STATE OF MICHIGAN

COURT OF APPEALS

AUBREY MICHELLE HEUSSER,

Plaintiff-Appellant/Cross-Appellee,

v

MATTHEW ROBERT HEUSSER,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
March 11, 2021

No. 354343
Allegan Circuit Court
LC No. 18-059322-DM

Before: REDFORD, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

In the main appeal, plaintiff appeals by right a portion of the trial court's judgment of divorce. Specifically, she challenges the trial court's determination that she and defendant would have joint legal and physical custody of their youngest child, JLH. In the cross-appeal, defendant argues that the trial court erred by granting the parties joint legal custody of JLH, and that it instead should have granted sole legal custody to defendant. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant have three children together: KTH, RCH, and JLH. In March 2018, after approximately 21 years of marriage, plaintiff filed a complaint for divorce. The parties separated when plaintiff and the children moved out of the marital home in April 2018. In May 2018, the trial court issued a temporary custody order granting plaintiff sole physical custody of the children, maintaining joint legal custody, and ordering that defendant have parenting time from 9:00 a.m. to 5:00 p.m. every other Saturday and Sunday. Although defendant objected to the recommendation, the trial court kept the recommendation in place on a temporary basis and sent the case to Dr. William Brooks for a custody evaluation pending trial.

The divorce trial took place over four days in 2019 and 2020. Dr. Brooks testified that, as part of his custody evaluation, he interviewed plaintiff, defendant, KTH, and RCH, but did not have any contact with JLH. Much of Dr. Brooks's evaluation focused on the behavior of KTH and RCH and their animosity toward defendant. He testified that KTH had expressed "dis[d]ain," "frustration," and "anger" toward her father and believed that her father was "very controlling." He also stated that RCH called parenting time with defendant "misery time" and that defendant

"manipulates situations." Dr. Brooks testified that KTH and RCH "were at the onset very much against visiting with the father" and often made fun of him. Dr. Brooks opined that the toxicity" coming from KTH and RCH would "result in [JLH] not wanting to spend time with her father" and that he did not "know any other result" than JLH "likely growing up like her two older sisters with dis[d]ain," anger, and fear of defendant.

Dr. Brooks testified that he had expressed to plaintiff his concerns regarding the effect the behavior and feelings of KTH and RCH would have on defendant's relationship with JLH. Dr. Brooks also told plaintiff on several occasions that it was "her responsibility to try to convey to [KTH and RCH] that they should not unduly try to influence their sister." However, Dr. Brooks stated that he "did not see any evidence that [his statements concerning her responsibility] reached [plaintiff] to the extent that the girls changed their opinions." Dr. Brooks opined that plaintiff had "to take responsibility for" the behavior of KTH and RCH "in some respects." Dr. Brooks ultimately recommended joint legal and physical custody of JLH.

Plaintiff and defendant both testified at trial. Plaintiff testified that after moving out of the marital home and into an apartment in April 2018, she subsequently moved to a four-bedroom home in Williamston, in July 2019, to be closer to family. Plaintiff homeschooled KTH "all the way through" school and RCH until she began 9th grade; plaintiff testified that defendant was "[n]ot really" involved in homeschooling the children. Plaintiff expressed an interest in having JLH attend Saint Mary's Elementary School, a Catholic school in Williamston. Plaintiff also testified about defendant's relationship with KTH and RCH, stating that defendant had engaged in "escalating intimidation and emotional abuse," and describing situations that led the two older daughters to not trust defendant. Plaintiff denied that she made any effort to interfere with defendant's relationship with JLH.

Defendant testified that, although he was initially involved in the care of KTH and RCH when they were younger, his involvement with them declined after he started his own computer-consulting firm in 2011 and was required to travel for long periods of time. Defendant also admitted that he did not provide KTH and RCH as much attention after JLH was born as he had previously. Defendant described various incidents that led to the deterioration of his relationship with his two older daughters and that demonstrated the animosity KTH and RCH felt toward defendant. Defendant also testified that as the parties' separation approached, plaintiff began escalating her "silent treatment" and "stonewalling" tactics by withholding information about the children from defendant, saying "critical things in front of the children," and that she would "tolerate and implicitly support their disrespect" toward defendant. Additionally, defendant testified about his discussions with plaintiff regarding JLH attending school near Allegan rather than the school in Williamston suggested by plaintiff.

