STATE OF MICHIGAN

COURT OF APPEALS

RUTH E. PLOSKI,

Plaintiff-Appellee,

v

DAVID L. WISZ,

Defendant-Appellant.

UNPUBLISHED
November 19, 2019

No. 348792
Oakland Circuit Court
Family Division
LC No. 2015-837993-DM

Before: M. J. KELLY, P.J., and FORT HOOD and SWARTZLE, JJ.

PER CURIAM.

In this custody dispute, defendant appeals as of right the trial court's order granting plaintiff sole custody and limiting defendant to supervised-parenting time with the parties' minor child, DHW. This case was previously before this Court to review the trial court's temporary order granting plaintiff sole legal custody and requiring defendant to have supervised-parenting time. This Court reversed and remanded, instructing the trial court to conduct an evidentiary hearing to determine whether there had been a proper cause or change of circumstances warranting review of the previous custody order, whether an established custodial environment existed, and whether a change of custody was in the best interests of DHW. *Ploski v Wisz*, unpublished order of the Court of Appeals, entered December 21, 2018 (Docket No. 346828). This case now returns to this Court, and we affirm.

I. BACKGROUND

In December 2015, after more than seven years of marriage, plaintiff filed for divorce from defendant, and later amended her complaint to one for annulment. The proceedings were acrimonious. Of the exorbitant amount of motions, briefs, and orders filed in this case before the trial court entered the consent judgment-of-annulment (JOA), only a few are relevant to the issues presented in this appeal.

In February 2016, the trial court entered an order appointing Laura Eisenberg to serve as DHW's guardian ad-litem (GAL) under MCL 722.27(1)(d). One month later, the parties stipulated to an order clarifying the GAL's duties. The trial court also entered an order barring

the parties from hiring private investigators to follow one another. Defendant made two complaints with Children's Protective Services (CPS) against plaintiff, one in January 2016, and one in February 2017, alleging that plaintiff and her family were religious extremists who practiced corporal punishment and physically abused DHW. Both CPS and the GAL investigated defendant's complaints and dismissed them as unsubstantiated.

In 2016, Dr. James Bow conducted a custody evaluation, concluding that plaintiff and defendant should share joint legal and physical custody of DHW. The trial court entered the JOA on May 15, 2017, awarding joint legal and physical custody of DHW to both parties. The trial court ordered the GAL to continue on the case and ordered that DHW attend therapy with Dr. Kimberly Waldron. In addition to the JOA, the trial court entered a mutual restraining order to which the parties had stipulated.

In August 2017 and January 2018, defendant made two more CPS complaints against plaintiff and her family, both of which again involved allegations of physical abuse, corporal punishment, and religious extremism. In the January 2018 complaint, defendant specifically alleged that plaintiff's mother had slapped DHW's face. Both CPS and the GAL investigated defendant's complaints and dismissed them as unsubstantiated.

After entry of the JOA, which required the parties to coparent DHW, it quickly became clear that they could not agree on anything. The parties required the trial court's or GAL's involvement to decide on a dentist, doctor, school, and even a haircut for DHW. When the GAL's decisions favored plaintiff, defendant accused the GAL of having a bias against him. Defendant eventually concluded that the bias emanated from Dr. Waldron. Despite trial-court orders to the contrary, defendant stopped taking DHW to see Dr. Waldron and stopped paying her. In February 2018, defendant sewed a recording device into DHW's clothing and sent him to therapy with Dr. Waldron. Defendant listened to the recording later the same day, and discovered what he claimed was evidence that DHW informed Dr. Waldron that plaintiff's mother had slapped his face. Defendant later asked Dr. Waldron about the allegation, which he contends she denied.[1] Despite obtaining this alleged proof of Dr. Waldron's purported failure to report physical abuse of a child, defendant did not bring the recording to the trial court's attention for another nine months.

