STATE OF MICHIGAN

COURT OF APPEALS

DANNY H. WATSON,

Plaintiff-Appellant,

v

KYLE WATSON,

Defendant-Appellee.

UNPUBLISHED
August 6, 1996

No. 186264
LC No. 91-057725-DM

Before: Neff, P.J., and Fitzgerald and Taylor, JJ.

PER CURIAM.

Plaintiff appeals as of right from the May 22, 1995 judgment of divorce entered by the trial court. Specifically, plaintiff challenges the award of physical and legal custody of the parties' children to defendant, as well as the property distribution and the award of attorney fees to defendant. We affirm, but remand for proceedings consistent with this opinion.[1]

I

The trial court's finding that there was an established custodial environment in defendant is not against the great weight of the evidence. MCL 722.27(1)(c); MSA 25.213(7)(1)(c); *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994). Contrary to plaintiff's assertion, there was not a shared custodial environment or repeated custody changes in the time preceding the March 1995 trial in this matter. Cf. *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995). Although there was ample evidence that plaintiff loves the children, plaintiff was not the principal parent with whom the children resided or who provided the children with guidance, discipline and the necessities of life. *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981).

II

As required by the Child Custody Act, the trial court made findings of fact regarding each of the statutory "best interest" factors contained in MCL 722.23; MSA 25.312(3). The great weight of the

evidence supports the trial court's ultimate findings on factors a, b, d, e, f, j and k. However, the evidence clearly preponderates against the court's finding that the parties are equal with regard to factor c; we find instead that the evidence overwhelmingly favors defendant. Factor c involves the capacity and disposition of the parties to provide the children with food, clothing and medical care. On the basis of the record, we take issue with the court's finding that plaintiff was a "good provider."

Between the time the first and second judgments of divorce were entered, plaintiff paid no daycare expenses and was frequently behind in child support payments and in reimbursing defendant for uninsured medical expenses for the children. Plaintiff allowed medical insurance to lapse on the children and did not contribute toward the $40 monthly premium for health insurance that defendant was able to obtain for the children through Bissell. In contrast, defendant obtained food stamps, Medicaid, and child care assistance payments to ensure that the basic needs of the children were met; we do not find this to weigh against defendant. On August 22, 1995, following the second judgment of divorce, plaintiff was found in contempt for failure to pay the children's health insurance and child support. Plaintiff has repeatedly demonstrated his incapacity or unwillingness to provide the children with basic support and health care. Evidence was presented that plaintiff's actions resulted in the liquidation and foreclosure of Arbor Gardens and that plaintiff intentionally sabotaged the possible sale of this business, resulting in the loss of money to the parties which would have undoubtedly helped provide for the children's basic needs. The trial court's finding that the parties were equal on factor c is not supported by the great weight of the evidence; however, the court's error is harmless because it benefited plaintiff, not defendant who ultimately prevailed here.

III

We deem plaintiff's arguments regarding factors i and l to be abandoned because plaintiff has failed to cite any legal authority in support of these issues. *Vugterveen Systems, Inc v Olde Millpond Corp*, 210 Mich App 34, 46-47; 533 NW2d 320 (1995). Regardless, we will briefly address the merits of these claims.

Factor i relates to the reasonable preference of the children. Contrary to plaintiff's assertion, the court did not state that the children were too young to state a custodial preference; rather, the court stated that neither child was able to express a *reasonable* custodial preference. Plaintiff expressly consented below to the trial court's interview of the children and did not object to the timing, the place or the format of the interviews. Plaintiff cannot now claim error to that which he acquiesced below. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995). Moreover, the trial court's decision to interview the children together at Toddler Tech was in accord with suggestions given by plaintiff's own witnesses at trial.

Factor l regards any other factor considered by the court to be relevant. A review of the trial court's analysis of this factor in its opinion reveals, contrary to plaintiff's patently false assertions on appeal, that the court specifically considered the "idyllic farm setting" of plaintiff and considered the parties' violation of court orders. We note that plaintiff does not take issue with the court's finding that

his behavior was culpable. The court's decision to give factor l little weight due to plaintiff's culpable behavior was a conclusion clearly within the discretion of the trial court to make.

