STATE OF MICHIGAN

COURT OF APPEALS

ADAM STEELE,

Plaintiff-Appellee,

v

ASHTON STEELE,

Defendant-Appellant.

UNPUBLISHED
January 14, 2021

No. 351272
Wayne Circuit Court
LC No. 13-100279-DM

Before: K. F. KELLY, P.J., and STEPHENS and CAMERON, JJ.

PER CURIAM.

In this case involving child custody, defendant appeals as of right the trial court's opinion and order granting sole legal and physical custody of the minor child, FAS, to plaintiff. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant were married in July 2010, and shortly thereafter, plaintiff adopted FAS, defendant's child from a previous relationship. In January 2013, plaintiff filed a complaint for divorce. By August 2013, a consent judgment of divorce was reached by the parties that gave defendant sole physical custody of FAS, and the parties shared legal custody. Plaintiff was awarded parenting time with FAS.

Plaintiff discovered that defendant had changed FAS's school district without conferring with plaintiff or getting approval from the trial court. Thereafter, in 2015, an onslaught of motions filed by both parties commenced, including a motion to modify the custody order contained in the consent judgment of divorce. In her motions, defendant raised claims of abuse by plaintiff. Despite an evidentiary hearing being scheduled regarding custody and parenting time, the parties continued their deluge of motions requesting cessation of parenting time, supervised parenting time, and further allegations of abuse raised by defendant against plaintiff. The evidentiary hearing finally commenced in January 2017, took place over the course of 14 separate days, and ended on May 19, 2017. The trial court expressed concern with defendant's decision to violate the legal-custody order by making the unilateral decision to change FAS's school, found that defendant's

allegations of abuse by plaintiff were unfounded, and in August 2017, issued a written opinion and order maintaining sole physical custody with defendant and shared legal custody.

Almost immediately after that opinion and order were entered, the parties began to file motions again, including defendant's motion for approval of a vaccination schedule for FAS. The increased litigation led to the trial court appointing Katherine Zopf as the guardian ad litem (GAL). With the GAL's involvement in the case, the parties reached a settlement agreement about the various issues with which they were concerned. On August 3, 2018, the parties met in court for the trial court to adopt the terms of the settlement agreement. However, defendant acted strangely in the courtroom and informed the trial court that she no longer agreed with the settlement agreement because she was forced to grant her attorney the authorization to sign it before she could properly review it. Nonetheless, when questioned by the trial court, defendant agreed to the settlement. After the trial court acknowledged defendant's decision and began to delineate the terms of the settlement agreement, defendant experienced a mental breakdown on the record. The trial court expressed concern with defendant's behavior, noting she had just announced her willingness to be bound by the settlement agreement. The trial court's written order was entered on August 6, 2018, and relevantly, contained a detailed process for having FAS vaccinated, which required the GAL's approval after a visit to the pediatrician.

Shortly after that order was entered, defendant scheduled an appointment for FAS to be vaccinated without engaging in any of the steps required under the settlement agreement. Defendant canceled the appointment after being contacted by the GAL and claimed to misunderstand the terms. A few weeks later, plaintiff moved the trial court to modify custody to award him sole legal and physical custody of FAS. Plaintiff cited defendant's apparent mental-health event in the courtroom and her decision to schedule the vaccination appointment in direct violation of the settlement agreement and trial court's order. At a hearing regarding that motion, defendant, for the first time, requested accommodations under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. Defendant presented a letter from Dr. Allison Ursu, which stated that defendant had been diagnosed with post-traumatic stress disorder (PTSD), and would benefit from accommodations including being given extra time to respond to questions, provided short breaks to address defendant's anxiety, and to have a support person present with her. The trial court granted all of those accommodations.

At that hearing, plaintiff and the GAL informed the trial court that defendant had been leaving FAS, who was nine years old, home alone for more than an hour after school but before defendant returned home from work. Defendant admitted that she had done so, but explained that she consulted with her therapist and friends who opined that FAS was mature enough to handle it. During a brief recess, defendant suffered another mental breakdown, this time in the bathroom of the courthouse. This event occurred when defendant saw Nichole Hankins, plaintiff's fiancée, in the public bathroom in the courthouse. Two other women witnessed defendant's breakdown, defendant's support person and another woman who was in the bathroom with her infant child. After accepting testimony from defendant's friend and the woman with the child, the trial court granted the GAL's request to suspend defendant's parenting time for two weeks, finding that allowing defendant to parent FAS in defendant's elevated emotional state presented a significant risk of harm to FAS's well-being. The order also required defendant's contact with FAS to be monitored by plaintiff during that time. Additionally, the trial court found that a proper cause or

change of circumstances existed warranting a review of the previous custody order and set the issue for an evidentiary hearing.

Two weeks later, the trial court reinstated defendant's parenting time, but ordered that it must be supervised by her friend, Nicholas Boyer. The trial court also ordered defendant to stop engaging social-media campaigns that defamed plaintiff and used FAS's likeness to obtain money through GoFundMe, a crowdfunding application. Lastly, the trial court ordered that defendant undergo a psychological evaluation with Dr. James Bow.

Then, in December 2018, defendant moved the trial court to allow her to take FAS on vacation to Arizona for Christmas, which would not be supervised by Boyer. At a hearing regarding that motion, it was revealed that defendant had told FAS about the planned vacation before she received court approval to travel. The trial court expressed concern that defendant was attempting to use FAS's anticipation of the vacation as a way to strong-arm plaintiff and the court into approving it—otherwise, FAS would be disappointed. The GAL agreed that defendant was engaging in manipulation of FAS's emotions. The trial court then denied the request.

In January 2019, the trial court granted defendant's motion to adjourn the evidentiary hearing for eight weeks to ensure that she had appropriate accommodations for her PTSD. At another hearing in February 2019, despite appearing via videoconference, although at the courthouse, with Boyer present with her, defendant had another mental breakdown. Specifically, after defendant saw the GAL in the public hallway of the courtroom, defendant yelled loudly that plaintiff was a child molester and that just being in the courtroom made her feel plaintiff's hands around her throat. Defendant was only subdued after being physically moved to a nearby jury room and her attorney being called to assist court officers.

By the end of February 2019, plaintiff had moved the trial court to order defendant to appear in court and show cause why she should not be held in contempt of court for violating the court's orders on four different occasions. Pertinently, defendant put a note in FAS's backpack after being ordered to have her communication with FAS monitored by plaintiff, she continued to accuse plaintiff of abuse on social media, and she used FAS's likeness in her social-media fundraising campaigns. The evidentiary hearing, which was scheduled in March 2019, did not occur when defendant went to the hospital on the morning the hearing was set to commence. The trial court entered an order rescheduling the evidentiary hearing to May 2019, and ordered defendant to produce all of her medical records or to sign a waiver under the Health Insurance Portability and Accountability Act (HIPAA), 42 USC 1320d *et seq*., and noncompliance could result in an adverse inference.

