STATE OF MICHIGAN

COURT OF APPEALS

JILL RENEE GREY, f/k/a JILL RENEE WATTS,

Plaintiff-Appellant,

v

STEVEN GLENN KERR,

Defendant-Appellee.

UNPUBLISHED
April 12, 1996

No. 180873
LC No. 90-05756-DP

Before: Fitzgerald, P.J., Corrigan and C.C. Schmucker,* JJ.

PER CURIAM.

Plaintiff appeals as of right the November 15, 1994, order granting physical custody of the parties' minor child, Courtney Kay Kerr, to defendant. We affirm.

Courtney was born on February 9, 1989. On January 24, 1990, plaintiff filed a paternity action against defendant. After blood tests revealed that defendant was Courtney's biological father, defendant admitted paternity and an order of filiation and support was entered on June 26, 1990.

In September 1990 defendant filed a petition for change of custody. The parties filed a stipulation for change of custody on September 28, 1990, and on October 3, 1990, the trial court entered an order changing custody to defendant. Courtney, however, continued to reside with plaintiff until June 1993 when plaintiff moved to Florida. At that time, Courtney went to live with defendant. Courtney remained with defendant from June 1993 until plaintiff filed this action in January 1994.

Plaintiff first contends that the trial court committed clear legal error when it failed to return custody to plaintiff according to an agreement between the parties. Plaintiff contends that she voluntarily and temporarily relinquished custody to defendant because doing so was in Courtney's best interest. Plaintiff reasons that case law required the trial court to restore plaintiff's custody of Courtney upon request because plaintiff voluntarily and temporarily relinquished custody to improve herself and her position.

* Circuit judge, sitting on the Court of Appeals by assignment.

In support of her position, plaintiff relies on a line of cases holding that custody should be returned to a parent who voluntarily and temporarily relinquishes custody to protect the child's best interest because such a policy encourages the custodial parent to address and resolve problems without threat of loss of custody. See, e.g., *Pluta v Pluta*, 165 Mich App 55; 418 NW2d 400 (1988), *Theroux v Doerr*, 137 Mich App 147; 357 NW2d 327 (1984), and *Speers v Speers*, 108 Mich App 543; 310 NW 455 (1981).

The key difference between the cases cited by plaintiff and the present case is that in each of the cited cases there was an undisputed agreement between the parties that the custodial parent had only temporarily relinquished custody. *Pluta*, *supra* at 58; *Theroux*, *supra* at 148. Here, the parties' testimony was sharply divided regarding whether they agreed that Courtney would live temporarily with defendant while plaintiff settled in Florida.

This Court has refused to follow the above cases under circumstances similar to those found in this case. For example, in *Sedlar v Sedlar*, 165 Mich App 71, 75-77; 419 NW2d 18 (1987), this Court rejected the argument that *Theroux* and *Speers* required the restoration of custody to the plaintiff because the parties' custody stipulation was "without limitation." Similarly, in *Hall v Hall*, 156 Mich App 286, 290; 401 NW2d 353 (1986), this Court declined to follow *Theroux* because the plaintiff had not voluntarily relinquished custody and because the parties did not have an agreement granting defendant temporary custody until plaintiff was able to regain custody. Based on the foregoing, we reject plaintiff's argument that the court had an obligation to return Courtney to plaintiff's custody because the parties lacked an agreement on the custody change.

Plaintiff also contends that the trial court committed clear legal error in concluding that, at the time of trial, an established custodial environment existed with defendant. An established custodial environment is defined in MCL 722.27(1)(c); MSA 25.312(7)(1)(c), which provides in relevant part:

> 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. The age of the child, the physical environment, the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

Whether an established custodial environment exists is a question of fact that the circuit court must address before it determines the child's best interests. *Overall v Overall*, 203 Mich App 450, 455; 512 NW2d 851 (1994). An established custodial environment is one of significant duration, both physical and psychological, in which the relationship between the custodian and the child is marked by security, stability, and permanence. *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981). Generally, the court's concern is not with the reasons the custodial environment was established, but whether it exists. *Treutle v Treutle*, 197 Mich App 690, 693; 495 NW2d 836 (1993). A court focuses its attention on the circumstances surrounding the child's care in the time preceding trial. *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995).

. The evidence supports the trial court's finding that Courtney looked solely to defendant for guidance, comfort, discipline, and the necessities of life as of June 1993. *Treutle, supra*. The evidence also supports the trial court's finding that Courtney felt secure in defendant's custody and that it provided her with a sense of stability and permanence. *Baker, supra* at 579-580. Hence, the trial court's finding that an established custodial environment existed with defendant is not clearly erroneous.

Next, plaintiff's argument that the trial court applied an incorrect standard in ruling on the motion for change of custody is without merit. Because an established custodial environment existed with defendant, the trial court properly required plaintiff, who was the party seeking to change custody, to prove by clear and convincing evidence that custody should be returned to her. *Baker, supra*. MCL 722.27(1)(c); MSA 25.312(7)(1)(c).

Last, plaintiff contends that the trial court's findings of fact regarding several of the best interest factors are against the great weight of the evidence. Specifically, plaintiff challenges the trial court's findings that factors (a), (b), (d), and (h) weighed in favor of defendant and that factors (e), (f), (j), and (k) were of neutral weight. We have reviewed plaintiff's challenges to the factors and find them to be without merit, with one exception. The trial court's finding that religion did not play a role in Courtney's life is against the great weight of the evidence. Plaintiff testified that she and Courtney are baptized Lutherans, that she took Courtney to church every Sunday that she did not have to work, that plaintiff's parents took Courtney to church when plaintiff could not, and that she had arranged for Courtney to attend Sunday school. However, because factor (b) also includes consideration of the parties' capacity to give love, affection, and guidance in addition to consideration of religion, we cannot conclude that the evidence clearly preponderates in plaintiff's favor. The trial court did not abuse its discretion in concluding that Courtney should remain in defendant's custody.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Maura D. Corrigan
/s/ Chad C. Schmucker