The case progressed to the point where it was obvious that the parties could not coparent in any manner. After the parties submitted to a psychological evaluation by Dr. Linda Green, plaintiff moved the trial court to grant her sole custody and to require that defendant have supervised-parenting time. The GAL prepared and submitted her report, and the trial court heard plaintiff's motion in September 2018. The trial court expressed concern that the parties were unable to coparent and that DHW was caught in the crossfire of their quarrel, to the child's detriment. The trial court set the matter for an evidentiary hearing to determine the best course

[1] Having reviewed the entire record in this case, we note that Dr. Waldron's alleged denial is not as clear as defendant would have us believe. The record indicates that Dr. Waldron believed that DHW was repeating the allegation about plaintiff's mother that was already under investigation by CPS. Dr. Waldron was aware of that allegation because CPS spoke to her about it.

of action, but denied plaintiff's request for supervised parenting time for defendant in the interim.

Then, nine months after surreptitiously recording DHW's therapy session with Dr. Waldron, defendant finally brought the issue to the trial court's attention. Defendant did so after asking Dr. Waldron about the issue under oath during her deposition. In a December 2018 motion to remove Dr. Waldron from the case, defendant alerted the trial court of Dr. Waldron's purported perjury, his covert recording, and an apparent anomaly with Dr. Waldron's professional license. The trial court, primarily relying on defendant's behavior regarding Dr. Waldron and the parties' inability to coparent, set the case for an evidentiary hearing, but entered a temporary order awarding sole custody to plaintiff and requiring defendant's parenting time to be supervised. As noted earlier, defendant appealed that order and this Court reversed and remanded with instructions for the trial court to hold an evidentiary hearing.

On remand from this Court, the trial court held a 10-day evidentiary hearing, spanning from December 2018 through March 2019. After hearing assertions that he had not engaged in or benefited from therapy, defendant began treating with a therapist, Dr. Cotter, on January 28, 2019.[2]

During the hearing, the parties stipulated that an established custodial environment existed with both parents, and the trial court held that plaintiff had established proper cause or a change of circumstances warranting review of the previous custody order—the JOA. The trial court accepted testimony from plaintiff, defendant, the GAL, Dr. Green, Dr. Cotter, defendant's character witnesses, and defendant's parenting-time supervisors. At the end of the hearing, before rendering a decision regarding the motion for change of custody, the trial court heard testimony from an expert witness establishing that Dr. Waldron was not properly licensed to practice in Michigan. Consequently, the trial court granted defendant's motion to strike Dr. Waldron's testimony from the record. The trial court then examined the best interests of DHW and found that it was in the child's best interests that plaintiff be granted sole custody and that defendant continue with supervised parenting time.

This appeal followed.

II. ANALYSIS

A. SCOPE OF REMAND ORDER

Defendant first argues that the trial court exceeded the scope of this Court's remand order and violated his procedural-due-process rights by holding an evidentiary hearing regarding plaintiff's motion for a permanent change of custody and parenting time, rather than limiting the evidentiary hearing to considering a temporary change of custody and parenting time. We conclude that defendant has waived this argument.

[2] The trial-court record does not indicate Dr. Cotter's first name.

During the first day of the evidentiary hearing following this Court's remand order, the trial court expressed its intent to conduct the entire evidentiary hearing, reasoning that this Court's remand order did not specify that the hearing was limited to establishing grounds for only a temporary change of custody and parenting time. Plaintiff objected, asserting that if the trial court intended to decide the entire issue, the parties should be provided additional time to engage in discovery. Defendant disagreed with plaintiff, arguing, "[A]s the Court has stated, we have to do this the exact way any custody hearing would go." Defendant reiterated that position over the course of the evidentiary hearing.

Now, on appeal, defendant argues that the trial court exceeded this Court's remand order by doing exactly what defendant advocated for during the evidentiary hearing. A party "may not successfully obtain appellate relief on the basis of a position contrary to that which the party advanced in the lower court." *In re Leete Estate*, 290 Mich App 647, 655; 803 NW2d 889 (2010). When a party attempts to make such an argument this Court may "dismiss [the] argument at the outset." *Id*. Defendant has waived this argument, and we decline to consider it.