Shortly before the evidentiary hearing, defendant moved the trial court for an indefinite adjournment of the hearing. Defendant stated that the indefinite adjournment was an ADA-accommodation for her PTSD. The trial court denied the motion. Then, when defendant failed to comply with the order regarding her medical records or a HIPAA waiver, plaintiff moved the trial court in limine to bar admission of any of defendant's medical records. The trial court granted that motion and took an adverse inference as a discovery sanction.

When the evidentiary hearing finally commenced on May 16, 2019, defendant did not attend and her attorney informed the trial court that she would not attend any future hearing dates.

Defendant claimed her PTSD did not allow her to come to court, and asked her counsel to provide the trial court with a letter explaining her situation. The letter, which was read into the record by the trial court, provided a strained comparison between someone with PTSD and someone with diabetes. The letter also addressed defendant's belief that blood-glucose testing was disgusting. The trial court expressed confusion about the letter, noting that the parties were aware that he suffered from diabetes and wore an insulin pump on the bench. The trial court eventually determined that defendant's proposed excuse for missing court was not legitimate, finding that she was exaggerating her PTSD as a form of gamesmanship.[1]

Over the course of three days, the trial court accepted testimony from plaintiff, allowed the introduction of Dr. Bow's psychological evaluation as evidence, and considered other documentary evidence. The trial court then announced its decision on the record, finding that it was in FAS's best interests, by clear and convincing evidence, for plaintiff to have sole legal and physical custody of FAS. The trial court also found defendant to be in contempt of court for violating the orders regarding contacting FAS and using social media to defame plaintiff. Defendant to ordered to pay plaintiff's attorney fees as a sanction for the contempt. For reasons that are unclear from the record, the trial court did not enter a written opinion and order until five months after that decision was made on the record. This appeal followed.

II. PROPER CAUSE OR CHANGE OF CIRCUMSTANCES

Defendant alleges that the trial court erred in determining that there was a proper cause or change of circumstances warranting review of the previous custody order. We disagree.

A. STANDARD OF REVIEW

This Court applies "three standards of review in custody cases." *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003), quoting *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). "Findings of fact . . . are reviewed under the 'great weight of the evidence' standard." *Dailey v Kloenhamer*, 291 Mich App 660, 664; 811 NW2d 501 (2011). In other words, "a reviewing court should not substitute its judgment on questions of fact unless they clearly preponderate in the opposite direction." *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994) (quotation marks and citation omitted). Meanwhile, "[d]iscretionary rulings . . . are reviewed for an abuse of discretion." *Dailey*, 291 Mich App at 664. "In child custody cases, an abuse of discretion occurs if the result [is] so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Maier v Maier*, 311 Mich App 218, 221; 874 NW2d 725 (2015) (quotation marks and citation omitted). "Lastly, the custody act provides that questions of law are reviewed for 'clear legal error.' " *Fletcher*, 447 Mich at 881, quoting MCL 722.28. A trial court commits "clear legal error" where it "incorrectly chooses, interprets, or applies the law . . . ." *Id.* In sum, "in child-custody disputes, 'all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of

[1] Indeed, over the course of the proceedings, defendant's request for accommodations increased to the extent that she deemed questioning by the trial court, plaintiff's attorney, and the GAL as triggers for her PTSD and instead sought to be questioned through a third-party.

fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.' " *Dailey*, 291 Mich App at 664, quoting MCL 722.28.

B. ANALYSIS

Defendant contends that the trial court improperly found that there was a proper cause or change of circumstances that permitted a review of the previous custody order. In Michigan, the Child Custody Act, MCL 722.21 *et seq*., "applies to all circuit court child custody disputes and actions, whether original or incidental to other actions." *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010), quoting MCL 722.26(1). When presented with a request to modify custody, the trial court is only permitted to actually consider the change in custody "if the movant establishes proper cause or a change in circumstances." *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011), citing MCL 722.27(1)(c). This requirement was included in the Child Custody Act "to minimize unwarranted and disruptive changes of custody orders, except under the most compelling circumstances." *Corporan v Henton*, 282 Mich App 599, 603; 766 NW2d 903 (2009). "Accordingly, a party seeking a change in the custody of a child is required, as a threshold matter, to first demonstrate to the trial court either proper cause or a change of circumstances." *Id*.

"[T]o establish a 'proper cause' necessary to revisit a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court." *Vodvarka*, 259 Mich App at 512. Further, an "appropriate ground" is typically "relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being." *Id*. When considering the alternate possibility of a "change of circumstances," this Court is required to view how the situation of the child has changed since the last custody order. *Corporan*, 282 Mich App at 604. Stated differently, "a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed." *Vodvarka*, 259 Mich App at 513. This Court clarified that not just any change would suffice under that rule, because "there will always be some changes in a child's environment, behavior, and well-being." *Id*. "Instead, the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child." *Id*. at 513-514. When considering the changes in conditions, this Court must do so while "being gauged by the statutory best interest factors." *Id*. at 514. While this Court is permitted to consider "evidence of the circumstances existing at the time of and before entry of the prior custody order[,]" it must do so only for comparison's sake, and "the change of circumstances must have occurred *after* entry of the last custody order." *Id*.

Thus, we must determine whether there was such a proper cause or a change of circumstances to warrant a review of the trial court's prior custody order—the August 2017 order—in light of the statutory best-interest factors. See *id*. at 512-514. In determining that proper cause existed, the trial court primarily relied on defendant's mental breakdowns that occurred in the courthouse. The first such event occurred on August 3, 2018, a hearing to adopt the parties' settlement agreement. Despite specifically authorizing her attorney to sign the agreement, defendant informed the trial court that she was having second thoughts. When pressed on the issue, defendant said that she was not given enough time to review the written settlement agreement and had only told her attorney to sign it after being pressured by plaintiff. Defendant

essentially said that she agreed to be bound by the settlement agreement but only because she wanted to stand by her word, not because she actually agreed with it. After the trial court confirmed defendant's acceptance of the terms and began entering the order adopting the parties' agreement, defendant had what she referred to as a panic attack. Defendant stopped responding to the trial court and asked her attorney for help. She then fled the courtroom. Given defendant's severe reaction to her own agreement being enforced, the trial court expressed concern regarding her ability to parent FAS.

After that hearing, plaintiff moved the trial court to modify custody. On October 5, 2018, when the trial court considered that motion, defendant had another mental breakdown. This time, the breakdown occurred in the bathroom of the courthouse. Defendant was in the bathroom with a friend when Hankins walked inside with a woman who had a baby with her. Despite the presence of defendant's friend as a form of support and the fact that a child was also there, defendant started screaming at Hankins and fled the bathroom. She later claimed that Hankins had triggered her PTSD causing a panic attack. Regardless of the veracity of that claim, the trial court again expressed concern about defendant's ability to parent FAS when even such minor occurrences caused a psychological episode.

