

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RANDY S. JUNEAC,

Plaintiff-Appellee,

v

KERRI MILLER-GARCIA, f/k/a KERRI  
MILLER,

Defendant-Appellant.

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UNPUBLISHED

May 15, 2012

No. 306260

Roscommon Circuit Court

LC No. 06-726411-DP

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

Kerri Miller-Garcia appeals as of right an order granting Randy J. Juneac's motion for a change of custody and awarding primary physical custody of the parties' daughter to him. We affirm.

In 2005, Miller-Garcia became pregnant by Juneac while the parties were cohabiting in Pontiac, Michigan. For a variety of reasons, the parties moved to Roscommon County. After the child's birth, Miller-Garcia was asked to return to work by her former employer, General Motors. Miller-Garcia initially lived with her parents in Pontiac during the week and returned to Roscommon County on the weekends. Miller-Garcia and Juneac eventually ended their relationship in late 2006. In April 2007, Miller-Garcia and Juneac stipulated to a custody order that granted the parties joint physical and legal custody, and provided for parenting time with the child on alternating weeks.

In the summer of 2010, the parties discussed which school district to enroll the child in for kindergarten. Resolving the dispute would result in one party having primary physical custody over the child during the school year. Miller-Garcia wanted the child to attend school in the Howell or Brighton School District, while Juneac wanted the child to attend school in the Houghton Lake School District. The parties were unable to reach an agreement, so Juneac filed a motion for a change of custody.

A friend of the court ("FOC") referee conducted a hearing to determine with whom the child should be placed during the school year. Following the hearing, the referee recommended that the child be placed with Juneac. Miller-Garcia objected to the referee's recommendation. Thereafter, a de novo hearing was conducted and the trial court found in favor of Juneac.

On appeal, Miller-Garcia argues that the trial court erred in finding that it was in the child's best interest to award primary physical custody to Juneac. We disagree. A custody dispute must be resolved in the best interests of the child.<sup>1</sup> All custody orders must 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."<sup>2</sup> "[A] trial court's findings . . . with respect each factor regarding the best interest of a child . . . should be affirmed unless the evidence clearly preponderates in the opposite direction."<sup>3</sup> We review "[a] trial court's discretionary rulings, such as the court's determination on the issue of custody" for an abuse of discretion.<sup>4</sup> Questions of law are reviewed by this Court for clear error.<sup>5</sup> "[T]his Court defers to the trial court's determination of credibility"<sup>6</sup> and "the trial court has discretion to accord differing weight to the best-interest factors."<sup>7</sup>

Miller-Garcia challenges the trial court's findings regarding best interest factors (a), (b), (c), (d), (e), (h), (j), and (l).<sup>8</sup> This Court notes that both the referee and the trial court erroneously considered evidence regarding the amount of time the parents have available to spend with the child under factor (a), instead of factor (b). For the purposes of our analysis, this Court will do its best to cure the error and evaluate the factors based on the applicable evidence. Factor (a) addresses the "love, affection, and other emotional ties existing between the parties involved and the child" and the trial court found that this factor favored Juneac.<sup>9</sup> The trial court found that "both [parties] are appropriately bonded to [the child] and 'love' her as envisioned by this factor." The court indicated that it was impressed by how invested the parties are in making the child "the center of his or her life, even to the sacrifice of his or her own needs." The court further noted that the "parties actively play with [the child], are supportive of her school training and socialization, and are encouraging of [the child's] preferred hobbies." As the record supports the above conclusions, we find that factor (a) favors both parties equally.<sup>10</sup>

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<sup>1</sup> MCL 722.23.

<sup>2</sup> MCL 722.28; *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008).

<sup>3</sup> *Id.*

<sup>4</sup> *Sinicropi v Mazurek*, 273 Mich App 149, 155; 729 NW2d 256 (2006).

<sup>5</sup> *Berger*, 277 Mich App at 706.

<sup>6</sup> *Sinicropi*, 273 Mich App at 155.

<sup>7</sup> *Berger*, 277 Mich App at 705.

<sup>8</sup> MCL 722.23. This Court would note that Miller-Garcia also challenged the referee's findings regarding the same factors.

<sup>9</sup> MCL 722.23(a).

<sup>10</sup> *Berger*, 277 Mich App at 705.