Several family friends testified at the trial. Lisa Cerven (Cerven), a family friend and godmother of JLH, testified that although plaintiff told her about defendant being emotionally abusive "for years," she saw nothing during the time she spent with the parties to indicate that defendant was emotionally abusive. Cerven also attended some of defendant's parenting time with JLH, and stated that when KTH and RCH were also present, they were "disrespectful." Even so, according to Cerven, defendant was "excellent," "very mellow," and "not loud," although he seemed "very fed up with how they were treating him too." Cerven had no concerns about how defendant cared for JLH, and believed he was a "loving and caring" father. Margaret Brown

(Brown), defendant's next-door neighbor, testified that she never saw defendant act aggressively toward plaintiff or his children. Michael Pettee (Pettee), a friend of the parties through their church, testified that defendant was "a great guy, patient, [and] kind," and described KTH and RCH as "very disrespectful" and disruptive. Pettee never saw defendant behave aggressively toward his daughters, and properly cared for JLH when Pettee was present. Finally, Jolene Clearwater (Clearwater), the director of religious education at Blessed Sacrament, where the parties attended church services, testified that she had observed the parties and their children for several years as members of the church. Clearwater testified that KTH and RCH seemed to have a "particular dis[d]ain" for defendant that was "disproportionate to any sort of behavior" she had seen from defendant. Clearwater opined that defendant was "great" with JLH, noting that he dropped her off at her Sunday school class, walked with her to and from church, and "interact[ed] like a normal father and daughter would."

After testimony and closing arguments, the trial court concluded that JLH had an established custodial environment with plaintiff, noting the length of time JLH had lived primarily with plaintiff since the parents separated. It further concluded that there was clear and convincing evidence that it was in JLH's best interests for plaintiff and defendant to have joint physical and legal custody, with physical custody being "equal between the two parents on a week on and week off basis." Although the trial court addressed each best-interest factor individually, plaintiff only challenges the trial court's findings regarding factors (b), (d), and (j). The trial court concluded that factors (b) and (d) weighed equally between plaintiff and defendant, and that factor (j) weighed "heavily" in favor of defendant. The trial court also ordered that JLH was to be homeschooled for the rest of the then-current school year if the parties could agree, and ordered alternate schooling arrangements otherwise. The trial court entered a judgment dissolving the marriage between plaintiff and defendant, awarding plaintiff sole legal and physical custody of KTH and RCH, and granting plaintiff and defendant joint legal and physical custody of JLH. The judgment of divorce provided that if plaintiff moved back, or closer, to Allegan, the week-on, week-off custody arrangement would continue. However, if plaintiff did not move back to the Allegan area, defendant would be granted primary physical custody of JLH, who would then be enrolled in the Allegan Public Schools.

This appeal and cross-appeal followed.

II. BEST-INTEREST FACTORS

Plaintiff argues that the trial court's findings regarding factors (b), (d), and (j) were against the great weight of the evidence and that the trial court therefore erred by concluding that an award of joint physical and legal custody was in JLH's best interests. We disagree.

A. STANDARD OF REVIEW

Under MCL 722.28, this Court must affirm a custody order on appeal "unless the circuit court's findings were against the great weight of the evidence, the circuit court committed a palpable abuse of discretion, or the circuit court made a clear legal error on a major issue." *Pierron v Pierron*, 282 Mich App 222, 242; 765 NW2d 345 (2009), aff'd by *Pierron v Pierron*, 486 Mich 81; 782 NW2d 480 (2010) (citations omitted). "The great weight of the evidence standard applies to all findings of fact; the circuit court's findings should be affirmed unless the evidence clearly

preponderates in the opposite direction." *Pierron*, 282 Mich App at 242-243 (citations omitted). "In reviewing the circuit court's findings, we defer to the court's determination of witness credibility." *Id*. at 243 (citation omitted). "The abuse of discretion standard applies to the circuit court's discretionary rulings," such as an order establishing or changing child custody. *Id*., citing *Vodvarka v Grasmeyer*, 259 Mich App 499, 507-508; 675 NW2d 847 (2003). An abuse of discretion occurs when 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." *Butler v Simmons-Butler*, 308 Mich App 195, 201; 863 NW2d 677 (2014) (citation and quotation marks omitted).