These incidents are pertinent to a proper cause to warrant a custody review that must be "relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being." *Vodvarka*, 259 Mich App at 512. It is clear that concern regarding defendant's mental breakdowns in the courthouse were related to MCL 722.23(g), which is "[t]he mental and physical health of the parties involved." Nonetheless, defendant alleges that her mental breakdowns were not "of such magnitude to have a significant effect on the child's well-being." *Vodvarka*, 259 Mich App at 512. She focuses her analysis on the fact that FAS was not present in the courtroom during the mental-health events that occurred on August 3, 2018, and October 5, 2018. From that, defendant reasons that the "proper cause" cited by the trial court could not possibly fulfill the relevant standard when there was no way that it could have had "a significant effect on the child's well-being." *Id.*

The problem with that argument is that the "proper cause" cited by the trial court was not merely the mental breakdowns in court, but instead, the trial court focused on what those breakdowns portended for events occurring outside the court. Stated differently, if defendant had a mental breakdown because she saw Hankins in the bathroom, despite being with a friend specifically there to comfort her, and in the presence of an infant, it was reasonable to assume that defendant was not in control of her emotional response to stimuli, regardless of whom was present. Thus, defendant's rapidly deteriorating mental health, MCL 722.23(g), was a significant concern as it related to FAS's well-being, *Vodvarka*, 259 Mich App at 512. The trial court's finding that this was a proper cause warranting a review of the previous custody order, consequently, was not erroneous. *Id.*

Considering that concerns arising out of defendant's mental breakdowns were a proper cause to permit the trial court's review of the previous custody order, we decline to address the arguments related to other proposed proper causes cited by plaintiff and defendant.

III. TEMPORARY SUSPENSION OF PARENTING TIME

Defendant asserts that the trial court erred when it effectively changed custody by suspending her parenting time without considering all of the best-interest factors. We disagree.

A. STANDARD OF REVIEW

Like all issues involving child custody, "[o]rders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005). "Under the great weight of the evidence standard, this Court should not substitute its judgment on questions of fact unless the facts clearly preponderate in the opposite direction." *Shade v Wright*, 291 Mich App 17, 21; 805 NW2d 1 (2010). With regard to parenting time decisions, this Court will find an abuse of discretion only where a "trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). Meanwhile, "[c]lear legal error occurs when the trial court errs in its choice, interpretation, or application of the existing law." *Shade*, 291 Mich App at 21 (quotation marks and citation omitted).

B. ANALYSIS

We must first address defendant's contention that the trial court's temporary suspension of her parenting time amounted to an order changing custody, and thus, was improper without an evidentiary hearing and consideration of the best-interest factors. This argument relies on a misunderstanding of law and a misstatement of fact. Importantly, defendant's argument relates solely to the October 5, 2018 order of the trial court, which temporarily suspended defendant's parenting time after her two mental breakdowns in the courthouse. It is correct that a trial court is not permitted to change custody under the guise of a revocation of parenting time without being required to hold an evidentiary hearing and addressing the best-interest factors. *Grew v Knox*, 265 Mich App 333, 336-338; 694 NW2d 772 (2005).

However, in this case, the trial court's order was not an order changing custody masquerading as a parenting-time order. Instead, it was a two-week suspension of parenting time after defendant exhibited severe mental-health issues in the courtroom. The order itself specifically noted that defendant's parenting-time would be restored on October 19, 2018, relying on a suggestion from the GAL that defendant needed time to calm down before being able to properly parent again. Indeed, on October 19, 2018, just two weeks after the challenged order was entered, defendant was awarded parenting time from Thursday at 4:00 p.m. to Monday morning when FAS was dropped off at school, which was slightly more time than plaintiff had with FAS. Despite that fact, defendant implies in her brief on appeal that her parenting time was "temporarily" suspended until the evidentiary hearing was completed in May 2019. Plainly, that allegation is not supported by the record. Further, a temporary suspension of parenting time is permitted under Michigan law and the circumstances presented in this case.

Under Michigan's parenting time statutory scheme, "[p]arenting time shall be granted in accordance with the best interests of the child." MCL 722.27a(1). Further, "parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time." MCL 722.27a(1). With

respect to the best-interest analysis, "[i]t is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents." MCL 722.27a(1). Under MCL 722.27a(7), a court "may consider" a list of factors provided by statute. However, the parenting-time statute also reflects that parenting time should not be granted where the time "would endanger the child's physical, mental, or emotional health." MCL 722.27a(3).

In this case, the trial court relied on MCL 722.27a(3) to suspend defendant's parenting time. Indeed, "if 'it is shown on the record by clear and convincing evidence that [parenting time] would endanger the child's physical, mental, or emotional health' the court need not order parenting time." *Luna v Regnier*, 326 Mich App 173, 180; 930 NW2d 410 (2018), quoting MCL 722.27a(3). As summarized above, the trial court considered significant evidence of defendant's deteriorating mental health on August 3, 2018, and October 5, 2018. Simply seeing Hankins in a public bathroom was enough to send defendant screaming into the hallway of the courtroom, despite the fact that she had a person there to support her and that there was an infant in the bathroom. The trial court opined that this was evidence that defendant could not control her emotions, even when a child was involved and she had emotional support. This created significant concern for the trial court that FAS would be endangered if defendant were to be parenting FAS when such a situation arose. Therefore, in considering that evidence, the trial court found by clear and convincing evidence that sending FAS to spend time with defendant "would endanger [FAS's] physical mental or emotional health." MCL 722.27a(3). On the basis of the evidence just discussed, "the trial court's finding was not against the great weight of the evidence because the facts do not clearly preponderate in the opposite direction." *Luna*, 326 Mich App at 180 (quotation marks and citation omitted). Consequently, the trial court did not commit an error requiring reversal when it granted plaintiff's and the GAL's request to suspend defendant's parenting time for two weeks under MCL 722.27(a)(3). *Luna*, 326 Mich App at 180.

IV. ESTABLISHED CUSTODIAL ENVIRONMENT

Defendant contends that the trial court erred by altering its findings related to FAS's custodial environment with plaintiff. We disagree.

