

STATE OF MICHIGAN
COURT OF APPEALS

DENISE M. SPRANGER,

Plaintiff-Appellant,

V

RICHARD G. SPRANGER,

Defendant-Appellee.

UNPUBLISHED

March 11, 2003

No. 240986

Macomb Circuit Court

LC No. 1997-003376-DM

AFTER REMAND

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for a change in custody. We affirm.

Plaintiff claims that the trial court erred in three different respects. First, plaintiff asserts the trial court erred in determining in connection with defendant's motion that a custodial environment for the children was established with both plaintiff and defendant. Second, plaintiff contends that the trial court made erroneous findings and misapplied the statutory best interest factors. Third, plaintiff argues that the trial court abused its discretion in granting defendant's motion to modify the custody order.

In *Foskett v Foskett*, 247 Mich App 1, 4-5; 634 NW2d 363 (2001), this Court discussed the standard of review in child custody cases:

There are three different standards of review applicable to child custody cases. The clear legal error standard applies where the trial court errs in its choice, interpretation, or application of the existing law. *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000). Findings of fact are reviewed pursuant to the great weight of the evidence standard. In accord with that standard, this Court will sustain the trial court's factual findings unless "the evidence clearly preponderates in the opposite direction." *Id.* Discretionary rulings are reviewed for an abuse of discretion, including a trial court's determination on the issue of custody. *Id.*

We disagree with plaintiff's contention that the trial court erred in determining that a custodial environment for the children had been established with both plaintiff and defendant. "Because the existence of a custodial environment is a factual inquiry, the great weight of the

evidence standard applies.” *Id.* at 8. “An established custodial environment, however, need not be limited to one household; it can exist in more than one home.” *Mogle v Scriver*, 241 Mich App 192, 197-198; 614 NW2d 696 (2000). We cannot say on the basis of this record that the trial court clearly erred in finding that because the consent judgment of divorce ordered joint physical and legal custody there was an established custodial environment with both the plaintiff and defendant.

Moreover, “[i]f the trial court finds that an established custodial environment exists, then the trial court can change custody only if the party bearing the burden presents clear and convincing evidence that the change serves the best interests of the child.” *Foskett, supra* at 6. Thus, even if plaintiff correctly asserts that the great weight of the evidence is that a custodial environment was established solely with plaintiff, defendant’s burden of proof remained that of clear and convincing evidence. Therefore, any error in the trial court’s finding on the custodial environment was harmless.

Next, plaintiff claims the trial court’s findings on nine of the twelve best interest factors, MCL 722.23 (b), (c), (d), (e), (f), (g), (h), (j), and (l), are against the great weight of the evidence resulting in an abuse of discretion by the trial court in awarding defendant sole physical and legal custody of the parties’ minor children. We disagree.

The second factor, found at MCL 722.23(b), involves “[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.” See *Fletcher v Fletcher*, 229 Mich App 19, 25; 581 NW2d 11 (1998) (*Fletcher III*). The trial court weighed this factor in favor of defendant, finding that although the children had been baptized and were being raised in the Catholic church, plaintiff took them to a Lutheran church without discussing it with defendant. The trial court also found that plaintiff was overprotective and hypervigilant in regard to the children.

These findings were not against the great weight of the evidence. Dr. Ross Beckley testified that plaintiff had a histrionic personality, such that she would overact to moderate or minimal stimuli. He also concluded that plaintiff was hypervigilant with the children, causing her to overprotect and isolate the children, and that plaintiff was rigid and not adaptable, even though it was important to be flexible in divorce situations. Therefore, there was support in the record for the trial court’s finding that plaintiff was hypervigilant. Additionally, plaintiff admitted that she began taking the children to her Lutheran church without consulting defendant and allowed their daughter to make her first communion in the Lutheran church, despite the fact the children were baptized and raised as Catholics. We cannot find that the trial court’s findings on this factor were against the great weight of the evidence.

Plaintiff also argues that the trial court failed to consider other relevant facts in connection with this factor. However, the trial court is not required to address every fact in evidence or voice its conclusion concerning every argument presented. *LaFleche, supra* at 700.

Under the third factor, MCL 722.23(c), the trial court evaluates “[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.” The trial court weighed this factor in favor of defendant, finding that

plaintiff, in an attempt to prosecute her claims of abuse against defendant, subjected the children to multiple invasive medical examinations. The trial court's findings were not against the great weight of the evidence.

