

STATE OF MICHIGAN  
COURT OF APPEALS

---

JODIE RAE BATES-RUTLEDGE,  
Plaintiff-Appellant,

UNPUBLISHED  
January 11, 2005

v

ROY LAMONT RUTLEDGE, III,  
Defendant-Appellee.

No. 257186  
Lapeer Circuit Court  
LC No. 03-032466-DM

---

Before: Neff, P.J., and Cooper and R. S. Gribbs\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of divorce granting defendant sole physical custody of the parties' three children. We reverse and remand.

Plaintiff and defendant were married in October 1998, and they had three sons. Plaintiff sustained a back injury in January 1999; she has two torn discs and one bulged disc in her back. Plaintiff received workers' compensation benefits until June 2002. In August 2002, plaintiff returned to work for a short time. Plaintiff testified that she was terminated from her position because she left work one day when one of the children became ill. Plaintiff filed for divorce in January 2003, and defendant moved out of the marital home in February 2003. Plaintiff was awarded temporary sole physical custody of the children, and defendant sought joint physical custody.

In custody cases, we apply three standards of review. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004). The great weight of the evidence standard applies to all findings of fact. *Id.* We should affirm a trial court's findings regarding the existence of an established custodial environment and regarding each custody factor unless the evidence clearly preponderates in the opposite direction. *Id.* We review a trial court's discretionary rulings, such as custody decisions, for an abuse of discretion. *Id.* We review questions of law for clear legal error. *Id.* A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law. *Id.* "To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28.

---

\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Plaintiff claims that the trial court erred when it granted custody of the parties' three children to defendant. Custody disputes are to be resolved in the children's best interest, as measured by the best interest factors set forth in MCL 722.23.

Plaintiff first argues that the trial court erred by failing to make specific findings of fact regarding factors (a) and (b). Plaintiff also challenges the trial court's opinion that the parties were equal with regard to factors (a) and (b). MCL 722.23(a) examines the "love, affection, and other emotional ties existing between the parties involved and the child." MCL 722.23(b) examines "[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." The trial court concluded that these factors were equal between the parties; however, it failed to make any factual findings on either factor. While a trial court need not comment on "every matter in evidence or declare acceptance or rejection of every proposition argued," *Baker v Baker*, 411 Mich 577, 583; 309 NW2d 532 (1981), a trial court's failure to consider and state findings and conclusions regarding each factor is reversible error. *Daniels v Daniels*, 165 Mich App 726, 730; 418 NW2d 924 (1988). Therefore, we remand for reevaluation and consideration of up-to-date information. On remand, the trial court "must consider and explicitly state its findings and conclusions with respect to each of these factors." *Bowers v Bowers*, 190 Mich App 51, 54-55; 475 NW2d 394 (1991).

Plaintiff next challenges the trial court's determination that neither party prevailed with regard to factors (d) or (e). MCL 722.23(d) examines "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(e) considers "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes." Despite plaintiff's argument, the testimony presented at trial showed that both parties had established a stable environment for the children and maintained a family unit in both homes. The trial court's findings were not against the great weight of the evidence. *Thompson, supra* at 358.

Plaintiff also challenges the court's conclusions regarding factor (g), "[t]he mental and physical health of the parties involved." MCL 722.23(g). The trial court determined that factor (g) favored defendant because "according to Plaintiff's testimony she is not physically able to care for the children." Plaintiff testified at trial that she had two torn discs and one bulged disc in her back. According to her testimony, the doctor stated that she was not to do any lifting, standing, or twisting. However, there is nothing in the record showing that plaintiff's injury affected her ability to care for the children. In fact, there is no dispute that she had been the primary caregiver for the children since their birth. Therefore, we find the trial court's finding regarding factor (g) to be against the great weight of the evidence. *Thompson, supra* at 358.

We also conclude that the trial court erred with respect to factor (j). MCL 722.23(j) examines "[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." The court concluded that plaintiff had been open regarding working out a parenting time schedule. However, the court concluded that plaintiff's "failure to follow Court orders or make any effort . . . to alleviate the parties' financial problems . . . leads this Court to score this factor for Defendant." However, the testimony at trial showed that plaintiff encouraged the children to see defendant. The court failed to explain how the identified financial problems affected plaintiff's willingness and ability to facilitate a relationship between defendant and the

minor children. Therefore, the trial court's finding regarding factor (j) is also against the great weight of the evidence. *Thompson, supra* at 358.

Plaintiff also challenges factor (l), "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." MCL 722.23(l). Under this factor, the trial court considered plaintiff's refusal to assist in selling the marital home and her refusal to find employment. Plaintiff admitted that she had done absolutely nothing to assist in selling the marital home. In addition, plaintiff admitted that she had not applied for any job since she had been terminated from her job because she did not want her pending workers' compensation claim to be affected. The trial court's findings are fully supported by the testimony at trial and are not against the great weight of the evidence.

Plaintiff next claims that the trial court failed to consider joint custody, as required by MCL 722.26a(1). However, this argument is without merit. The issue of joint custody was squarely presented to the court. While the court's opinion does not provide an analysis of the issue, the text of the opinion indicates that the court properly considered joint custody. Indeed, the court granted joint legal custody to plaintiff and defendant.

Finally, plaintiff claims that the trial court abused its discretion by denying her motion for reconsideration. "Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." MCR 2.119(F)(3). "The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." *Id.*

Plaintiff's motion for reconsideration merely presented the same issues already ruled on by the trial court in the judgment of divorce. Relying on letters from two doctors, plaintiff asked the trial court to reconsider its earlier decision granting sole physical custody to defendant. We see "no abuse of discretion in the denial of a motion for reconsideration that rests on testimony that could have been presented the first time the issue was argued." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Jessica R. Cooper  
/s/ Roman S. Gribbs