The trial court consistently found that FAS had an established custodial environment[2] with defendant. The confusion in this case arises from the trial court's differing decisions related to

[2] This Court, in *Griffin v Griffin*, 323 Mich App 110, 118-120; 916 NW2d 292 (2018) (footnotes omitted), recently provided a summary of the relevant law related to the importance of determining the existence of an established custodial environment:

> When a parent moves for a change of custody, he or she must first establish that there is a change of circumstances or proper cause to revisit the custody decision. *Vodvarka* [], 259 Mich App [at] 508-509 []; MCL 722.27(1)(c). If that threshold is satisfied, the trial court must determine whether the child has an established custodial environment. "Where no established custodial environment exists, the trial court may change custody if it finds, by a preponderance of the evidence, that the change would be in the child's best interests." *LaFleche v Ybarra*, 242 Mich App 692, 696; 619 NW2d 738 (2000). "However, where an

whether FAS had an established custodial environment with plaintiff. On the second day of the evidentiary hearing, after examining plaintiff on the record, the trial court found that FAS did not have an established custodial environment with plaintiff. The trial court, therefore, held that in order to change custody, the appropriate standard of review was clear and convincing evidence. On the fourth day of the evidentiary hearing, the trial court again addressed the question of established custodial environment, noting only that granting plaintiff's requested modification of custody would change FAS's custodial environment with defendant. The trial court again noted that this resulted in the standard of review being clear and convincing evidence. Finally, on the fifth day of the evidentiary hearing and in the written opinion and order, the trial court found that FAS had an established custodial environment with both parents. Even so, the trial court held that granting the requested custody modification would change FAS's custodial environment with defendant, and consequently, the standard of review remained clear and convincing evidence.

Defendant's argument regarding these occurrences essentially is that they were confusing. Although potentially true, that is not grounds for reversal. In *Kubicki v Sharpe*, 306 Mich App 525, 540; 858 NW2d 57 (2014), this Court considered a case where "[t]he circuit court failed to articulate any findings specifically identifying [the minor child]'s established custodial environment." The circuit court in *Kubicki*, 306 Mich App at 541, though, while considering the change of custody, applied the highest burden of proof available—clear and convincing evidence. "Because the court held [the moving party] to the highest standard of proof applicable to custody proceedings, the omission qualifies as harmless error." *Id.*

We are bound to follow the guidance of the *Kubicki* Court and find any potential error to be harmless, and thus, not grounds for reversal. Defendant's argument on this point cannot possibly change the outcome of the trial court proceedings, and we need not consider whether the trial court's final decision was improper. The highest burden of proof was applied in the case such that any alteration of the trial court's decision would not have any practical effect. *Id.*

V. BEST-INTERESTS DETERMINATION

> established custodial environment does exist, a court is not 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." *Id.* See also MCL 722.27(1)(c). Stated differently, "[t]o determine the best interests of the children in child custody cases, a trial court must consider all the factors delineated in MCL 722.23(a)-(l) applying the proper burden of proof," *Foskett v Foskett*, 247 Mich App 1, 9; 634 NW2d 363 (2001), and the proper burden of proof is based on whether or not there is an established custodial environment, *LaFleche*, 242 Mich App at 696.

"The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c).

Defendant contends that the trial court erred in determining that it was in FAS's best interests to modify custody in favor of plaintiff. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

As discussed earlier in this opinion, "in 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*, 291 Mich App at 664, quoting MCL 722.28. Defendant's related claim of judicial bias warranting disqualification is unpreserved for failure to seek chief judge review. *Sinicropi v Mazurek*, 273 Mich App 149, 176 n 15; 729 NW2d 256 (2006). Because this issue was not preserved, we must review it for plain error affecting defendant's substantial rights. *In re BGP*, 320 Mich App 338, 343; 906 NW2d 228 (2017), citing *Demski v Petlick*, 309 Mich App 404, 463; 873 NW2d 596 (2015). "[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) (quotation marks and citation omitted; alteration in original).

B. ANALYSIS

In determining that a change of custody was in FAS's best interests, the trial court reasonably accommodated defendant's disability, did not exhibit impermissible bias, did not commit clear legal error by considering defendant's in-court behavior, and did not make factual findings against the great weight of the evidence.

Defendant argues that, for an array of reasons, the trial court's findings regarding the best-interest factors must be reversed. "In determining whether a change of custody is in the best interests of a child, the best-interest factors set forth in MCL 722.23 are the appropriate measurement." *Riemer v Johnson*, 311 Mich App 632, 641; 876 NW2d 279 (2015). When a trial court considers those factors in making its decision, it must "explicitly state its findings and conclusions regarding each factor" on the record. *Id.*, quoting *LaFleche*, 242 Mich App at 700. Given this, it is important to consider the statutory best-interest factors in their entirety:

> As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:
>
> > (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. [MCL 722.23.]

The trial court's "findings and conclusions need not include consideration of every piece of evidence entered and argument raised by the parties." *MacIntyre v MacIntyre*, 267 Mich App 449, 452; 705 NW2d 144 (2005). "In reviewing the findings, this Court defers to the trial court's determination of credibility." *Berger v Berger*, 277 Mich App 700, 707; 747 NW2d 336 (2008) (quotation marks and citation omitted).

After years of litigation, months of contentious motion hearings, and several days of an evidentiary hearing, the trial court addressed each of the best-interest factors on the record. The trial court first discussed MCL 722.23(a) and found it favored plaintiff:

> Factor A, the love, affection, and other emotional ties existing between the parties involved and the child.
>
> While this, based upon the testimony presented, my ability to observe the parties, and the fact that I could have simply defaulted [defendant] for her refusal to come to court, based upon the years I've spent with these parties, the hearings, the testimony, the other evidence presented, I do find factor A favors [plaintiff] over [defendant].

> I find that [defendant] lacks the ability to put her selfish love over, or subordinate, rather, to her obligations as a mother, or as parent more precisely, to put her child's needs first.

In sum, the trial court found that defendant did love FAS, but that the love was unhealthy on defendant's part. This finding was supported by the trial court's observations of defendant, which included acting in a way that put her own feelings above her purported concern for FAS's well-being. The evidence presented also showed that plaintiff had a loving relationship with FAS that he did not allow to overcome his ability to properly parent FAS. This determination by the trial court largely relied on its credibility findings after observing the parties for several years, and this Court "defers to the trial court's determination of credibility." *Berger*, 277 Mich App at 707 (quotation marks and citation omitted). Considering the evidence provided and this Court's deference to the trial court, the factual finding that MCL 722.23(a) favored plaintiff was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878; *Berger*, 277 Mich App at 707.

The trial court then considered MCL 722.23(b), and provided the following factual findings and analysis:

> Factor B the capacity and disposition of the parties involved to give the child love, affection, and guidance, and to continue the education in raising the child in his or her religion or creed, if any, I do find this factor also favors [plaintiff].
>
> Again, [defendant] lacks the ability to put her child's needs ahead of her own selfish needs. I have powerful evidence about the relationship between [plaintiff] and his daughter.
>
> I don't doubt that there is love between [defendant] and daughter, but was struck that the evidence seems to support finding that [defendant] does not act as parent in all respects.
>
> Often, she leverages [her other daughter], using that relationship as a carrot to entice [FAS] to spend time with defendant. The exhibits marked and discussed previously also bear this out.