Plaintiff argues that the trial court's determination that the children were subjected to multiple invasive medical examinations was based on erroneous testimonial and documentary evidence. Defendant testified that on one occasion in 1997 after the allegations were first raised, the parties' daughter began crying and was upset after plaintiff took her to a doctor who made her remove her clothing. Amy Allen, who was involved in the investigation of the allegations made against defendant in 1997, testified that two examinations were performed on the parties' daughter, including one examination by Dr. Annamarie Church and a second examination by Dr. Mary Smith. Allen indicated that a second examination would not generally be performed following unsubstantiated allegations of sexual abuse because the examinations could be intrusive and/or emotional experiences for the child. Plaintiff also testified that she initially took the parties' son for an examination in connection with the sexual abuse allegations at Royal Oak Beaumont Hospital, where the doctors examined his private parts. Plaintiff then took the parties' son for an examination with Dr. Church, who performed an examination similar to the one performed at the hospital. Accordingly, we find that there was sufficient evidence to support the trial court's findings with respect to factor (c), and the trial court's findings were not against the great weight of the evidence.

The fourth factor, found at MCL 722.23(d), looks at "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." See also *Fletcher III, supra* at 28. The trial court weighed this factor in favor of defendant, finding that the stability of the custodial environment with plaintiff was detrimentally affected by plaintiff's numerous allegations of abuse.

Plaintiff argues that she provided the children with stability, that there was no claim that the home environment was not safe, and that plaintiff's neighborhood and apartment were important to the children. However, there was significant testimony regarding the four allegations of abuse initiated by plaintiff against defendant and testimony that the allegations were unsubstantiated. Further, there was significant testimony that defendant lost parenting time and that his parenting time was supervised for a period of time following the allegations. The evidence demonstrated that defendant continued to maintain a residence in the former marital home in Lake Orion and had no plans of moving. Defendant also testified that he continued to maintain a relationship between the children and plaintiff's family members, while plaintiff admitted that she was estranged from her parents and the children visited her parents through defendant or her sister. Thus, there was sufficient evidence to support the trial court's findings with respect to factor (d), and the trial court's findings were not against the great weight of the evidence.

The fifth factor, MCL 722.23(e), considers "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes." The trial court weighed this factor in favor of defendant, finding that plaintiff lived in a two-bedroom apartment, allowed her boyfriend to be present when the children were awake, and was estranged from her family. Plaintiff contends that the trial court's focus on the geographical location of the home, as opposed to the family unit, was erroneous. Plaintiff further contends that the trial court's implication that she sleeps

with her boyfriend while the children are present was unsupported by the evidence and that the trial court improperly relied on defendant's contacts with her family.

It is not apparent that the trial court's findings focused on the geographical location of plaintiff's home as plaintiff contends. The evidence demonstrated that plaintiff lives in a two-bedroom apartment where plaintiff sleeps on the couch and that, occasionally, her boyfriend would be present when the children were awake. On the other hand, defendant testified that he continued to live in the former marital home where defendant and the children each have their own bedrooms. Plaintiff admitted at the evidentiary hearing that she was estranged from her parents and agreed that the children saw her parents through either defendant or her sister, while defendant personally continued to foster a relationship between the children and their maternal relatives. The evidence presented establishes that plaintiff did not foster a relationship with her family, detracting from the permanence of the family unit. Thus, there was sufficient evidence to support the trial court's findings with respect to factor (e), and the trial court's findings were not against the great weight of the evidence.

The sixth factor considers "[t]he moral fitness of the parties involved." MCL 722.23(f). The trial court weighed this factor in favor of defendant because plaintiff permitted her boyfriend to sleep in her home when the children were present. Plaintiff argues that the trial court misconstrued the testimony regarding her boyfriend and claims that he slept on a different couch than she did and that there was no evidence that the children were exposed to any improper behavior. Plaintiff further states that her actions were not immoral and do not affect her ability to act as a role model for the children.

"Standing alone, unmarried cohabitation is not enough to constitute immorality under the Child Custody Act." *Truitt v Truitt*, 172 Mich App 38, 46; 431 NW2d 454 (1988). In *Fletcher v Fletcher*, 447 Mich 871, 887; 526 NW2d 889 (1994) (*Fletcher I*), the Michigan Supreme Court stated, "[e]xtramarital relations are not necessarily a reliable indicator of how one will function within the parent-child relationship. While such conduct certainly has a bearing on one's spousal fitness, it need not be probative of how one will interact with or raise a child." From the record it appears that the trial court focused only on plaintiff's unmarried cohabitation without looking at the moral fitness of the parties as parents. Therefore, we conclude that the trial court's application of this factor was clearly erroneous and against the great weight of the evidence.

