

STATE OF MICHIGAN
COURT OF APPEALS

JEANEE M. SOFF-GILSON,

Plaintiff-Appellee,

v

RAYMOND J. SOFF,

Defendant-Appellant.

UNPUBLISHED

July 23, 1996

No. 191987

LC No. 92-014246-DM

Before: Neff, P.J., and Fitzgerald and C. A. Nelson,* JJ.

PER CURIAM.

Defendant appeals as of right from the order of the circuit court denying defendant's motion to change physical custody of the parties' minor children. We affirm.

I

Defendant first argues that the trial court erred in finding that the minor children had an established custodial environment in plaintiff's home. We disagree. In determining whether an established custodial environment exists, the trial court must consider whether the minor child has, over a significant period of time, developed a dependence on one parent alone for "guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Bowers v Bowers*, 198 Mich App 320, 325; 497 NW2d 602 (1993). The trial court should also consider the child's age, the security and stability of the child's physical environment, and the inclination or understanding of both the child and the guardian as to the permanence of the custody arrangement. *Id.* Finally, the trial court should "examine the circumstances surrounding the care of the [child] in the years immediately preceding the divorce trial." *Vander Molen v Vander Molen*, 164 Mich App 448, 456; 418 NW2d 108 (1987). We review a trial court's finding that an established custodial environment exists under a great weight of the evidence standard. Findings of fact are against the great weight of the evidence when the "evidence clearly preponderates in the opposite direction." *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994). This Court must also review the trial court's interpretation or application of legal standards on important issues for clear error. *Id.* at 881.

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

After careful review of the lower court record, we hold that the trial court's finding that an established custodial environment existed with plaintiff was not against the great weight of the evidence. Throughout the minor children's lives, defendant was not a stable presence, due to his work obligations. Plaintiff, on the other hand, successfully handled the daily supervision of the children's lives, e.g., school, extra-curricular activities, and social events. Accordingly, the evidence supports the conclusion that plaintiff provided the children with an established custodial environment.

II

Defendant argues that the trial court committed clear legal error in its evaluation of the best interest factors¹. Defendant also argues the trial court's findings with regard to the best interest factors were against the great weight of the evidence. Finally, defendant contends that the award of custody to plaintiff was an abuse of discretion. We disagree.

The trial court must consider and explicitly state its findings and conclusions regarding each factor and the failure to do so is usually error requiring reversal. *Daniels v Daniels*, 165 Mich App 726, 730; 418 NW2d 924 (1988). A trial court commits clear legal error when it incorrectly selects, interprets, or applies legal standards. *Fletcher, supra* at 879. Findings of fact are against the great weight of the evidence when the "Evidence clearly preponderates in the opposite direction." *Id.* at 881. A trial court's decision is an abuse of discretion if it 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 reason but rather passion or bias." *Id.* at 879-880 (quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959)).

Defendant contends that the trial court committed clear legal error in evaluating many of the best interest factors because the trial court did not consider all the relevant evidence or make insufficient findings of fact. However, neither the Child Custody Act nor the court rules governing the findings of fact require that the trial court "comment upon every matter in evidence or declare acceptance or rejection of every proposition argued." *Fletcher, supra* at 883. Thus, the trial court's failure to mention a piece of information does not constitute legal error in and of itself. We find that the trial court made detailed findings of fact and carefully considered all the relevant evidence in analyzing each of the best interest factors. Even though the trial court did not explicitly state whether it considered the children's preferences, the trial court's comments on the record seem to indicate that it considered their testimony. We note that the trial court's act of suppressing the children's preferences, for privacy reasons, was proper. *Impullitti v Impullitti*, 163 Mich App 507, 510; 415 NW2d 261 (1987). In conclusion, we believe that the trial court's consideration of the factors did not constitute clear legal error.

Defendant also argues that the trial court's findings with respect to factors (b), (c), (d), (e), (j) and (k) were against the great weight of the evidence. We disagree. Contrary to defendant's assertions on appeal, the evidence adduced at trial showed that: 1) plaintiff attends church while defendant does not; 2) plaintiff provides adequate medical treatment for the children; 3) plaintiff provides a stable

environment where the children are thriving; 4) plaintiff's new family appears to be of a permanent nature; 5) plaintiff encourages her children to have a continuing relationship with defendant; and, 6) the children's allegations of abuse against the stepparents were isolated incidents. On the whole, we conclude that the trial court's findings with respect to the statutory best interest factors were not against the great weight of the evidence.

Defendant also argues that the trial court's failure to grant custody to him constituted an abuse of discretion. We disagree. Because the trial court did not commit clear legal error in analyzing the statutory best interest factors, and because trial court's findings of fact were not against the great weight of the evidence, we find that the trial court's decision to allow plaintiff to retain custody did not constitute an abuse of discretion. Accord *Hayes v Hayes*, 209 Mich App 385, 389; 532 NW2d 190 (1995).

III

Lastly, defendant argues that the trial judge's bias against defendant rendered his ruling in favor of plaintiff an abuse of discretion. We disagree. After reviewing the trial record, we conclude that no bias exists which could render the trial judge's holding an abuse of discretion. Rather, we believe that the trial judge was fair and considerate to defendant. In fact, the trial judge often complimented defendant during his findings of fact. For example, the trial court stated, "[B]oth parties in this case are nice people. Mrs. Gilson's a very nice person. Mr. Soff is a very nice person. Each of these parents love dearly their children." Therefore, because the trial judge cannot be deemed biased against defendant, his decision to allow custody to remain with plaintiff was not an abuse of discretion.

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Charles A. Nelson

¹ MCL 722.23; MSA 25.312(3).