

STATE OF MICHIGAN  
COURT OF APPEALS

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DEANNA M. JEWETT,

Plaintiff-Appellee,

v

BRAD L. JEWETT,

Defendant-Appellant.

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UNPUBLISHED

February 24, 1998

No. 199543

Grand Traverse Circuit Court

LC No. 94-012691-DM

Before: McDonald, P.J., and Sawyer and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce, challenging the grant of full legal and physical custody of the parties' two children, Justin Michael and Allison Nicole, to plaintiff. We affirm.

A trial court in a child custody determination must make specific findings of fact on each of twelve factors that are to be taken into account in determining the best interests of the child. *Treutle v Treutle*, 197 Mich App 690, 694; 495 NW2d 836 (1992). These factors are set forth in MCL 722.23; MSA 25.312(3). In this case, the trial court found the parties equal on eight factors and that plaintiff prevailed on three factors. Defendant argues that the trial court's factual determinations as to five of the factors were against the great weight of the evidence and that he should have prevailed over plaintiff on these five factors. We review these arguments to determine whether the evidence clearly preponderated in favor of the results defendant is advancing, MCL 722.28; MSA 25.312(8), and conclude that his arguments are without merit.

First, defendant contests the trial court's finding factor "(b) [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; MSA 25.312, weighed in favor of plaintiff. It was not against the great weight of the evidence for the court to find certain of plaintiff's activities, such as teaching violin and setting up counseling with the children, rose to a higher level of "special involvement" and therefore plaintiff prevailed. Although it was against the great weight of the evidence for the trial court to conclude defendant's change in Christian churches implicates this factor in a negative way, since there was no indication the change of churches would be in any way harmful or

disturbing to the children, any error did not impact the outcome of the custody dispute. The religious issue was neutral and plaintiff also prevailed with regard to the care of the children, therefore continuing to prevail as to this factor.

Defendant next disputes the trial court's finding the parties were equal with regard to factor "(c) [t]he capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs." MCL 722.23; MSA 25.312. The trial court was fully aware of the income disparity between the parties. Contrary to defendant's representation, there was no evidence at the hearing plaintiff ever defaulted on medical or other bills regarding the children. As long as plaintiff was able to provide for the children's needs, even with child support, the trial court's decision was proper. See *Barringer v Barringer*, 191 Mich App 639, 641; 479 NW2d 3 (1991).

Defendant next argues it was against the great weight of the evidence for the trial court to find the parties were equal as to factor "(e) [t]he permanence, as a family unit, of the existing or proposed custodial home or homes," MCL 722.23; MSA 25.312, primarily because he owned his own mobile home whereas plaintiff rented and because defendant thought the court considered the "acceptability" of the home rather than permanence. The "focus of factor (e) is the child's prospects for a stable family environment." *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996). The court took into account the "family unit" of both parties, as required in the language of factor (e), and this necessitated discussing the future marriage plans of plaintiff and her fiancé and the fiancé's demonstrated responsibility to plaintiff and the children since this will certainly affect the permanence of the family unit. Both parties had extended family in the area that was involved with the children. The neutral finding on this factor was not against the great weight of the evidence, nor did the trial court misapply the factor.

The trial court also found the parties equal with regard to factor "(f) [t]he moral fitness of the parties involved." MCL 722.23; MSA 25.312. The court correctly determined extramarital conduct was relevant to factor (f) only if it had a "significant influence on how one will function as a parent." *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994). Although the trial court found that plaintiff had an affair in 1991, it took place when Justin was a baby and before Allison was born, and there was no showing that it affected her parenting abilities. Defendant claims plaintiff began dating her current fiancée in December 1994, before separating from defendant in January 1995. Plaintiff testified the relationship began after the final separation from defendant in January 1995. The trial court's determination in this matter was not against the great weight of the evidence.

Finally, defendant contends the trial court should have found he prevailed on factor "(j) [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 or the child and the parents." MCL 722.23; MSA 25.312. Defendant basically argues the trial court should have given more weight to defendant's cooperation with plaintiff and to her attempts to cut off contact between the children and defendant. The trial court was aware of the shortcomings of both parties with regard to this factor and cited deficiencies in each party, even though it did not recite every single factor that the parties had raised. Determinations of weight and credibility given to the evidence regarding this factor were for the trial

court to make, not defendant. The finding of the trial court was not against the great weight of the evidence.

Affirmed.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Joel P. Hoekstra