Miller-Garcia's contention that the trial court inappropriately considered her relationship with Butch Warden<sup>11</sup> when analyzing factor (a) lacks merit. The trial court indicated, and we agree that this evidence is relevant to Miller-Garcia's argument that she loved the child more than Juneac did and made greater sacrifices to make sure the child's needs were met.<sup>12</sup> Miller-Garcia also disagrees with the trial court's conclusion that her life was "centered on matters totally unrelated to [the child's] best interest" during her relationship with Warden, given that it produced a sister for the child. The trial court, however, correctly asserted that "[n]o testimony supported any contribution by [Warden] to any improvement for [the child's] life, other than the incidental benefit of producing a sister for her." While it is unclear from the record whether Miller-Garcia in fact had difficulty revealing Warden's identity, which Miller-Garcia claims did not occur, we find that even if the trial court erred in making that assertion, it does not cause the evidence to clearly preponderate in Miller-Garcia's favor.<sup>13</sup>

Moreover, Miller-Garcia's argument that because she is a woman and the child is female, she should somehow be favored for factor (a) also must fail. While this argument was raised by Miller-Garcia in her objection to the referee's recommendation, it was not supported by any evidence or authority. This Court is not required "to discover and rationalize the basis for [her] claims, or unravel and elaborate [her] arguments, and then search for authority either to sustain or reject [her] position."<sup>14</sup>

Factor (b) relates to the "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 and creed[.]"<sup>15</sup> While the trial court found that the parties were equally favored regarding factor (b), we find that after considering the evidence regarding the time the parties have available to spend with the child, factor (b) favors Juneac. The trial court found and we agree that Juneac "enjoys a much more flexible schedule" and can be present for the child both before and after school. We further agree with the trial court's finding that Miller-Garcia's employment provides her "more time to spend with [the child] in the summer."

Miller-Garcia's argument regarding how much time the child would spend on a school bus traveling to and from school, and Juneac's childcare needs if custody was awarded to him must fail. The child traveling to and from school by bus was discussed by the trial court at length. The trial court indicated that it would be difficult to find that the child's bus trip to school was against her best interest and questioned "[W]hat if a particular child enjoys the socialization that occurs on the school bus rather than the boredom that occurs walking back-

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<sup>11</sup> Warden is the father of the child's half-sister.

<sup>12</sup> MRE 401 and 402.

<sup>13</sup> *Berger*, 277 Mich App at 705.

<sup>14</sup> *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

<sup>15</sup> MCL 722.23(b).

and-forth to school?” Evidence regarding the parties’ childcare needs was also presented to the trial court and questions concerning the weight of such evidence belong solely to the trial court.<sup>16</sup>

Miller-Garcia asserts that factor (b) favors her because of her involvement in the child’s schooling. While the trial court was impressed by Miller-Garcia’s involvement in the child’s schooling, as the trial court aptly noted under factor (l), the child was enrolled in a cooperative preschool by Miller-Garcia. As Miller-Garcia’s involvement in the child’s preschool was required, this argument is unpersuasive. Miller-Garcia’s contention that Juneac failed to testify regarding his involvement in the child’s schooling also lacks merit. Review of the record reveals that Juneac testified in that regard and the trial court found that it was “equally impressed with [Juneac’s] testimony concerning his encouragement of [the child’s] schooling.” Miller-Garcia further challenges the trial court’s finding that her ability to raise the child in her religion did not favor her. The record evidence supports the conclusion that Miller-Garcia’s spiritual life was “developing.” As such, the trial court did not err in finding that “until [Miller-Garcia’s spiritual life] is fully established, it is understandably difficult for Juneac to guide [the child] in this area.” Accordingly, based on the above the evidence regarding factor (b) preponderates in favor of Juneac.<sup>17</sup>

