STATE OF MICHIGAN

COURT OF APPEALS

PHILLIP P. COURNOYER,

Plaintiff-Appellant,

v

PATRICIA M. COURNOYER,

Defendant-Appellee.

UNPUBLISHED
June 20, 1997

No. 196306
Sanilac Circuit Court
LC No. 95-024057-DC

Before: Gribbs, P.J., and Sawyer and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting the parties joint legal and physical custody of their minor child, Jeffrey C. Cournoyer. We affirm.

The parties and defendant's son, Nicholas Mifsud, lived together in plaintiff's home in Berkley, Michigan for about nine months before the parties married on May 23, 1992. They remained in Berkley until June 1993 when they moved to Dallas, Georgia. The parties' son, Jeffrey, was born on May 13, 1994. On September 11, 1995, defendant returned to Michigan with Nicholas and Jeffrey. Within one week of defendant's departure, plaintiff filed for divorce in Tallapoosa County, Georgia. Plaintiff eventually withdrew his Georgia suit, returned to Michigan on November 15, 1995, and subsequently filed this child custody action.

Pursuant to the parties' stipulation, the court awarded the parties joint legal and physical custody, ordering that plaintiff have Jeffrey every week from Thursday at 6:00 p.m. until Sunday at 6:00 p.m. and that defendant have Jeffrey the rest of the time. The court then referred the issues of custody, child support and visitation to the Sanilac County Friend of the Court. The Friend of the Court subsequently recommended that Jeffrey reside with plaintiff for the first six months of every year and with defendant for the second six months of the year. On defendant's motion, the court conducted a de novo custody hearing. Ultimately, it awarded the parties joint legal and physical custody. The order provided that plaintiff would have custody every other weekend from Thursday at 6:00 p.m. to Sunday at 6:00 p.m. until Jeffrey reached school age, at which point these weekend custodial periods would

begin on Friday at 6:00 p.m. Plaintiff was also to have extended visitations during the summer. Defendant was to have custody at all other times.

Plaintiff argues that the trial court erred in finding that best interests factor (b) slightly favored defendant because she had more experience with children. He maintains that this finding was against the great weight of the evidence. Factor (b) requires the court to consider "[t]he 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." MCL 722.23(b); MSA 25.312(3)(b). Plaintiff asserts that the number of children defendant had helped to raise should not affect this factor, especially in light of the testimony of Mike Mifsud, who was defendant's brother and said that defendant had once pointed a gun at him. In making this argument, plaintiff ignores the testimony that indicated he had committed domestic assault on more than one occasion. Moreover, he did this as an adult and a parent, while defendant's act occurred when she was a child and involved a dispute with her brother. None of the evidence indicated that defendant had struck or threatened anyone as an adult or parent. Thus, because the evidence did not clearly preponderate in a direction opposite the court's finding, this finding was not against the great weight of the evidence. *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994).

Plaintiff also argues with respect to factor (b) that the court should have considered the disciplinary techniques of the parties. Contrary to plaintiff's assertion, the court was not required to consider the parties' disciplinary techniques when determining the parties' capacity to provide guidance; however, had the court done so, this would not have been in error. *Harper v Harper*, 199 Mich App 409, 414-415; 502 NW2d 731 (1993). Moreover, the court did consider the merits of the parties' disciplinary techniques in conjunction with factor (a), the love, affection and other emotional ties between the parties and the child, and determined that although the parties had different methods of disciplining children, neither method was necessarily favorable. Thus, the court did not fail to consider this factor.

Plaintiff also contends with respect to this factor that the trial court failed to consider that plaintiff had moved from Georgia to Michigan to be with the child when defendant took the child from his father to return to Michigan. Plaintiff asserts that this shows that defendant has a lesser capacity to give the child love and affection. While this might arguably be relevant to factor (j), the willingness to foster a parent-child relationship with the other parent, it does not have any apparent bearing on defendant's relationship with Jeffrey. Moreover, the record provides no indication that either party loves the child less than the other. Thus, the trial court did not err in finding that the parties were equal on this factor.

With regard to factor (c), the capacity and disposition of the parties to provide food, clothing and medical or other remedial care, plaintiff argues that the trial court erred in finding that the parties were equal because it ignored the evidence that defendant would not force Jeffrey to wear a night splint, which had been prescribed by a doctor whom plaintiff had consulted, to help correct a problem with his club foot. Plaintiff contends that this shows that defendant had a lesser capacity to provide Jeffrey with medical or other remedial care. However, plaintiff ignores the fact that he had not purchased a night splint for Jeffrey. Plaintiff also ignores the fact that defendant was operating under the recommendation of another doctor by having Jeffrey wear high-top shoes rather than a night splint. This does not

indicate that defendant lacked the capacity to provide medical care for Jeffrey; rather, it shows that she had attempted to do so and was following her physician's recommendations. Thus, because the evidence did not clearly preponderate in a direction opposite this finding, this finding was not against the great weight of the evidence. *Fletcher*, *supra* at 879.

Plaintiff also contends that because the trial court found the parties equal on factor (d), the length of time Jeffrey had lived in a stable, satisfactory environment, the court should not have modified its prior order by which the parties shared custody of the child during the week. Plaintiff assumes that because the court found that the parties were equal on this factor, the court must have found that the child's living environment was stable and satisfactory. Although the court did not make a specific finding regarding an established custodial environment, the court determined before it began discussing the best interests factors that a custody arrangement that required the child to live with one parent and then the other on alternate days, weeks or months was not stable or satisfactory. No evidence was presented to establish that the current arrangement was beneficial to the child. Therefore, the court had reason to modify the arrangement and did not err in finding the parties equal on this factor.

Finally, plaintiff argues that the court erred in finding that factor (l), any other relevant factor, favored defendant based on the fact that Nicholas lived with her. Plaintiff argues that the court failed to consider that Nicholas, who was sixteen years old at the time of the decision, would soon be old enough to live on his own. However, no evidence established that he would do so or that he would lose contact with his mother and Jeffrey. Thus, the evidence did not clearly preponderate in a direction opposite the court's finding and, accordingly, was not against the great weight of the evidence. *Id*.

Affirmed.

/s/ Roman S. Gribbs
/s/ David H. Sawyer
/s/ Robert P. Young, Jr.