Once again, the trial court acknowledged that defendant loved FAS, but that her love for FAS did not result in defendant's "capacity and disposition . . . to give [FAS] love, affection, and guidance . . . ." MCL 722.23(b). Instead, the record evidence reflected that defendant was more interested in harming plaintiff and his relationship with FAS than she was with ensuring that FAS had adequate affection and guidance. That finding by the trial court was supported by evidence that defendant told FAS about potential family vacations, which were to occur with defendant's younger child, despite being aware that there was no approval for such a vacation. Indeed, the trial court noted that defendant's purpose for telling FAS about the vacations with the family was to make FAS excited, which would result in disappointment if the trial court or plaintiff were to block FAS from attending. The trial court was rightfully troubled by defendant's willingness to use FAS's emotional health as leverage in the proceedings. On the contrary, plaintiff testified that he had a strong and loving relationship with FAS, and provided her with adequate and appropriate

affection and guidance. In light of that evidence, the trial court's finding that MCL 722.23(b) favored plaintiff was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

Next, the trial court turned to MCL 722.23(c), which relates to "[t]he 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."

The trial court noted that both parties were now employed and had family support. Yet, it concluded that the factor favored plaintiff because he put FAS's needs first, while also maintaining an occupation that allowed him to financially care for her. Indeed, the trial court expressed concern that defendant allowed FAS to stay home alone after school so that defendant did not have to leave work early or pay for childcare. Dr. Bow's psychological evaluation, which the trial court specifically expressed reliance upon, noted that at least one of defendant's therapists was concerned about whether defendant properly ensured adequate supervision of FAS when defendant was unavailable. Thus, despite having a career that provided her the "capacity" to financially provide for FAS, there was also record evidence that defendant did not have the "disposition" necessary to ensure that FAS was appropriately cared for. MCL 722.23(c). Plaintiff, on the other hand, testified that he limited his work hours to five, eight-hour shifts during the week, so that he could earn adequate money to care for FAS, but also so that he could spend quality time with her. Plaintiff also did not leave FAS home alone so that he could save money on childcare or make extra money at work. Consequently, in light of those proofs, the trial court's finding that MCL 722.23(c) favored plaintiff was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

The trial court them moved on to address MCL 722.23(d):

> Factor D is the length of time the child has lived in a stable satisfactory environment with the desirability of maintaining continuity.
>
> While [plaintiff] has moved in the past, and [defendant] has as well, the child is now at a time when there could be a smooth transition from her current school to a different school.
>
> It's a natural break, a natural change point. I am not a fan of making this disruptive change in taking the child out of Dexter.
>
> But [plaintiff's] argument is that the child has been in the Dexter school system not that long, such that that factor should not prevent the child from being relocated to a school near [plaintiff's] home.
>
> I find that [defendant's] recent relocation, which apparently was not announced in advance, contrary to court order, also favors [plaintiff] over [defendant].
>
> There's an exhibit that explains that [defendant's] advertising for someone to join them at their new address. While I assume [defendant] would carefully interview anyone, it is just unusual.

> Conversely, [plaintiff] resides with his fiancee, [] Hankins, and her two children.

In brief, the trial court concluded that MCL 722.23(d) favored plaintiff because he was living in a home with Hankins and her children, he and Hankins planned to get married, they had no plans to move, and FAS knew everyone who lived in the home, while defendant was moving to a new apartment and advertising for a roommate on the Internet. Those findings were supported by plaintiff's testimony, as well as documentary evidence, which defendant does not dispute. The trial court also noted that although granting plaintiff's requested change in custody would cause FAS to change school districts, it was an appropriate time to transition. This was supported by plaintiff's testimony that, in FAS's current school district, she was about to change school buildings when she entered the next grade. Thus, instead of merely switching buildings in the school district, she would change buildings to another district. Consequently, the change in custody and school districts would not have a serious detrimental effect on the "continuity" of FAS's "stable, satisfactory environment[.]" MCL 722.23(d). Accordingly, the trial court's finding was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

Turning to MCL 722.23(e), which relates to "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes," the trial court made factual findings and engaged in analysis in the following manner:

> Factor E there is a strong relationship between [defendant's other daughter] and [FAS]. I have less information about the relationship between [FAS] and [] Hankins' children.
>
> Um, I do find, however, that factor E favors [FAS] being relocated from [defendant's] home to [plaintiff's] home. I'm very concerned about her work schedule, and her refusal to provide information regarding her work schedule.
>
> It feels that either she is acting in defiance of the Court's authority, or there is information showing that her work requires more than she is willing to share.

The trial court apparently conflated factors (d) and (e) when analyzing them. Specifically, in analyzing factor (d), the trial court noted that plaintiff had a more permanent and stable home than defendant. The trial court relied on the fact that plaintiff lived with Hankins, he planned to marry her, and her children also lived there. At that point, FAS had known Hankins and her children for years, so there was a strong indication of "permanence, as a family unit," of plaintiff's home. MCL 722.23(e). To the contrary, defendant was in the process of moving and was advertising on the Internet for a new roommate. Undoubtedly, plaintiff's situation, at least at the time, had a greater sense of permanence than did defendant's situation. There is nothing in the record to suggest that the trial court did not intend that analysis to also apply to MCL 722.23(e), which appears more appropriate for the facts and evidence cited. In further analyzing best-interest factor (e), the trial court determined that FAS's close relationship with defendant's other child, did not outweigh the clearly superior level of "permanence, as a family unit, of the . . . proposed custodial home" with plaintiff. *Id.* In light of the factual record, the finding by the trial court that MCL 722.23(e) favored plaintiff was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

The trial court then addressed MCL 722.23(f), providing the following factual findings and analysis on the record:

> Factor F is the moral fitness of the parties involved. This is not whom is the morally superior parent. This deals with relative moral fitness only as it relates to how each parent will function as a parent. . . . Here's, um, I have nothing by way of moral fitness of [plaintiff].
>
> I do find that the excessive resort to social media really bears poorly on [defendant]. Her decision to abandon the court system and take this matter to the internet is a poor decision.
>
> She's making a very poor decision in choosing not to participate in the court proceedings. I do find that this is not a matter of her suffering from PTSD, which is triggered by me and the court process.
>
> I find she is, again, ignoring court orders, considering herself above and beyond the rules that apply to everyone else. And thus, I find factor F favors [plaintiff] over [defendant].

