

STATE OF MICHIGAN  
COURT OF APPEALS

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DANIEL J. MCINNIS,  
Plaintiff–Appellee,

UNPUBLISHED  
May 24, 1996

v

No. 185103  
LC No. 94-20305-DP

TRINA MARIE ZIMMER,  
Defendant–Appellant.

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Before: Sawyer, P.J., and Griffin, and M. G. Harrison\*, JJ.

PER CURIAM.

Defendant appeals as of right the portion of the trial court’s custody order that awarded physical custody of the parties’ child to plaintiff. We affirm.

Defendant contends that the trial court’s findings on statutory factors (b), (f), (g), (j), and (l) of the Child Custody Act were against the great weight of the evidence. MCL 722.23; MSA 25.312(3). As recently explained by the Michigan Supreme Court in *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994), a reviewing court should not substitute its judgment on questions of fact unless they “clearly preponderate in the opposite direction.”

We disagree with defendant’s contention. The parties presented conflicting evidence on each of the factors. After a close review of the transcript and record, this Court finds that the facts in this case did not “clearly preponderate” against the findings by the trial court.

However, the trial court did err in applying the law on factor (f), moral fitness. In evaluating this factor, the court stated that “[m]orality, as contemplated by this factor, implies conformity with established sanctioned codes or accepted notions of right and wrong.” This is not the standard by which the trial court should have evaluated factor (f). The Michigan Supreme Court has stated that moral fitness is not an assessment of “who is the morally superior adult,” but is a question that relates to the person’s fitness as a parent. *Fletcher, supra*, 447 Mich 887. Questionable conduct is relevant to

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

factor (f) “only if it is of a type which necessarily has a significant influence on how one will function as a parent.” *Id.*

The only basis articulated by the trial court for finding against defendant on this factor was her credibility at trial. Regarding other “questionable conduct” by either party, the trial court found that there was no effect on the parties’ child. The trial court failed to make any connection between defendant’s credibility and her fitness as a parent. Despite the trial court’s erroneous legal analysis, we believe that a determination in favor of defendant on this factor would not have had any effect on the trial court’s decision to award physical custody to plaintiff. Therefore, we find that the error is harmless.

Affirmed.

/s/ David H. Sawyer

/s/ Richard Allen Griffin

/s/ Michael G. Harrison