The trial court also found that the parties were equally favored regarding factor (c). Factor (c) addresses the “capacity and disposition of the parties . . . to provide the child with food, clothing, medical care or other remedial care[.]”<sup>18</sup> Miller-Garcia argues that she should be favored for factor (c) because her earning capacity is greater, she has certainty of future income, she has the requisite knowledge of the child’s medical and developmental needs, and she provides health insurance for the child. While Miller-Garcia testified that she was employed by General Motors, the evidence presented did not establish that she has a greater earning capacity or certainty of future income. Additionally, contrary to Miller-Garcia’s assertion that she has the requisite knowledge regarding the medical and development needs of the child, which Juneac allegedly lacks, the trial court found and the record supports that both parties “raised criticism concerning specific incidents involving [the child’s] needs.” Moreover, although Miller-Garcia provides health insurance for the child, that evidence was presented to the trial court. Because it is the trial court’s role to determine the credibility of the witnesses and the weight of the evidence, the trial court’s finding that the parties were equal regarding factor (c) does not warrant reversal.<sup>19</sup>

Factor (d) addresses the “length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity,”<sup>20</sup> and factor (e) relates to the

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<sup>16</sup> *Berger*, 277 Mich App at 705.

<sup>17</sup> *Berger*, 277 Mich App at 705.

<sup>18</sup> MCL 722.23(c).

<sup>19</sup> *Sinicropi*, 273 Mich App at 155; *Berger*, 277 Mich App at 705.

<sup>20</sup> MCL 722.23(d).

“permanence, as a family unit, of the existing or proposed custodial home or homes.”<sup>21</sup> The trial court discussed factors (d) and (e) together and found that Juneac was favored for both factors, which Miller-Garcia challenges.

While Miller-Garcia argues that she did not dispute the referee’s finding that the parties were equal regarding factor (d), she has provided no authority indicating that it was improper for the trial court to make a determination regarding this factor.<sup>22</sup> Further, contrary to Miller-Garcia’s claims on appeal, the trial court did not find that Miller-Garcia demonstrated a lack of permanence or stability when she had another child, got married to a man with children, purchased a home, or when the child was bitten by a dog. Rather, the trial court considered the facts that Miller-Garcia’s work schedule varied, she had moved the child to different homes, and she had exposed the child to different men. These findings by the trial court were supported by the record evidence. Assuming the trial court relied in part on the existence of the child’s half and step-siblings and the dog bite in determining the stability of the child’s environment, any misplaced reliance on those facts does not warrant reversal in light of the other evidence considered.<sup>23</sup> Thus, Miller-Garcia has failed to establish that the findings regarding factor (d) were against the great weight of the evidence.<sup>24</sup>

Regarding factor (e), in addition to the arguments regarding factor (d), Miller-Garcia also claims that the trial court did not properly consider the relationship the child has with her half-sister. The trial court, however, did consider that relationship, but concluded that such relationship “[was] not sufficient to outweigh the other factors that have led the Court to its conclusion concerning primary custody.” The trial court also explained that because the girls would not be attending the same school, “having them together in the summer would provide them with sufficient blocks of potential quality time to build and/or enhance their relationship.” Thus, Miller-Garcia’s claim is without merit.<sup>25</sup>

The trial court found that factor (h) was inapplicable because “the child is too young to have a community ‘record.’” Factor (h) addresses the “home, school, and community record of the child”<sup>26</sup> and Miller-Garcia contends that this factor should favor her. We find that because the child was enrolled in two separate preschools, she was of sufficient age to have a community record. That notwithstanding, we find that Miller-Garcia’s arguments regarding why she is

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<sup>21</sup> MCL 722.23(e).

<sup>22</sup> *Mudge*, 458 Mich at 105.

<sup>23</sup> *Berger*, 277 Mich App at 705.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> MCL 722.23(h).

avored are irrelevant to the consideration of this factor. Accordingly, any error by the trial court in treating the factor as inapplicable was harmless.<sup>27</sup>

Miller-Garcia also challenges the trial court's conclusion regarding factor (j), the "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."<sup>28</sup> The trial court found the parties equal regarding factor (j), but Miller-Garcia argues that this finding should be reversed in her favor. The record evidence establishes that the trial court was accurate in its assertion that the parties "recognize[] [the child's] strong bond with the other parent and also appropriately comprehend[] the need to encourage [the child's] relationship with the other party." Therefore, based on the record, the trial court appropriately concluded that "communication between the parties concerning [the child's] needs could be better," but one party was not so "obviously to blame for this deficiency." Thus, the trial court's conclusion was not against the great weight of the evidence.<sup>29</sup>

