STATE OF MICHIGAN

COURT OF APPEALS

NANCY S. WOFFORD,

Plaintiff-Appellee,

v

JAMES C. WOFFORD,

Defendant-Appellant.

UNPUBLISHED
September 16, 1997

No. 201044
Monroe Circuit Court
LC No. 95-021843-DM

Before: Wahls, P.J., and Taylor and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. On appeal, defendant challenges the trial court's decisions regarding custody of the two minor children, alimony, and the distribution of property. We affirm in part, reverse in part, and remand.

Defendant first contends that the trial court erred by awarding plaintiff and defendant joint legal and physical custody of their minor children. Defendant's argument is twofold. First, he argues that the trial court erred in failing to make a determination regarding the existence of an established custodial environment before considering the statutory best interest factors. Second, he argues that the trial court's later finding that there was no established custodial environment was against the great weight of the evidence. Child custody orders must be affirmed on appeal unless the trial court made findings against the great weight of the evidence, committed a palpable abuse of discretion, or made a clear legal error on a major issue. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994).

Where a temporary custody order exists prior to trial, the trial court must determine whether an established custodial environment exists pursuant to MCL 722.27(c); MSA 25.312(7)(c) before ruling on the best interest factors set out in MCL 722.23; MSA 25.312(3). *Overall v Overall*, 203 Mich App 450, 455; 512 NW2d 851 (1994). Here, the trial court erred by failing to make a factual finding regarding an established custodial environment before addressing the best interest factors. *Bowers v Bowers*, 190 Mich App 51, 53-54; 475 NW2d 394 (1991). While the trial court later stated that there was no established custodial environment, it is clear that the court was actually discussing one of the

best interest factors, and never properly determined whether there was an established custodial environment. However, we need not remand on this issue, as there is sufficient evidence in the record to allow us to make our own finding by de novo review. *Thames v Thames*, 191 Mich App 299, 304; 477 NW2d 496 (1991).

The record clearly demonstrates that, during the period of defendant's temporary physical custody prior to trial, plaintiff had visitation from 9:00 a.m. to 5:00 p.m., Monday through Thursday, during which time she served as their home-school instructor. Plaintiff also had visitation every other weekend, during which time the children stayed at her house. Under these circumstances, we find that no established custodial environment existed, because the children did not look naturally to only one of their parents for guidance, discipline, the necessities of life, and parental comfort. MCL 722.27(c); MSA 25.312(7)(c); *Hoke v Hoke*, 162 Mich App 201, 205-206; 412 NW2d 694 (1987).

Defendant next argues that the trial court erred in finding that the best interests of the children would be served by an award of joint legal and physical custody. We disagree. Absent an established custodial environment, custody is determined upon a showing by a preponderance of the evidence that a particular placement is in the child's best interests. MCL 722.27(c); MSA 25.312(7)(c); *Baker v Baker*, 411 Mich 567, 579; 309 NW2d 532 (1981). In determining the best interest of the child, the trial court must consider the twelve factors listed in MCL 722.23; MSA 25.312(3) and explicitly state its findings and conclusions regarding each. *Bowers v Bowers*, 198 Mich App 320, 328; 497 NW2d 602 (1993). The trial court need not comment upon every matter in evidence or every proposition argued. *Fletcher*, *supra* at 883. We review a trial courts findings of fact on the best evidence factors under the "great weight of the evidence" standard. *Id.* at 877-879; MCL 722.28; MSA 25.312(8).

After reviewing the record, we conclude that the trial court properly reviewed each of the statutory factors, and that none of the court's findings were against the great weight of the evidence. Accordingly, we affirm the trial court's award of joint custody.

Defendant next argues that trial court's award of alimony was inequitable because the trial court failed to consider defendant's ability to pay. We agree. When reviewing an award of alimony, this court reviews the trial court's findings of fact under the "clearly erroneous" standard. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Id.*

The trial court in a divorce action has the discretion to award alimony as it considers just and reasonable. MCL 552.23(1); MSA 25.103(1); *Magee v Magee*, 218 Mich App 158, 162; 553 NW2d 363 (1996). "The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Id.* Among the factors to be considered are the source and amount of property awarded to the parties and the abilities of the parties to pay alimony. *Thames*, *supra* at 308. The trial court must make specific findings regarding those factors relevant to the award of alimony in the particular case. *Ianitelli v Ianitelli*, 199 Mich App 641, 643; 502 NW2d 691 (1993).