B. EVIDENTIARY STANDARD

As an initial matter, defendant argues that the trial court should have evaluated the best-interest factors under a preponderance-of-the-evidence standard, rather than by clear and convincing evidence. We disagree.

The applicable evidentiary standard in a child custody case depends upon the presence or absence of an established custodial environment. *Griffin v Griffin*, 323 Mich App 110, 119; 916 NW2d 292 (2018). A custodial environment 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. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. [MCL 722.27(1)(c).]

"A custodial environment can be established as a result of a temporary custody order, in violation of a custody order, or in the absence of a custody order." *Berger v Berger*, 277 Mich App 700, 707; 747 NW2d 336 (2008). Additionally, "[r]epeated changes in physical custody and the uncertainty resulting from an upcoming custody trial can destroy an established custodial environment." *Rains v Rains*, 301 Mich App 313, 333; 836 NW2d 709 (2013).

The trial court concluded that JLH had an established custodial environment with plaintiff. The trial court made its determination based "upon the length of time that [JLH] resided primarily with her mother since the parents separated and who she looks to for primary guidance and care." The trial court acknowledged defendant's argument that it could use a preponderance of the evidence standard, but concluded that was "safer to apply the clear and convincing evidence standard" in this case.

The trial court did not err by concluding that there was an established custodial environment with plaintiff. The temporary custody order provided that plaintiff and defendant shared joint legal custody of KTH, RCH, and JLH, but gave plaintiff sole physical custody of all three children. A temporary custody order may, but does not always, establish a custodial environment. *Berger*, 277 Mich App at 707; but see *Bowers v Bowers*, 198 Mich App 320, 325; 497 NW2d 602 (1993) ("Custody orders, by themselves, do not establish a custodial environment."). According to the temporary order, defendant spent "very little time with the minor children," despite, at the time, residing in the marital home with them and plaintiff. The temporary

order also noted that although defendant worked from home, he also traveled to Grand Rapids once a week and also traveled "on average, one week a month," Monday to Friday. JLH resided primarily with plaintiff throughout the pendency of this case.

On balance, the trial court did not make a clear legal error by finding that an established custodial environment existed with plaintiff and that JLH would naturally look to plaintiff for guidance, discipline, the necessities of life, and parental comfort. *Butler*, 308 Mich App at 201; MCL 722.27(1)(c). "If an established custodial environment exists with one parent and not the other, then the noncustodial parent bears the burden of persuasion and must show by clear and convincing evidence that a change in the custodial environment is in the child's best interests." *In re AP*, 283 Mich App 574, 601; 770 NW2d 403 (2009). As a result, the trial court did not err by applying the clear-and-convincing-evidence standard when analyzing the best-interest factors of MCL 722.23.

C. BEST INTEREST FACTORS

Plaintiff argues that the trial court's findings regarding factors (b), (d), and (j) were against the great weight of the evidence. We disagree.

In making a custody determination, the trial court must evaluate the factors set forth in MCL 722.23 and state its findings regarding each factor to determine the child's best interests. Trial courts have a "duty to ensure that the resolution of any custody dispute is in the best interests of the child." *Harvey v Harvey*, 470 Mich 186, 191-192; 680 NW2d 835 (2004). MCL 722.23 defines the "best interests of the child" as "the sum total of the" factors set forth in MCL 722.23(a) to (l). "In child custody cases, the family court must consider all the factors delineated in MCL 722.23 and explicitly state its findings and conclusions with respect to each of them." *Spires v Bergman*, 276 Mich App 432, 443; 741 NW2d 523 (2007); see also *Thompson v Thompson*, 261 Mich App 353, 356-357; 683 NW2d 250 (2004) (explaining that, after a temporary custody order, a party is entitled to a hearing and the trial court must make best-interest findings). Further, "[t]he trial court may not '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.' " *Thompson*, 261 Mich App at 362, quoting MCL 722.27(1)(c). Finally, "[a] court need not give equal weight to all the facts, but may consider the relative weight of the factors as appropriate to the circumstances." *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006).

MCL 722.23 provides:

> 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(a) to (l).]