Miller-Garcia next challenges the trial court's finding regarding factor (l) which addresses "[a]ny other factor considered by the court to be relevant to a particular child custody dispute."<sup>30</sup> Miller-Garcia asserts that the trial court did not appropriately evaluate the differences in the Howell and Houghton Lake public schools. The record, however, establishes that the trial court considered both the academic performance and the extracurricular activities available in the Howell and Houghton Lake School Districts, as it stated in its opinion that "the research and information obtained by [Miller-Garcia] is both important and helpful." The trial court, however, concluded that "virtually all of the factors favoring the Howell School District do not benefit [the child] at this time." Further, the trial court found the parties' original decision to move to Roscommon County persuasive. While Miller-Garcia contends that their original intent is irrelevant because the parties are no longer together, we find the evidence both relevant and admissible.<sup>31</sup> As the determination of the weight of the evidence is the role of the trial court, the trial court's finding does not warrant reversal.<sup>32</sup>

Miller-Garcia also argues that the trial court committed reversible procedural error when it denied Miller-Garcia's request for a custody evaluation and to interview the child, assumed facts not in evidence, and improperly took judicial notice of facts. We disagree. Miller-Garcia has provided no authority to support her assertion that the alleged procedural errors warrant reversal. Because this Court is not required "to discover and rationalize the basis for [her]

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<sup>27</sup> *Berger*, 277 Mich App at 705.

<sup>28</sup> MCL 722.23(j).

<sup>29</sup> *Berger*, 277 Mich App at 705.

<sup>30</sup> MCL 722.23(l).

<sup>31</sup> MRE 401 and 402.

<sup>32</sup> *Berger*, 277 Mich App at 705.

claims, or unravel and elaborate [her] argument, and then search for authority either to sustain or reject [her] position” her arguments must fail.<sup>33</sup>

Although Miller-Garcia is not entitled to review of these issues, we will review Miller-Garcia’s arguments that reversal is warranted because a custody evaluation was not provided and the child was not interviewed. Regarding Miller-Garcia’s request for a custody evaluation, counsel for Miller-Garcia admitted to the trial court that she did not request that the FOC referee conduct a custody evaluation. As the trial court may “prohibit a party from introducing new evidence or calling new witnesses unless there is an adequate showing that the evidence was not available at the hearing referee” the court’s denial was proper.<sup>34</sup>

Finally, regarding the trial court’s decision to not interview the child, “[i]n order to determine the best interests of children in custody cases, the trial court must consider the eleven factors provided in § 3 of the Child Custody Act . . . and explicitly state its findings and conclusions with regard to each factor.”<sup>35</sup> Factor (i) addresses the “reasonable preference of the child, if the court considers the child to be of sufficient age to express a preference.”<sup>36</sup> Here, the trial court did not determine whether the child was of sufficient age to express a preference. Rather, the court advised the parties that because the child was not interviewed by the referee, it could not interview the child without both parents stipulating. The trial court then indicated in its opinion that “given the facts of this case” factor (i) “[could not] be effectively applied to assist this Court in determining [the child’s] best interest.” We find that the trial court erred. The child’s preference, however, is only one factor that the trial court considers when determining the best interests of the child.<sup>37</sup> Assuming arguendo that the child expressed a desire to live with her mother, factors (b), (d) and (e) favor Juneac and only factor (i) would favor Miller-Garcia. Accordingly, the child’s preference could not have overcome the weight of the other factors and reversal is not warranted.<sup>38</sup>

In summary, the trial court’s decision to grant Juneac’s motion for a change of custody

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<sup>33</sup> *Mudge*, 458 Mich at 105.

<sup>34</sup> MCR 3.215(F)(2)(c).

<sup>35</sup> *Treutle v Treutle*, 197 Mich App 690, 694; 495 NW2d 836 (1992).

<sup>36</sup> MCL 722.23(i).

<sup>37</sup> MCL 722.23.

<sup>38</sup> *Treutle*, 197 Mich App at 696.

did not constitute an abuse of discretion.<sup>39</sup> Miller-Garcia has failed to establish that the challenged factual findings of the trial court were against the great weight of the evidence.<sup>40</sup>

Affirmed.

/s/ Donald S. Owens  
/s/ Michael J. Talbot  
/s/ Patrick M. Meter

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<sup>39</sup> *Berger*, 277 Mich App at 705.

<sup>40</sup> *Id.*