In the relevant section of her brief on appeal, defendant cited to the standard of review, but she failed to cite to the substantive legal standard regarding the admissibility of the evidence in question. Consequently, the issue is abandoned. See *Cheesman*, 311 Mich App at 161 ("An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority.").

Furthermore, even if defendant's argument that two witnesses testified outside their areas of expertise was not abandoned it would still fail. In essence, defendant argues that two witnesses diagnosed her with Munchausen Syndrome.[3] But the record clearly establishes that these witnesses did not diagnose defendant with Munchausen Syndrome. Rather, the trial judge asked the CPS worker:

> *Q.* [CPS Worker], your last statement there that [defendant], despite input from professionals, continues to seek affirmation that there is something wrong. That almost sounds like Munchhausen's [sic]?
>
> *A.* It could be. It's never been called in as such, but yes.

The CPS worker clearly did not diagnose defendant with Munchausen Syndrome. Instead, she merely responded to the trial judge's question, stated that defendant's actions had never led anyone—presumably including medical professionals—to say that she had Munchausen Syndrome, and then agreed that defendant *might* have Munchausen Syndrome. But the CPS worker certainly did not diagnose defendant with Munchausen Syndrome. Furthermore, "in a bench trial, we assume that the trial court knew the law and considered only the evidence properly before it." *In re Archer*, 277 Mich App 71, 84; 744 NW2d 1 (2007). The trial judge knew that the CPS worker was not qualified to diagnose defendant with Munchausen Syndrome and, therefore, we assume the trial court did not consider the CPS worker's testimony as if it confirmed that defendant was diagnosed with Munchausen Syndrome. And the trial court obviously also knew the context of the CPS worker's testimony, that no one else ever had given such a diagnosis regarding defendant, either.

Similarly, admission of the friend-of-the-court investigator's testimony also was not erroneous. The friend-of-the-court investigator testified about what an "Axis II disorder" was and testified that she did not know whether Munchausen Syndrome was an Axis II disorder.[4] As such,

---

[3] Munchausen syndrome is a factitious disorder, a mental disorder in which a person repeatedly and deliberately acts as if he or she has a physical or mental illness when he or she is not really sick. Munchausen syndrome is considered a mental illness because it is associated with severe emotional difficulties.

[4] As described by the friend-of-the-court investigator, "Axis II disorders" are personality disorders such as "histrionic personality disorder, narcissistic personality disorder, [and] paranoid delusional personality disorders." In his capacity to parent evaluation, Dr. Jeff Kieleszewski could not conclude whether defendant suffered from any Axis II disorders.

the friend-of-the-court investigator did not testify that defendant had Munchausen Syndrome or that defendant had been diagnosed with Munchausen Syndrome. Additionally, as stated earlier, to the extent the friend-of-the-court investigator did testify about any potential mental illness of defendant the trial court is presumed to have given that testimony the appropriate weight given the friend-of-the-court investigator's lack of medical knowledge and expertise. See *Archer*, 277 Mich App at 84. Finally, the trial judge did not base his custody ruling on whether defendant potentially had any mental illness. Thus, defendant was not prejudiced by the admission of this testimony and its admission did not constitute plain error. See *Hogg*, 307 Mich App at 406.

V. DR. JEFF KIELESZWESKI'S REPORT

Defendant also argues that the trial court erred by allowing the friend-of-the-court investigator to testify regarding the Capacity to Parent evaluation. We disagree.

Defendant failed to raise this issue before the trial court. Thus, the issue is unpreserved. See *Genna*, 286 Mich App at 423. As explained earlier, unpreserved issues are reviewed for plain error affecting substantial rights. See *Hogg*, 307 Mich App at 406.