The seventh factor, MCL 722.23(g), requires the trial court to determine "[t]he mental and physical health of the parties involved." The trial court weighed this factor in favor of defendant, finding the state of plaintiff's mental health to be in question, in part, because of her claims of abuse against defendant and, in part, because of her history of mental health treatment. Plaintiff contends that the trial court misconstrued her actions in relation to the allegations of abuse she made against defendant and that her actions were proper. Plaintiff also argues that the evidence does not support the conclusion that she suffered from a mental illness.

There was sufficient evidence to support the trial court's findings with respect to factor (g). Plaintiff was on medication for stress at the time of the evidentiary hearing, and plaintiff's therapist testified that although plaintiff did not have a serious mental problem or a major personality disorder, plaintiff was depressed and anxious, causing her to have difficulty readjusting to her life following divorce. Dr. Beckley described plaintiff as having a histrionic personality with obsessive-compulsive features. Together with Dr. Beckley's testimony that

plaintiff was hypervigilant about tasks that should not cause her to be hypervigilant and the evidence that plaintiff made multiple allegations of abuse, none of which were substantiated, we conclude that the trial court's findings were not against the great weight of the evidence.

Under the eighth factor, MCL 722.23(h), the trial court makes findings concerning "[t]he home, school, and community record of the child." The trial court weighed this factor equally in both parties' favor. Plaintiff argues that the parties were not equal because the children performed better academically under her care. Plaintiff also contends that there was no evidence that defendant engaged in activities with the children. However, the evidence demonstrated that defendant enrolled the parties' son in a day care program and that the parties' daughter had perfect school attendance while in his custody. Defendant further discussed his involvement with the children's school projects. Thus, there was sufficient evidence to support the trial court's findings with respect to factor (h), and the trial court's findings were not against the great weight of the evidence.

Plaintiff challenges the trial court's findings on factor ten, MCL 722.23(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." See *Fletcher III*, *supra* at 28-29. The trial court weighed this factor in favor of defendant, finding that plaintiff coached one or both of the children to tell investigative authorities that defendant sexually abused them, and that plaintiff consistently attempted to thwart defendant's relationship with the children. The trial court's findings were not against the great weight of the evidence on this factor.

The evidence demonstrated that plaintiff initiated the three allegations of sexual abuse and an allegation of physical abuse against defendant. Defendant was not charged in connection with any of these allegations, all of which were unsubstantiated. Further, several witnesses opined that the parties' daughter was being coached to claim that she was abused. There was also evidence that plaintiff attempted to otherwise hinder the parent-child relationship between defendant and the children by discouraging the parties' daughter from being with defendant during his parenting time. There was sufficient evidence to support the trial court's findings with respect to factor (j).

Finally, plaintiff challenges the trial court's finding that the twelfth factor, MCL 722.23(l), "[a]ny other factor considered by the court to be relevant to a particular child custody dispute," see *LaFleche*, *supra* at 701-702, weighs in favor of defendant. The Michigan Supreme Court has noted that "[f]actor l is a catch-all, encompassing '[a]ny other factor considered by the court to be relevant to a particular child custody dispute.'" *Ireland v Smith*, 451 Mich 457, 464 n 7; 547 NW2d 686 (1996). The trial court felt compelled to comment that the possible long-term negative effects of plaintiff's conduct on the minor children's well-being made plaintiff inappropriate as a custodial parent. We find that as discussed above, there was sufficient evidence to support the trial court's findings with respect to factor (l), and the trial court's findings were not against the great weight of the evidence.

In summary, although the trial court clearly erred and made findings against the great weight of the evidence in its determination regarding the moral fitness of plaintiff as a parent, we hold that this error was harmless because the majority of the factors weighed in favor of defendant. Therefore, we affirm the trial court's judgment awarding defendant sole physical and

legal custody of the parties' minor children and find that the trial court did not abuse its discretion in modifying the original custody order.

Plaintiff next argues that this case should be assigned to a different judge on remand. Given our determination that the trial court did not abuse its discretion in granting defendant sole physical and legal custody of the parties' minor children, this issue is moot.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder

/s/ Jessica R. Cooper