In sum, the trial court found that the question of the moral fitness of the parties favored plaintiff because there was evidence that defendant had issues with morality. The trial court relied on defendant's relentless use of social media in an attempt to defame plaintiff, leverage her relationship with FAS to gain monetary donations, make unsubstantiated allegations of sexual abuse by plaintiff, and accuse plaintiff of domestic violence and attempted murder. Although the trial court did not specifically relate how that behavior by defendant could affect FAS, the record shows that this was the trial court's primary concern. Indeed, at other times when the trial court discussed defendant's social media campaigns, the focus of the concern was that FAS would be exposed to defendant's claims about the court system, and more troublingly, plaintiff. While plaintiff could sue for defamation if he chose, the court noted that FAS's exposure to the allegations could not be undone. Despite the fact that defendant was informed of those concerns and ordered to discontinue making such allegations on the Internet, she continued to do so. Plaintiff, on the other hand, did not engage in such behavior. Considering the evidence that defendant openly disregarded the potential of baselessly destroying plaintiff's reputation, and more importantly, negatively affecting FAS's mental and emotional health if she were to become aware of such allegations by her mother against her father, the trial court was well-supported in finding that MCL 722.23(f) favored plaintiff. Thus, that finding was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

The next factor considered by the trial court was MCL 722.23(g):

> Factor G is the mental and physical health of the parties involved. Before [defendant] married [plaintiff], he had sustained an injury. You can see the scar across his head. He was involved in a bull riding incident.
>
> I've seen no evidence that shows that that injury has interfered with his ability to think and/or parent [FAS].

> Conversely, I have the psychological report with significant concerns. I have a continued pattern of [defendant's] inability to follow court orders and to seek the mental counseling she needs.
>
> Moreover, I make an adverse inference against [defendant] due to her refusal to provide discovery, including her refusal to either provide medical records and/or execute medical authorizations for the release of her medical treatment records. Thus, I find factor G favors [plaintiff].

Defendant does not contend in this appeal that the trial court's decision to make an adverse inference about her medical history was improper. Thus, the trial court's decision to do so suggests that, had the medical records been supplied, they would have been detrimental to defendant's claims of PTSD caused solely by plaintiff's alleged domestic abuse and triggered solely by the court process.

Indeed, that adverse inference is supported by Dr. Bow's psychological evaluation of defendant, which showed contradictory findings related to her allegations of panic attacks and PTSD. In pertinent part, one of the diagnostic tests used by Dr. Bow showed that defendant was within normal limits related to PTSD and anxiety. Dr. Bow noted that defendant also was inconsistent in describing the effects of her purported PTSD, at once suggesting that it did not control her and that she could live her life with it, while also claiming that she literally could not step into a courtroom without devolving into a panic attack. Although some of the diagnostics did suggest elevated levels of anxiety and PTSD, none of them were extreme. Dr. Bow provided three specific recommendations for defendant to address her mental-health issues. There was nothing produced on the record to suggest that defendant followed those instructions, even after being ordered to do so by the trial court. Thus, the evidence supported that defendant did have *some* mental-health issues, potentially PTSD, but that it was likely not as severe as defendant asserted that it was. Consequently, the trial court properly found defendant's mental health was a significant concern. Plaintiff, on the other hand, testified that he had no physical or mental-health issues, which was not disputed by any record evidence. Considering those proofs, the trial court's finding that MCL 722.23(g) favored plaintiff over defendant was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

Next, the trial court considered MCL 722.23(h), and provided the following factual findings and analysis:

> Factor H is the home, school, and community record of the child. While this is a change that will be disruptive, it is my belief that [defendant's] unusual way of conducting herself in court, her decision to act in this way, her refusal to participate in the court system, leaves me also uncomfortable in terms of how she is going to help [FAS] with school, with her home life, and in her community. Thus, on the record, I find factor H favors [plaintiff].

The trial court previously discussed that FAS's change of school systems was not a significant concern under the circumstances of the case, which was not against the great weight of the evidence. That analysis, plainly, also was adopted by the trial court as related to MCL 722.23(h).

The trial court also reasoned that defendant, considering the serious issues regarding her behavior, would not be able to support FAS in her "home, school, or community," as contemplated under MCL 722.23(h). That finding was supported by record evidence that defendant was unable to control her emotional reactions to events that occurred around her. In addition to the events previously discussed that occurred in the courtroom and in the courthouse bathroom, defendant also had a concerning meltdown in the hallway of the courthouse. This occurred when defendant saw the GAL in a public area of the courthouse, where defendant could have encountered anyone. Upon seeing the GAL, defendant reacted in a manner that drew the attention of staff attorneys and court officers that were nearby. Defendant was in such an elevated state that she ignored the directions of court officers, called plaintiff a child molester in a voice loud enough for someone to hear far down the hallway, and was eventually forced into a separate room until her attorney could be called to assist. Notably, this occurred while Boyer was present, who specifically came to court with defendant to keep her calm and to provide emotional support. From that evidence, the trial court's concern is clear—if something as simple as seeing an individual in a public area can cause defendant to lose her entire grip on emotional stability, there were grave implications for her ability to care for FAS in the "home, school, and community," under MCL 722.23(h). Thus, the trial court's finding that factor (h) favored plaintiff was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

In addressing MCL 722.23(i), which relates to "[t]he reasonable preference of the child, if the court considers the child to be of sufficient age to express preference," the trial court noted that it had found FAS to be of sufficient age, discussed her preference with her, and taken it into account. The trial court did not state the preference on the record, but did note that FAS's "stated preference does not interfere with the ruling I'm going to make." Defendant makes no argument related to that factor and there is nothing on the record to suggest that the trial court's determination was against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

The trial court then addressed MCL 722.23(j), issuing the following explanation on the record:

> Factor J is 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.
>
> The exhibits . . . share one of the current problems, which is the great difficulty [defendant] has in being a co-parent.
>
> I have [a] history of incidents during which [defendant] has sought, even for unusual reasons like head lice, to limit the relationship and the time spent between father and daughter.
>
> Conversely, [plaintiff], in this action, could be said to be interfering with the relationship between [FAS] and [defendant].
>
> That, I disagree and do not disagree with and do not endorse [sic]. This is an effort by [plaintiff] to, number one, protect [FAS] from someone . . . who will not obey court orders.

> I believe he has been subjected to unfair limitation of time with [FAS]. And time and time again, [defendant] has made decisions in efforts to divest [plaintiff] of his relationship with [FAS]. I do find factor J favors [plaintiff] over [defendant].

As reflected above, the record contains an abundance of evidence that defendant sought to undermine and undo plaintiff's relationship with FAS. In short, defendant repeatedly attempted to revoke plaintiff's custody and parenting time, took actions related to FAS's medical care (vaccination appointment) and home care (leaving FAS home alone) without conferring with plaintiff, and engaged in social media campaigns that could destroy plaintiff's relationship with FAS, if discovered by her. Moreover, at the evidentiary hearing, plaintiff testified that defendant told FAS to call him "Adam" instead of "dad" when defendant was around, attempted to substitute Boyer in events like a daddy-daughter dance at school, and called the police over minor issues related to FAS having a cough and going to the doctor's office. Plaintiff also testified that he would do his best to encourage a relationship between FAS and defendant when she was mentally capable of doing so. Thus, the trial court's decision that MCL 722.23(j) favored plaintiff was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

The trial court then turned to MCL 722.23(k), which is in regards to "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." The trial court found that this factor did not favor either party. The record evidence showed an abundance of allegations by both parties against the other regarding domestic violence, but no documentary proof of that violence. The trial court relied on that lack of documentary proof in deciding that the factor favored neither party. Defendant does not dispute this finding on appeal and the record does not suggest that the trial court's finding was against the great weight of the evidence. MCL 722.23(k); *Fletcher*, 447 Mich at 878.