IV

The trial court's findings in support of its decision to award sole legal custody to defendant are amply supported by the evidence and in accord with virtually every expert who testified at trial in this regard. Contrary to plaintiff's assertion on appeal, the parties' disputes have not centered mainly on visitation and medical treatment rather than disagreements on the merits. There was overwhelming evidence presented that the parties' disagreements have permeated every aspect of their own and the children's lives and that the parties have been unable to cooperate and agree regarding the welfare of the children. MCL 722.26a; MSA 25.312(6a). Given the parties' inability to communicate or to agree on anything, the trial court did not abuse its discretion in awarding sole legal custody to defendant. *Fletcher, supra* at 880.

V

Plaintiff argues that the trial court erred in permitting defendant to call more than three expert witnesses at trial. However, in his cursory argument on appeal of this issue, plaintiff does not explain in what manner the court abused the discretion afforded to it under statute in permitting expert witnesses to testify at trial. MCL 600.2164(2); MSA 27A.2164(2). It is not enough for plaintiff to make a brief presentation of a claim and then leave it up to this Court to discover and rationalize the basis for the claim. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

VI

Plaintiff has abandoned the remainder of his issues by either giving them cursory treatment or failing to appropriately argue the merits of an issue, *Goolsby, supra.*, or by failing to cite any legal authority in support of an issue, *Vugterveen Systems, supra*. Nevertheless, we will briefly discuss the remaining issues.

A

The trial court did not abuse its discretion in denying plaintiff's request to name a new evaluating therapist in place of Dr. Guyer. Based on plaintiff's noncompliance with the pretrial order, his lack of diligence and his untimely request that would have resulted in prejudice and time problems for defense counsel, it cannot be said that the trial court abused its discretion in this regard. *Simonetti v Rinshed-Mason Co*, 41 Mich App 446, 456-457; 200 NW2d 354 (1972). Cf., *Snyder v NYC Transport Co*, 4 Mich App 38, 44-45; 143 NW2d 791 (1966).

B

Contrary to plaintiff's representation on appeal, the trial court expressly stated that it would *not* read all the pleadings before it made a decision. The court also stated that if there was something that counsel wanted the court to consider then counsel needed to bring it to the court's attention. In light of the nature and size of the record in this case, the trial court's position in this regard was perfectly reasonable. Contrary to plaintiff's further assertion, the court in its fifty-four page, April 14, 1995 opinion did consider the parties' compliance with prior court orders. A trial court is not required to recite all the evidence considered in custody cases. MCR 2.517; *Fletcher, supra* at 883.

C

For the reasons stated in defendant's brief on appeal, the trial court's property division was fair and equitable in light of the circumstances of this case. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

D

Finally, the trial court did not abuse its discretion in awarding defendant $4,000 in attorney fees. Contrary to plaintiff's bare assertion otherwise, attorney fees may be authorized when the requesting party has been forced to incur expenses as a result of the other party's unreasonable conduct in the course of litigation. *Hanaway v Hanaway*, 208 Mich App 278, 298; 527 NW2d 792 (1995); *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992); *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). The trial court's finding that plaintiff's attorney needlessly prolonged the trial is supported by the record.

Further, as already noted, plaintiff's appellate brief was sadly lacking in form and substance, and we conclude that many of his appellate issues were frivolously brought. Accordingly, this matter is remanded, and on remand, defendant may move for appellate costs and reasonable attorney fees. MCR 7.216(C).

Affirmed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Clifford W. Taylor

[1] We note that in at least seven of his issues plaintiff has failed to include the applicable standard of review as required by MCR 7.212(C)(7), which was in effect at the time that plaintiff filed his brief on appeal. This Court, on its own motion or that of defendant, could have stricken plaintiff's brief as nonconforming. MCR 7.212(I). We caution plaintiff's counsel to follow the provisions of the court

rules regarding the requirements for filing a brief with this Court, or sanctions for noncompliance may be appropriately ordered.