STATE OF MICHIGAN

COURT OF APPEALS

AMERIGO MARIO ROMANO,

Plaintiff-Appellant,

v

ELIZABETH DIANE WAHLSTROM, a/k/a ELIZABETH DIANE ROMANO,

Defendant-Appellee.

UNPUBLISHED
October 31, 1997

No. 197647
Marquette Circuit Court
LC No. 92-027372-DM

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of annulment that divided the parties' property, granted custody of the parties' minor child to defendant, and established the visitation rights of plaintiff with the minor child. We affirm.

The trial court originally entered an order giving the parties joint custody of the minor child, with custody changing between the parties on a monthly basis. Soon after this arrangement began, the child began to suffer from separation anxiety disorder because a child so young (one and a half years) cannot understand that the separation from its primary caregiver (defendant in this case) is temporary. After hearing from experts on this disorder and on the child's development, as well as testimony as to defendant's parenting skills and ability to handle this situation, the trial court ordered that defendant be given primary custody of the minor child with plaintiff having visitation at his home in Chicago for one week every month.

Plaintiff argues that the trial court erred in its award of custody and urges this Court to review the matter de novo. However, child custody orders are not reviewed de novo. *Fletcher v Fletcher*, 447 Mich 871, 882; 526 NW2d 889 (1994). In child custody disputes, there are three standards of review. Findings of fact are reviewed under the great weight of the evidence standard that requires this Court to affirm the trial court "unless the evidence 'clearly preponderate[s] in the opposite direction.'" *Id*. at 879 [quoting *Murchie v Standard Oil Co*, 355 Mich 550, 558; 94 NW2d 799 (1959)]. Custody decisions are discretionary rulings and, as such, are reviewed under a "palpable abuse of

discretion" standard. *Fletcher, supra*, 447 Mich at 879-880 [quoting MCL 722.28; MSA 25.312(8)]. Legal questions are reviewed for clear error. *Fletcher, supra*, 447 Mich at 881. Plaintiff has not raised any legal questions.

With regard to the factors to be considered under MCL 722.23; MSA 25.312(3), plaintiff argues that the trial court erred in finding that defendant should be favored under factors (a) and (l). We disagree. Plaintiff argues that the trial court erred in giving credence to defendant's experts regarding the bond between the child and defendant and regarding the separation anxiety disorder. The trial court's determination is not against the great weight of the evidence especially in view of plaintiff's expert's agreement that the original month on, month off custody arrangement was not good for such a young child.

Plaintiff argues that the trial court, in finding in his favor on factor (j) regarding the willingness of the parties to facilitate a relationship with the other party, should have given that factor more weight than the two factors found in defendant's favor. The record supports the trial court's award of this factor to plaintiff, but does not show any extreme behavior on defendant's part. Because the separation anxiety issue is so important to this young child, the trial court's determination that weighed this factor equally with the others is not against the great weight of the evidence.

Plaintiff claims that the trial court erred in finding that factors (b), (e) and (f) equally favored both parties. In support of his argument, he continues to insist that defendant be denied custody because of her past history of substance abuse and of leaving her children. The trial court findings were not against the great weight of the evidence that demonstrated that defendant had been drug free since 1989, alcohol free since 1991, and a good parent to this child since her birth. As the trial court so aptly stated, "[defendant] should not carry the prior baggage as a millstone around her neck."

Finally, there is no palpable abuse of discretion in the trial court's custody determination. The trial court gave defendant physical and legal custody of the child, but gave plaintiff one week a month visitation at his home in Chicago. This was more than the experts suggested and less than plaintiff wanted. In light of the testimony, it was in the best interest of the child.

Plaintiff next argues that the trial court erred in awarding one of the homes purchased during the marriage to defendant. We disagree. The trial court's factual findings are reviewed under the clearly erroneous standard. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996). We do not reverse the trial court unless we are left with the definite and firm conviction that its action was inequitable. *Id*. Plaintiff argues that, because the marriage was short and because plaintiff contributed the majority of the money to purchase the homes, an equal distribution of the marital assets was not appropriate. In effect, plaintiff wanted the trial court to return him to his pre-marriage status. However, a property settlement should not be an attempt to restore the parties to their pre-marriage status. *Bone v Bone*, 148 Mich App 834, 837-838; 385 NW2d 706 (1986). In addition, plaintiff argues that, because of defendant's past history, she should receive nothing from the marriage except her debt-encumbered car. It is inappropriate to assign such disproportionate weight to any one factor. *McDougal, supra*, 451 Mich at 88-90; *Sparks v Sparks*, 440 Mich 141, 160; 485 NW2d 893

(1992). A trial court's role "is to achieve equity, not to 'punish' one of the parties." *Sands v Sands*, 442 Mich 30, 36-37; 497 NW2d 493 (1993).

In this case, the trial court awarded plaintiff the substantial property interest and money he acquired prior to the marriage together with a house acquired during the marriage and his car. The house and car were encumbered with a mortgage and a loan. Defendant, who, at the time of the property division, earned only half of what plaintiff was earning, received only the house she was living in and her car. She also was liable for the mortgage payment on the house, the payment on the car loan, and half of the parties' outstanding medical and dental expenses. We are not convinced that this division is inequitable. Plaintiff further claims that the $5,600 debt that was assigned to him in the property division was inequitable. We disagree inasmuch as that amount was a debt he incurred prior to the marriage for his education.

Affirmed.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Richard A. Bandstra