The final factor considered by the trial court, MCL 722.23(l), relates to "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." The trial court provided the following findings and analysis regarding that factor:

> Factor L is any other factor considered by the Court to be relevant to a particular child custody dispute. I do find the trajectory of this case to be of note, even though, I'm confined to look at what has happened since the last order regarding custody and parenting time. Over these years, [defendant], apparently, and I find, has engaged in conduct seeking to remove [plaintiff] from [FAS]'s life.
>
> Similarly, [FAS]'s biological father was removed from [FAS]'s life. And the father of [defendant's other daughter] was removed from [her] life. I consider that factor to be relevant.
>
> I consider her completely unreasonable efforts through social media, contained in exhibits presented in this case, to be further evidence of a lack of inability [sic] to properly parent a child. And those support my rulings in favor of [plaintiff]. I make the findings on each of these 12 factors by clear and convincing evidence.

In short, with respect to MCL 722.23(l), the trial court took into account that defendant had a pattern of removing the men in her life from the children she had with those men. The trial court used facts previously discussed to suggest a pattern by defendant. This was important to the trial court, because it bolstered the trial court's determination that defendant's goal was to excise plaintiff from FAS's life, regardless of what she had to do to accomplish it. This troubling attitude by defendant was a factor the trial court weighed against her under MCL 722.23(l). This finding was not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

In sum, the trial court's findings that clear and convincing evidence supported that factors MCL 722.23(a) through(h), (j), and (l), supported plaintiff; MCL 722.23(k) favored neither party; and MCL 722.23(i) was considered and did not disturb the trial court's decision, were not against the great weight of the evidence. *Fletcher*, 447 Mich at 878.

The trial court also properly concluded that plaintiff having sole legal custody was in FAS's best interests. Although defendant does not make specific arguments regarding that determination in this appeal, it is important to note that the trial court's decision in that regard was not improper. Under MCL 722.26a(1)(b), when considering joint legal custody, in addition to the best-interest factors already discussed, the trial court must consider "[w]hether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child." This Court has held that, in cases where there is "a deep-seated animosity between the parties and an irreconcilable divergence in their opinions about how to foster [the] child's well-being," a trial court did not err in determining that "joint custody was not an option . . . ." *Wright v Wright*, 279 Mich App 291, 299; 761 NW2d 443 (2008). That analysis clearly applies to this case, where the record has made it abundantly clear that plaintiff and defendant could not agree on even minor issues related to joint legal custody. Just a few examples include defendant's scheduling a vaccination appointment without conferring with plaintiff in violation of a direct court order and a settlement agreement, defendant deciding to leave FAS home alone without asking plaintiff if he approved, and defendant calling the police after plaintiff took FAS to an urgent care for a cough. Indeed, there is little in the record, if anything, to suggest that plaintiff and defendant would "be able to cooperate and generally agree concerning important decisions affecting" FAS's well-being. MCL 722.26a(1)(b). Consequently, the trial court's decision to award sole legal custody to plaintiff was proper. *Id.*; *Wright*, 279 Mich App at 299. Having determined that, we must next address defendant's more general contentions that the trial court erred in decisions not necessarily related to factual findings.

C. CONTEMPT, BIAS, AND ACCOMMODATION

First, defendant contends that the trial court improperly relied on her contempt of court and essentially awarded plaintiff custody as a sanction against defendant. Indeed, a change of custody cannot be a sanction for violating the court's orders. *Kaiser v Kaiser*, 352 Mich 601, 603-604; 90 NW2d 861 (1958); *Maier*, 311 Mich App at 227. The rule espoused in those cases, however, are inapplicable to the present case. In *Kaiser*, 352 Mich at 603-604, the Court considered a case where the trial court relied solely on a party's violation of a court's order to establish proper cause or a change of circumstances warranting review of the custody order, as well as grounds to actually change custody. In *Maier*, 311 Mich App at 227, this Court was concerned with a trial court giving undue weight to a party's refusal to submit to a psychological evaluation after the court ordered

one. There was no indication by the *Maier* Court that the parent's refusal to follow the order directly affected the minor child's well-being.

In the present case, while the trial court obviously had serious concerns regarding defendant's disregard for the court's authority, it did not overly rely on that fact. Indeed, as just discussed in depth, the trial court's analysis of all of the best-interest factors only passively mentioned defendant's violation of court orders. Further, when those contemptuous actions were mentioned, the trial court was focused on how defendant's decision to ignore the orders could affect FAS's well-being in the future. In other words, the trial court was not sanctioning defendant for violating court orders and being in contempt, but rather, was noting that scheduling medical appointments, failing to come to the evidentiary hearing, and continuing to make defamatory posts on social media, exhibited a pattern of behavior that put FAS's well-being at risk. Indeed, the trial court's sanction for defendant's contempt of court was clearly provided on the record—defendant was ordered to pay plaintiff's attorney fees. Thus, unlike in *Kaiser*, 352 Mich at 603-604, and *Maier*, 311 Mich App at 227, the trial court in this case did not award plaintiff custody of FAS as a sanction for defendant's contemptuous behavior. Rather, the trial court engaged in an evidentiary hearing, considered evidence, and provided a lengthy discussion of the best-interest factors under MCL 722.23, before determining by clear and convincing evidence that a change of custody was in FAS's best interests. Consequently, this argument by defendant lacks merit.

Second, we consider defendant's claim that reversal is required because the trial court was not impartial. Specifically, defendant argues that reversal is warranted because the trial court made its decision to change custody on the basis of his bias against defendant. "A trial judge is presumed to be fair and impartial, and any litigant who would challenge this presumption bears a heavy burden to prove otherwise." *In re Susser Estate*, 254 Mich App 232, 237; 657 NW2d 147 (2002). "A judge is disqualified when he cannot hear a case *impartially* . . . ." *Cain v Dep't of Corrections*, 451 Mich 470, 494; 548 NW2d 210 (1996). "MCR 2.003(C) provides . . . grounds for disqualifying a judge . . . ." *Butler*, 308 Mich App at 226. Under MCR 2.003(C)(1)(a), "[d]isqualification of a judge is warranted . . . [if] [t]he judge is biased or prejudiced for or against a party or attorney."

