

STATE OF MICHIGAN
COURT OF APPEALS

JULIE A. BUZZELL, f/k/a JULIE A. HILL,

Plaintiff-Appellant,

v

FRANCIS W. HILL,

Defendant-Appellee.

UNPUBLISHED

June 13, 1997

No. 197986

Livingston Circuit Court

LC No. 93-020438-DM

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

PER CURIAM.

Following plaintiff's motion for change of physical custody of the parties' three minor children, the trial court awarded sole physical custody to defendant. Plaintiff appeals as of right, and we affirm.

The parties were divorced on November 15, 1994. As part of the judgment of divorce, the trial court ordered the parties to share physical custody of the children. Shortly thereafter, plaintiff moved the trial court to amend the judgment of divorce and award her sole physical custody of the children. During the hearing on the matter, the parties agreed that the trial court's decision must involve an award of sole physical custody to one or the other party because of the untenability of the shared joint custody arrangement. Following many days of testimony, the trial court awarded custody of the children to defendant.

Plaintiff first argues that the trial court's finding with respect MCL 722.23(j); MSA 25.312(3)(j) ["factor (j)"] is against the great weight of the evidence. We disagree. All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876-878 (Brickley, J.), 900 (Griffin, J.); 526 NW2d 889 (1994). Thus, we will affirm the trial court's findings unless the evidence clearly preponderates in the opposite direction. *Fletcher, supra* at 879 (Brickley, J.), 900 (Griffin, J.).

Custody disputes are to be resolved in the child's best interests, as measured by the factors set forth in MCL 722.23; MSA 25.312(3). *Deel v Deel*, 113 Mich App 556, 559; 317 NW2d 685 (1982). Factor (j) provides that the court consider "[t]he willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent" Generally, the trial court must consider and explicitly state its

findings and conclusions regarding each factor, *Daniels v Daniels*, 165 Mich App 726, 730; 418 NW2d 924 (1988); however, the court need not comment on every matter in evidence or declare acceptance or rejection of every proposition argued, *Fletcher, supra* at 883 (Brickley, J.), 900 (Griffin, J.).

In the present case, although there is evidence that plaintiff, on occasion, encouraged a positive relationship between defendant and the children, we cannot say that the evidence, when viewed in totality, clearly preponderates in the opposite direction. Accordingly, the trial court's finding with respect to factor (j) is not against the great weight of the evidence.

Plaintiff next argues that the trial court abused its discretion in allocating more weight to factor (j) than to any other factor. We disagree. In order for the trial court to have abused its discretion, "the result must be 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 judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

Under the Child Custody Act, a trial court must examine each of the factors set forth in MCL 722.23; MSA 25.312(3) in order to determine the best interests of the child. *Fletcher, supra* at 881 (Brickley, J.), 900 (Griffin, J.); *Deel, supra*. The trial court found that the parties were equal with respect to all factors, except factors (b) and (j). The court gave a slight advantage to plaintiff with respect to factor (b) and a significant advantage to defendant with respect to factor (j). Therefore, the trial court's decision necessarily turned on factor (j) and, under the facts of this case, factor (j) necessarily carried more weight for the trial court. Further, a review of the trial court's opinion reveals that the court carefully considered all the factors before awarding custody to defendant. Thus, the trial court did not abuse its discretion in awarding custody of the children to defendant in reliance upon its assessment of factor (j).

Plaintiff finally argues that the trial court erred in considering the conduct of plaintiff's mother, a third party to the action, in assessing factor (j). We disagree. We review questions of law in child custody cases for clear legal error. MCL 722.28; MSA 25.312(8); *Fletcher, supra*. The record reveals that plaintiff's mother engaged in conduct that undermined defendant's relationship with the children. Although the language of factor (j) appears to preclude the court from considering the conduct of plaintiff's mother because factor (j) addresses the willingness and ability of the "parties" to promote a positive relationship between the children, we conclude that the trial court did not consider plaintiff's mother's conduct in the abstract. Rather, our review of the record and the trial court's opinion reveal that although the trial court considered plaintiff's mother's conduct, it penalized plaintiff because plaintiff permitted her mother to exert significant influence over her and to undermine the children's relationship with defendant. Thus, because the trial court properly focused on plaintiff's willingness and ability to promote a relationship between defendant and the children, no error occurred in this assessment.

We affirm.

/s/ Richard A. Bandstra

/s/ Richard Allen Griffin

/s/ E. Thomas Fitzgerald