Here, the trial court did not make any specific factual findings regarding defendant's income or his ability to pay alimony. Instead, the court simply noted that neither party had a "great substantial ability" to pay alimony. This finding is not sufficiently specific to allow us to review the award of alimony. If the trial court believed the testimony presented by defendant, he had a total weekly income of $625, before taxes. Using that figure, the trial court's award of alimony at the first-year's rate of $1400 per month amounts to fifty-two percent of defendant's gross income. Defendant was also ordered to pay child support and to pay plaintiff's health insurance premiums for three years. Finally, as part of the distribution of marital property, plaintiff was given the option of receiving either a one-half interest in defendant's corporations or one half of the value of defendant's corporations payable at the rate of $1500 per month. Without a specific factual finding regarding defendant's income, we have no way of determining whether the trial court's alimony award left defendant "impoverished." Thus, we reverse and remand for more specific findings regarding defendant's ability to pay alimony. The trial court should make a specific finding regarding defendant's income, and a specific finding regarding any other assets or liabilities which would affect defendant's ability to make alimony payments. On remand, the trial court should modify its award of alimony if, after arriving at a more specific finding on defendant's ability to pay, the award leaves defendant impoverished. *Magee*, *supra* at 164.

Defendant next contends that trial court erred when it clarified its judgment of divorce by awarding a vehicle owned by one of defendant's corporations to plaintiff after it had already awarded a fifty percent interest in the corporations to each party. We agree. When reviewing the distribution of property in a judgment of divorce, this court reviews the trial court's findings of fact under the "clearly erroneous" standard. *Sparks*, *supra* at 151-152. If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Id.*

A trial court is given broad discretion in fashioning its ruling on the distribution of property in a divorce action. *Sparks*, *supra* at 158-159. Similarly, "trial court's are afforded wide discretion in interpreting divorce judgments, in keeping with the discretion generally exercised in initially reaching such judgments." *Vigil v Vigil*, 118 Mich App 194, 199; 324 NW2d 571 (1982). Thus, a trial court has the power to modify a judgment of divorce in order to clarify an ambiguity. *Vigil*, *supra* at 197.

In the instant case, the judgment of divorce was ambiguous because it did not clearly indicate whether a van used by plaintiff was her personal property, which she was entitled to keep, or whether it was the property of one of defendant's corporations, which plaintiff had to return. The trial court then modified the judgment of divorce to indicate that the van belonged to one of defendant's corporations, but ordered that defendant transfer ownership to plaintiff, or provide her with a similar vehicle. This modification of the award was within the trial court's discretion. However, the trial court did not indicate how the award of the van was to affect the valuation and division of defendant's corporations. Specifically, the trial court did not indicate whether it was awarding plaintiff: (1) the van plus one half of the original value of the corporations (which presumably included the value of the van), (2) the van plus one half of the remaining value of the corporations (not including the van), or (3) one half of the corporations, with the value of the van taken out of plaintiff's half. Given the trial court's discretion to clarify or modify the judgment of divorce, we do not suggest which disposition is appropriate. We simply remand to the trial court for clarification of its intent regarding the award of the van to plaintiff.

Finally, we decline defendant's request for reassignment to a different trial judge on remand. We recognize that we have the power to remand to a different judge "if the original judge would have difficulty in putting previously expressed views or findings out of his or her mind, if reassignment is advisable to preserve the appearance of justice, and if reassignment would not entail excessive waste or duplication." *Feaheny v Caldwell*, 175 Mich App 291, 309-310; 437 NW2d 358 (1989). Here, however, we find no reason to disqualify the original judge, and assignment to a different judge would undoubtedly entail excessive waste and duplication.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Myron H. Wahls
/s/ Clifford W. Taylor
/s/ Joel P. Hoekstra