Defendant argues that the trial court erred by allowing evidence of Dr. Jeff Kieleszewski's Capacity to Parent evaluation to be introduced at trial, but fails to argue that evidence of the evaluation was inadmissible on hearsay grounds. Thus, any such argument is abandoned. See *Cheesman*, 311 Mich App at 161. Instead, defendant argues only that Dr. Kieleszewski's evaluation was inadmissible essentially due to lack of reliability. But, as with her argument that witnesses testified outside the scope of their expertise, defendant again failed to cite any relevant case law on the issue other than the standard of review. Consequently, defendant failed to make any legal argument why Dr. Kieleszewski's evaluation was inadmissible and, therefore, the argument is abandoned. See *id.*

Furthermore, even assuming for the sake of argument that Dr. Kieleszewski's evaluation was inadmissible, defendant cannot establish that she was prejudiced by its admission. The friend-of-the-court investigator explained that she filed an updated custody report and recommendation with the trial court after reviewing the evaluations and meeting with plaintiff. The investigator was unable to meet with defendant because defendant did not attend her scheduled meeting. At any rate, the investigator's testimony regarding Dr. Kieleszewski's evaluation ultimately was not prejudicial. The investigator explained that, due to language and cultural barriers, Dr. Kieleszewski could not determine whether defendant suffered from a mental illness or personality disorder. Nevertheless, Dr. Kieleszewski did find that defendant exhibited dysfunctional personality characteristics such as emotional reactivity, aggression, telling mistruths or exaggerations, and externalizing or minimizing responsibility for negative circumstances. The investigator was asked whether she agreed with that assessment on the basis of her experience with defendant. She stated that she did. The investigator was available for cross-examination regarding her opinion. Moreover, defendant testified regarding the findings of the evaluation in her direct testimony. She testified that the evaluation stated that she exhibited no signs of a mental disorder or a substance abuse disorder. Moreover, the evaluation did not find that she could not properly care for children. Finally, multiple other witnesses provided ample testimony regarding their opinions and recommendations on the basis of their own investigations and experiences with defendant. As a result, the investigator's testimony about Dr. Kieleszewski's evaluation could not

have constituted plain error affecting defendant's substantial rights. See *Hogg*, 307 Mich App at 406. See also *Merrow*, 458 Mich at 634.

VI. AUDIO RECORDING

Next, defendant argues that the trial court erred by not allowing her to play an audio recording at the hearing. We disagree.

Defendant argued at the trial court level that the audio recording in question should have been admitted in to evidence. Thus, the issue is preserved. See *Genna*, 286 Mich App at 423.

"Issues relating to the admission of evidence are reviewed for an abuse of discretion." *Hecht v Nat'l Heritage Academies, Inc*, 499 Mich 586, 604; 886 NW2d 135 (2016). "[A]n abuse of discretion will normally not be found when addressing a close evidentiary question." *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 303; 660 NW2d 351 (2003) (citations omitted).

Again, defendant's argument on this issue is devoid of relevant substantive legal citation. Defendant failed to cite to any legal authority establishing why the trial judge erred by refusing to admit the audio recording into evidence. Rather, defendant only cited MRE 103, which addresses preservation of evidentiary matters, and made factual recitations, which contradicted themselves and which changed during a colloquy with the trial court, about how the recording came to be. But defendant makes no legal argument on appeal regarding why the trial court erred. Thus, the claim of error is abandoned. See *Cheesman*, 311 Mich App at 161.

Even when addressed on the merits, however, defendant's assertion of error still fails. "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." MRE 901(a). See also *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 154-155; 908 NW2d 319 (2017) (discussing MRE 901(a)). MRE 901(b) allows testimony to establish the authenticity of evidence.

Defendant sought to play an audio recording of plaintiff's parenting time. Because the audio was 10 hours long, we assume that defendant sought to play only certain portions of the recording she deemed material. The trial court asked defendant how she obtained the recording several times. Defendant explained that a friend provided the recording, but she would not identify the friend, explain how exactly she came into possession of the recording, or explain how it was made. After defendant repeatedly failed to answer these questions the trial court concluded that the recording would not be played and asked plaintiff's counsel to provide his closing arguments. At that point, defendant admitted that she made the recording. The trial court stated that defendant was no longer credible in that regard and asked plaintiff to continue her argument. As explained earlier, we defer to the trial court's assessment of credibility. See *H J Tucker & Assocs, Inc*, 234 Mich App at 569; MCR 2.613(C).