"An actual showing of prejudice is required before a trial judge will be disqualified." *In re Forfeiture of $1,159,420*, 194 Mich App 134, 151; 486 NW2d 326 (1992). "This requirement has been interpreted to mean that disqualification is not warranted unless the bias or prejudice is both personal and extrajudicial." *Cain*, 451 Mich at 495. Stated differently, "the challenged bias must have its origin in events or sources of information gleaned outside the judicial proceedings." *Id*. "Opinions formed by a judge on the basis of facts introduced or events occurring during the course of the current proceedings, or of prior proceedings, do not constitute bias or partiality unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg v Rochester Mich Lodge No 2225 of the Benevolent & Protective Order of Elks*, 228 Mich App 20, 39; 577 NW2d 163 (1998). In fact, "judicial rulings, in and of themselves, almost never constitute a valid basis for" finding a judge to be biased. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001). "A trial judge's erroneous ruling, even when 'vigorously and consistently expressed,' is not grounds for disqualification." *Ireland v Smith*, 214 Mich App 235, 249; 542 NW2d 344 (1995).

It is important to initially note that defendant does not contend in any manner that the trial court's alleged bias against her was "both personal and extrajudicial." *Cain*, 451 Mich at 495. Indeed, defendant does not allege that "the challenged bias [has] its origin in events or sources of information gleaned outside the judicial proceedings." *Id.* The trial court, for its part, was clear that all of its opinions regarding defendant, especially those that defendant claims showed his bias, were formed because of events that occurred, and evidence that was admitted, on the record before the trial court. There is nothing in the record to suggest that the trial court had any knowledge of defendant outside of these proceedings.

Therefore, because there was no evidence of "extrajudicial" bias, *id.*, defendant is required to prove that the trial court's actions and statements "display[ed] a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg*, 228 Mich App at 39. Defendant has failed to meet that burden. The record does show that the trial court's opinion of defendant devolved as the case progressed. However, the record also shows that the trial court's formation of that opinion was not the result of "deep-seated favoritism or antagonism," *id.*, but because of defendant's concerning behavior.

Defendant directs this Court to the trial court's discussion of defendant's letter that was read into the record and contained a strained comparison between her purported PTSD and someone who suffered from diabetes. While the trial court read the letter into the record, which defendant specifically requested in her absence, it did not make any negative findings at the time. Then, after the evidentiary hearing and all of the factual findings, the trial court only noted the letter as a part of defendant's scheme to make issues personal in the case. Indeed, contrary to defendant's argument, the trial judge specifically noted on the record, "I take no umbrage in her describing blood glucose testing as disgusting." The trial court's use of the letter as emblematic of defendant's style of making things personal, which had negatively affected her ability to coparent FAS with plaintiff, was not improper. There was nothing to support that defendant's inconsiderate description of people with diabetes resulted in "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg*, 228 Mich App at 39.

Defendant also directs this Court to the trial court's treatment of her PTSD as evidence of his bias. Defendant accuses the trial court of ridiculing her mental illness and mistreating her because of it. After a thorough review of the record, that allegation by defendant is simply untrue. While the trial court was clearly frustrated with defendant, it never made light of her claims of PTSD. Instead, the trial court allowed time for defendant to provide proof regarding her claims of PTSD. In the meantime, the trial court granted almost all of the accommodations requested by defendant to make it easier for her to appear in court. Once he was confronted with defendant's refusal to provide access to her medical records and the results of Dr. Bow's psychological evaluation, the trial court found that its concerns were legitimate regarding defendant's claims of severe PTSD. Contrary to defendant's argument that the trial court acted against her because of bias related to her PTSD, the record actually reflects that the trial court made a well-reasoned and evidentiary supported determination that defendant was exaggerating her PTSD to gain an advantage in court. Despite being strongly concerned about defendant's behavior, especially with how it might affect FAS, there was nothing in the record to suggest that the trial court's consideration of defendant's claims of PTSD resulted in "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg*, 228 Mich App at 39.

Defendant also contends that the trial court exhibited its bias by limiting her counsel's cross-examination of plaintiff during the evidentiary hearing. The record does reflect that the trial court curtailed defense counsel's cross-examination of plaintiff on a few occasions. The record also shows, though, that the trial court did so under the rules of evidence, noting that the questions were not likely to lead to relevant and admissible evidence under MRE 401. Defendant has not contended that the trial court's evidentiary rulings were wrong, and even if they were, this Court has been clear that "judicial rulings, in and of themselves, almost never constitute a valid basis for" finding a judge to be biased, *Armstrong*, 248 Mich App at 597, and that "[a] trial judge's erroneous ruling, even when 'vigorously and consistently expressed,' is not grounds for disqualification." *Ireland*, 214 Mich App at 249. Further, defendant has not provided any indication what evidence should have and could have been admitted during cross-examination that was not. Consequently, defendant's argument lacks legal merit, and contains no contention that any potential error was not harmless.

As discussed above, the trial court engaged in a lengthy analysis of the best-interest factors when determining whether plaintiff should have sole legal and physical custody of FAS. In doing so, he did not make any findings that were against the great weight of the evidence. Further, he did not make any findings that suggested he was biased against defendant either because of her PTSD or because she made comments regarding people with diabetes. Indeed, the trial court impliedly considered all of these arguments when defendant made an oral motion requesting a new judge during a hearing. The trial court concluded that it was not biased, but merely had made conclusions about defendant's credibility after becoming familiar with her character and personality, as he was required to do. As discussed, the record supports that decision by the trial court, and thus, there was no plain error. *Lawrence*, 320 Mich App at 443. Consequently, defendant's claim of bias is without merit, and is not grounds for reversal or for remanding this case to a different judge. *Id*.; *Schellenberg*, 228 Mich App at 39.

The final argument raised by defendant is that reversal is required because the trial court violated the ADA by failing to provide appropriate accommodations for her PTSD. However, we conclude that this issue was abandoned by defendant on appeal. In support of her argument that the trial court failed to provide reasonable accommodations, defendant relies only on the Michigan Supreme Court's administrative webpage that merely provides that the court system has a goal of making the courts accessible to everyone, a general citation to the ADA, and a citation to a case involving the termination of parental rights, *In re Terry*, 240 Mich App 14; 610 NW2d 563 (2000). Importantly, defendant has not provided any law regarding how the ADA applies to custody cases, no analysis related to extent of accommodations necessary for a diagnosis of PTSD, nor any discussion of what the remedy is for a lack of accommodations under the ADA. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *The Cadle Co v City of Kentwood*, 285 Mich App 240, 258 n 10; 776 NW2d 145 (2009) (quotation marks and citation omitted). "The appellant [] must first adequately prime the pump; only then does the appellate well begin to flow." *Wayne Co Employees Retirement Sys v Wayne Charter Co*, 497 Mich 36, 41; 859 NW2d 678 (2014) (quotation marks and citation omitted). Because defendant has essentially left it for us to determine the applicable law, the required accommodations, and any resultant remedy, the issue has been abandoned and we need not consider it. *Cadle Co*, 285 Mich App at 258 n 10. Nonetheless, our review of the record reveals that the trial court accommodated

all of defendant's reasonable requests. See *In re Hicks/Brown Minors*, 500 Mich 79, 86; 893 NW2d 637 (2017).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens
/s/ Thomas C. Cameron