1. FACTOR (b)

Plaintiff argues that the trial court's findings regarding factor (b), which concerns "[t]he 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 religion or creed, if any," MCL 722.23(b), was improperly weighed equally between plaintiff and defendant, and should have been found to favor plaintiff. We disagree.

In weighing factor (b) equally between plaintiff and defendant, the trial court stated that the factor did not require it to weigh "who has given the child more love, affection, and guidance and raised them in their religion or creed," but instead requires it to "focus on the capacity and disposition of the parties." Although the trial court recognized that plaintiff did "more with regards to the schooling of [JLH]" and had "spent more time" with JLH, it found that the parents had equal capacity and disposition, and that both parents were dedicated to raising JLH "in a loving and affectionate environment" and wanted to continue JLH's education and practice of her Catholic

faith. This finding was not against the great weight of the evidence. *Pierron*, 282 Mich App at 242-243.

The evidence at trial showed that plaintiff, although not employed at the time of trial, had adequate living arrangements and sought to enroll JLH in a Catholic school in Williamston. Additionally, plaintiff indicated that she continued to raise her children in the Catholic faith. Defendant testified about having a successful computer-consulting firm and indicated that he was committed to having JLH attend school in Allegan. Additionally, defendant had participated in JLH's religious upbringing, including being involved in the family's church as a Sunday school teacher. The evidence demonstrated that both parents had the capacity and disposition to give JLH love, affection, and guidance in continuing her education and raising her in the Catholic faith. As a result, the trial court's finding that factor (b) weighed equally between plaintiff and defendant was not against the great weight of the evidence. *Id*.

2. FACTOR (d)

Plaintiff also argues that the trial court erred by weighing factor (d), which concerns "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity," MCL 722.23(d), equally between plaintiff and defendant, and that it should have found that it favored plaintiff. We disagree.

"Factor (d) is properly addressed by considering the environments in which the child has lived in the past and the desirability of maintaining the continuity of those environments." *Demski v Petlick*, 309 Mich App 404, 448-449; 873 NW2d 596 (2015). The trial court noted that while JLH had lived with plaintiff for a longer period of time, factor (d) also required consideration of whether plaintiff's home was a stable environment. The trial court found that the environment with plaintiff "ha[d] not been a stable environment due to the mother's efforts to keep the child away from [defendant] and her lack of willingness and ability to facilitate and encourage a close and continuing parent[-]child relationship between" JLH and defendant. The trial court further noted that its findings regarding factor (j) had influenced its "opinion on factor [(d)] because [sic] instability that has been caused in my opinion by [plaintiff's] efforts to keep [JLH] and the other children away from [defendant]." Additionally, the trial court found that defendant's environment had been stable, noting he had remained in the marital home and that JLH had lived with defendant in that home before the separation. The trial court noted testimony from friends and neighbors who indicated that defendant's home was appropriate and had no issues.

The trial court's findings regarding factor (d) were not against the great weight of the evidence. *Pierron*, 282 Mich App at 242-243. Evidence at trial demonstrated that plaintiff's two older daughters, KTH and RCH, had interfered with defendant's attempts to develop a relationship with JLH, and had done so throughout this case with little or no intervention from plaintiff. Dr. Brooks expressed concerns that the behavior of KTH and RCH would drastically affect the relationship between defendant and JLH, and that he had implored plaintiff to speak with her two older daughters to prevent a breakdown in defendant's relationship with JLH. However, the evidence showed that plaintiff failed to correct the behavior of KTH and RCH, and may have encouraged it. Although plaintiff claims that the trial court improperly conflated factor (d) with factor (j), we disagree; the trial court clearly recognized that the issues that had influenced its

holding regarding factor (j) had also influenced its opinion regarding factor (d) because of plaintiff's "efforts to keep [JLH] and the other children away from [defendant]."

