STATE OF MICHIGAN

COURT OF APPEALS

DEBRA J. MARKHAM,

Plaintiff-Appellee,

v

DONALD A. MARKHAM,

Defendant-Appellant.

UNPUBLISHED
July 19, 1996

No. 187619
LC No. 88063827 DM

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,* JJ.

PER CURIAM.

Defendant appeals as of right from a trial court order amending the parties' divorce judgment and granting physical custody of the parties' two minor daughters to plaintiff. We affirm.

I

Defendant challenges the trial court's determination that there was no established custodial environment. Whether an established custodial environment exists is a question of fact. *Overall v Overall*, 203 Mich App 450, 455; 512 NW2d 851 (1994). We will affirm the trial court's findings of fact unless the evidence clearly preponderates in the opposite direction. *Fletcher v Fletcher*, 447 Mich 871, 876-877, 900; 526 NW2d 889 (1994).

In the present case, the daughters moved between the parties' homes every three days over the course of several years, had personal belongings at each parent's home, attended the same school and church, and looked to both parties for guidance, discipline, the necessities of life, and parental comfort. We believe that the trial court could have determined, as defendant suggests, that an established custodial environment existed in both parties' homes. *Overall, supra*, 455; *Duperon v Duperon*, 175 Mich App 77, 81; 437 NW2d 318 (1989).

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

However, the record reveals that, during the seventeen months between the time plaintiff filed her motion to amend the judgment of divorce and trial, the girls were subjected to various interviews and tests and were keenly aware that a change in custody could occur. We thus conclude that the finding of no custodial environment was appropriate under the circumstances. *Hayes v Hayes*, 209 Mich App 385, 387-388; 532 NW2d 190 (1995) (a previously established custodial environment can be destroyed where, along with repeated changes in physical custody, an upcoming custody trial creates uncertainty).

We cannot say that the evidence before us clearly preponderates in the opposite direction; therefore, we conclude that the trial court's determination that no custodial environment existed is not against the great weight of the evidence. *Fletcher, supra*, 876-877, 900. Moreover, we note that the judge determined that a change in custody was warranted by not only a preponderance of the evidence, but also by clear and convincing evidence, the standard required where a custodial environment has been established. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Hayes, supra*, 387

Defendant has failed to demonstrate error requiring reversal.

II

Defendant also challenges the trial court's factual findings regarding factors (a), (b) and (c) found in MCL 722.23; MSA 25.312(3):

> (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.

The trial court stated that both parties love their daughters and that they both have the ability to give them love and guidance, and to continue their education and religious training. However, the court stated that plaintiff expressed her love in an appropriate fashion, whereas defendant treated the girls as co-equals and companions. The court noted that defendant was emotionally dependent on his older daughter and concluded that plaintiff had the greater ability to act in the girls' best interests. Our review of the record supports the trial court's findings.

Defendant also disputes the determination that factor (c) favored plaintiff. It is without question that both parties were financially able to provide for their daughters; however, defendant had admitted to withholding court-ordered child support in order to force plaintiff to agree to a joint custody

arrangement in the past. The trial court's conclusion that defendant's past manipulation of child support reflected adversely on his disposition to support the children is not clearly erroneous.

Defendant's argument that the trial court failed to make specific findings of fact regarding factors (d), (e), (f), (g), (h) and (j), is wholly without merit. The court specifically stated that factors (d), (e), (f) and (j) favored plaintiff, and that factors (g) and (h) favored neither party.

We conclude that the trial court properly considered the statutory factors and the best interests of the minor children. The court's decision that a change of custody was supported, not only by a preponderance of the evidence but also by clear and convincing evidence, was not against the great weight of the evidence. *Fletcher, supra*, 879, 900.

Affirmed.

/s/ Marilyn Kelly
/s/ Janet T. Neff
/s/ Jeanne Stempien