Considering that the trial court asked defendant several times to explain how she obtained the recording, defendant's refusal to disclose that information until the trial court ruled that the recording would not be played, and the fact that two CPS workers listened to the recording and

testified that they did not hear anything concerning, the trial court's decision not to admit the recording was not an abuse of discretion. See *Hayford*, 279 Mich App at 325.

VII. DUE PROCESS

Finally, defendant argues that the trial court violated her due-process rights and that the cumulative effect of the errors that occurred at the hearing denied defendant a fair hearing. We disagree.

An issue raised in the trial court and pursued on appeal is preserved even if the trial court failed to address or decide the issue. *Peterman*, 446 Mich at 183. Defendant failed to raise these issues in the trial court. Thus, the issues are unpreserved. See *id*. As explained earlier, unpreserved issues are reviewed for plain error affecting substantial rights. See *Hogg*, 307 Mich App at 406.

"Parents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). "Procedural due process serves as a limitation on governmental action and requires a government to institute safeguards in proceedings that might result in a deprivation of life, liberty, or property." *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 213; 761 NW2d 293 (2008). Specifically,

> [p]rocedural due process requires that a party be provided notice of the nature of the proceedings and an opportunity to be heard by an impartial decision maker at a meaningful time and in a meaningful manner. [*Id*. at 213-214 (citations omitted).]

Generally, "[t]he opportunity to be heard does not mean a full trial-like proceeding, but it does require a hearing to allow a party the chance to know and respond to the evidence." *Hinky Dinky Supermarket, Inc v Dept of Community Health*, 261 Mich App 604, 606; 683 NW2d 759 (2004). That being said, "the process due under the state and federal constitutions is flexible and satisfied as long as fundamental fairness is observed." *Genesco, Inc v Mich Dept of Environmental Quality*, 250 Mich App 45, 56; 645 NW2d 319 (2002).

> Fundamental fairness is determined by consideration of the private interest at stake, the risk of an erroneous deprivation of such interest through the procedures used, the probable value of additional or substitute procedures, and the state or government interest, including the function involved and the fiscal or administrative burdens imposed by substitute procedures. [*Id*. at 56-57 (citation and quotation marks omitted).]

Defendant was allowed to participate in the trial court proceedings. She had the opportunity to cross-examine plaintiff's witnesses and provide her own testimony. The trial court also allowed her to present videos and pictures. The trial court, however, would not allow defendant to show a video of an interview with an employee at Barnes and Noble because the employee was not subject to cross-examination; the trial court similarly did not admit the audio recording from plaintiff's parenting time discussed earlier in this opinion that defendant refused to authenticate. Those rulings, of course, were based simply on the rules of evidence, and thus

comply with the requirement of due process. The trial court also simply asked defendant to be quiet during plaintiff's presentation after she interrupted the judge several times. Additionally, the trial court told defendant that there was a limit to the amount of evidence that she could present. Apparently, defendant asked to view the recordings of plaintiffs' home and body camera recordings for the first time at the hearing, and the trial court stated that she could view those recordings, but she would have to pay for duplicating them. Such a requirement was in accordance with normal rules of discovery, and did not impede the fundamental fairness of the proceedings. Finally, the trial court told defendant that she could bring a motion for reconsideration on the basis of those videos. These actions were not unreasonable. As a result, defendant has not shown that the trial court violated her due-process rights, because she had a meaningful opportunity to be heard by the trial court, she was heard by the trial court, and none of the alleged errors denied her of a fair hearing. See *Mettler Walloon*, 281 Mich App at 213-214.

VIII. CONCLUSION

For the reasons stated in this opinion, the trial court's order changing custody of the children from defendant to plaintiff is affirmed. Plaintiff, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ Jonathan Tukel