Defendant had resided in the marital home after the separation and JLH thus was familiar with that environment. Additionally, testimony was presented from friends and family indicating that defendant's home was satisfactory and without issues. Friends of the family, testified that when they were present during defendant's parenting time with KTH, RCH, and JLH, the two older daughters were disrespectful and disruptive. Although plaintiff testified defendant had intimidated and emotionally abused KTH and RCH, other witnesses testified that defendant did not have any anger issues and that he was a "loving and caring" father, and a "great" person. And, in any event, Dr. Brooks testified that, if defendant had exhibited aggressive behavior toward KTH and RCH, that behavior had to be looked at in context. Dr. Brooks noted in his report that in many of the situations involving KTH, RCH, and defendant, defendant was "defending himself" from being "struck, punched, [and] punched" by his teenaged children. Dr. Brooks testified that he did not see anything that would make him concerned that defendant would be aggressive or assaultive toward JLH. Given the evidence presented at trial, the trial court's finding that factor (d) should be weighed equally between plaintiff and defendant was not against the great weight of the evidence. *Id.*

3. FACTOR (j)

Plaintiff also argues the trial court erred by finding that factor (j), which concerns "[t]he 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," MCL 722.23(j), "heavily" favored defendant. We disagree.

The trial court provided an extensive analysis of factor (j), concluding that it "tip[ped] the scales" for the "clear and convincing evidence to prove" that it was in JLH's best interests to "have a joint physical custody arrangement with both of her parents." The trial court found no evidence that defendant was "against [JLH] having a close and continuing parent child relationship with her mother," but found that "the opposite . . . [was] true with [plaintiff]." The trial court noted that although plaintiff had recently made an effort to facilitate a relationship between JLH and defendant, it believed this was "partially only because this Court has given strong indications" it was going to change the custodial environment. The trial court believed that plaintiff was primarily responsible for the nature of the defendant's relationship with KTH and RCH, noting that the children's feelings toward defendant were likely driven by plaintiff's poor attitude and negative feelings toward him.

The trial court relied on several pieces of evidence in reaching its findings regarding factor (j): (1) plaintiff's disdain for defendant, as demonstrated by her calling him a "thief" and "liar" during her testimony regarding pieces of personal property he wanted; (2) text messages from plaintiff to defendant stating that she hated him; (3) Dr. Brooks's testimony and report, including the interviews with KTH and RCH, his statements that he had "strongly urged" plaintiff to not let the relationship between defendant and his daughters deteriorate, and his opinion that plaintiff had "degrade[d]" defendant in front of the children, which led to KTH and RCH degrading defendant in front of JLH; (4) testimony from several witnesses that KTH and RCH engaged in disrespectful behavior toward defendant; and (5) evidence that, although plaintiff testified that she had moved

to Williamston to be closer to family, she had moved in part to make it more difficult for JLH to see defendant and to make it less likely that the trial court would change custody.

The trial court found that plaintiff's hatred and disdain for defendant was "simply unsupported by any other evidence," noting that several people who knew both parties testified "very positively" about defendant. The trial court noted Clearwater's testimony that she had known the family for several years, frequently saw them at church, and that they seemed like a "very happy family until about two to three years ago." The trial court pointed out that this time period approximately coincided with defendant beginning to work in Indiana. The trial court believed that plaintiff was not happy with defendant's decision to work in Indiana, and that this was "more than likely" when plaintiff decided she was "going to do all that she [could] to try to alienate [defendant] from the children . . . ." The trial court recognized plaintiff's claims of emotional abuse, but noted that she was "the only one that has testified to that," and that it thus did not "put a lot of credibility into that." The trial court also took issue with plaintiff's decision to allow "[JLH] to decide when she wanted to talk to [defendant]," finding that this was "just more evidence that really it[']s [plaintiff] making the decision for her child that she's not going to speak to her father." As a result, the trial court found that factor (j) weighed "heavily in favor of" defendant.

The trial court's findings regarding factor (j) were not against the great weight of the evidence. Plaintiff repeatedly references defendant's acknowledgment to Dr. Brooks that plaintiff was not interfering with his relationship with JLH, notes that Dr. Brooks believed that factor (j) only "slightly" favored defendant, and denies any interference with the relationship between defendant and JLH. But it was for the trial court to resolve any factual disputes, and it resolved this dispute in defendant's favor. See *Wright v Wright*, 279 Mich App 291, 299; 761 NW2d 443 (2008) ("Because this case was heard as a bench trial, the court was obligated to determine the weight and credibility of the evidence presented."). Further, the trial court was permitted to judge witness credibility. *Pierron*, 282 Mich App at 243.

The testimony of Cerven, Brown, Pettee, and Clearwater all support the trial court's conclusion that, although plaintiff clearly felt disdain for defendant, there was no record support for any basis of those her feelings that would affect factor (j). Those witnesses testified that nothing they saw indicated that defendant was emotionally abusive or aggressive toward his family. To the contrary, Cerven, Brown, Pettee, and Clearwater all testified that defendant was a good father who gave them no reason for concern regarding his parenting abilities. Cerven and Pettee additionally testified about the behavior of KTH and RCH, stating that they were disrespectful to defendant and that they tried to interfere with defendant's time with JLH. Because of the testimony and evaluation of Dr. Brooks, as well as the testimony of several witnesses who observed defendant in a family setting, the trial court's finding that factor (j) "heavily" favored defendant was not against the great weight of the evidence. *Id*. at 243-244.

III. JOINT LEGAL CUSTODY

In the cross-appeal, defendant argues that the trial court erred by granting plaintiff and defendant joint legal custody of JLH. We disagree.

In a custody dispute between parents, the parents must be advised of the possibility of joint custody, and, at the request of a parent, joint custody must be considered by the court. MCL 722.26a(1); *Shulick v Richards*, 273 Mich App 320, 326; 729 NW2d 533 (2006). If joint custody is requested, the trial court must consider whether an award of joint custody would be in the child's best interests, and must state on the record the reasons surrounding its decision regarding joint custody. MCL 722.26a(1); *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 406 (1999). When a party seeks joint custody of a child, the trial court is also required to consider whether the parents will be able to cooperate and generally agree on important decisions affecting the welfare of their child. MCL 722.26a(1)(b); *McIntosh v McIntosh*, 282 Mich App 471, 476; 768 NW2d 325 (2009). For purposes of joint custody, medical, educational, and religious decisions are important decisions affecting the welfare of a child. *Pierron*, 282 Mich App at 246-247; *Shulick*, 273 Mich App at 327; *Fisher v Fisher*, 118 Mich App 227, 233; 324 NW2d 582 (1982). A trial court can properly deny joint custody and award sole custody to one parent when the parties are unable to agree on important decisions affecting the welfare of the child. *Fisher*, 118 Mich App at 233.

Defendant argues that the trial court erred by not considering the parties' dispute regarding JLH's schooling as a reason not to award joint legal custody. We disagree. The record shows that the parties' disagreement over schooling was related to the parties' dispute regarding physical custody. Defendant preferred that JLH attend school in Allegan, where he lived, while plaintiff preferred that JLH attend school in Williamston, where she lived. That is, the reason that the parties could not agree about which school JLH would attend was simply because the choice was inextricably tied to the custody issue at large. As noted, the judgment of divorce provides that, "[u]pon mutual agreement of the parties, [JLH] may continue to be home schooled" and if they could not agree about homeschooling, she would be enrolled in the Allegan Public Schools for the 2020-2021 academic year. This aspect of the trial court's order suggests that the trial court believed the parties could come to an agreement about JLH's education. The trial court did not abuse its discretion by making this determination. *Id*.

Defendant also claims that the parties had disagreed over vaccinations and that this should have resulted in him receiving sole legal custody of JLH. Although defendant argued that plaintiff failed to share medical information with him, and would not allow him to participate in certain medical appointments, he did not raise this specific argument regarding vaccinations in the trial court. Generally, we need not consider an issue for the first time on appeal. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994); *Polkton Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). The record shows that plaintiff testified that she had discussed vaccinations with defendant. Defendant did not raise any concerns regarding vaccinations during his testimony at trial, or, at least as outlined in their respective reports, during his conversations with Dr. Brooks and Dr. Julia Cunningham, a clinical psychologist with whom defendant spoke and by whom he was evaluated. And in raising this issue on appeal, defendant fails to point to any other evidence supporting his claim that was presented to the trial court. We conclude that the trial court did not abuse its discretion by failing to divine an issue regarding JLH's vaccinations that was not brought to its attention. *Id*.

Affirmed in both the main appeal and the cross-appeal. Neither party having prevailed in full, each party will bear its own costs. MCR 7.219(A).

/s/ James Robert Redford
/s/ David H. Sawyer
/s/ Mark T. Boonstra