B. PROPER CAUSE OR CHANGE OF CIRCUMSTANCES

Defendant next argues that the trial court's decision regarding proper cause or change of circumstances warranting a review of the previous custody order was legally and factually erroneous. We conclude that the trial court's factual findings were not against the great weight of the evidence and its application of law was not clearly erroneous. Therefore, the trial court's decision does not require reversal.

This Court applies three standards of review in custody appeals. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003). We review findings of fact under the great weight of the evidence standard, *Dailey v Kloenhamer*, 291 Mich App 660, 664; 811 NW2d 501 (2011), and "a reviewing court should not substitute its judgment on questions of fact unless they clearly preponderate in the opposite direction," *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994) (cleaned up). "Discretionary rulings, such as to whom custody is awarded, are reviewed for an abuse of discretion." *Dailey*, 291 Mich App at 664. "In child custody cases, an abuse of discretion occurs if the result is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Maier v Maier*, 311 Mich App 218, 221; 874 NW2d 725 (2015) (cleaned up). Lastly, we review questions of law for clear legal error. *Fletcher*, 447 Mich at 881. A trial court commits clear legal error where it "incorrectly chooses, interprets, or applies the law." *Id*. In sum, "in child-custody disputes, '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.' " *Dailey*, 291 Mich App at 664, quoting MCL 722.28.

Defendant argues that the trial court erroneously found that plaintiff had established proper cause or a change of circumstances warranting a review of the prior custody order. A trial court is only permitted to consider a change in custody if the movant establishes proper cause or a change in circumstances. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). This standard was intended "to minimize unwarranted and disruptive changes of custody orders,

except under the most compelling circumstances." *Corporan v Henton*, 282 Mich App 599, 603; 766 NW2d 903 (2009).

Defendant first challenges the timeliness of the evidence considered by the trial court, arguing that proper cause or change of circumstances had to exist at the time plaintiff filed the motion to change custody. Defendant argues that the trial court improperly relied on his placement of a recording device on DHW before a therapy session, because the trial court did not become aware of that fact until December 2018. Defendant's argument is without merit. When a trial court considers a proper cause or change of circumstances, the only timeliness requirement is that the threshold be established before the trial court considers changing the previous custody order. See *Shann*, 293 Mich App at 305. While this Court has discussed the relevance of evidence regarding circumstances existing before entry of the previous custody order in establishing proper cause or change of circumstances, *Vodvarka*, 259 Mich App at 514, we have never held that the parties and the trial court must be aware, at the time the motion was filed, of all evidence supporting a conclusion that the threshold has been reached. Defendant admits in his brief on appeal that no such case law exists. Because defendant's argument regarding timeliness is not supported in the law, it is without merit.

Defendant next argues that the trial court's decision that the threshold was met was against the great weight of the evidence. This Court has held that, "to establish a 'proper cause' necessary to revisit a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court." *Id*. at 512. An appropriate ground should be "relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being." *Id*.

When considering the possibility of a change of circumstances, a court is required to view how the child's situation has changed since the last custody order. *Corporan*, 282 Mich App at 604. Stated differently, "a movant must prove that, since the entry of the last custody order, the conditions concerning custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed." *Vodvarka*, 259 Mich App at 513. Not just any change will suffice because "over time there will always be some changes in a child's environment, behavior, and well-being." *Id*. "Instead, the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child." *Id*. at 513-514. When considering the changes in conditions, the trial court must do so while "being gauged by the statutory best interest factors." *Id*. at 514. Although the trial court is permitted to consider "evidence of the circumstances existing at the time of and before entry of the prior custody order," it must do so only for comparison's sake, and "the change of circumstances must have occurred *after* entry of the last custody order." *Id*. Given these requirements, we must consider whether there existed proper cause or a change in circumstances to warrant a review of the trial court's prior custody order—the JOA entered by the trial court in May 2017—in light of the statutory best-interest factors.

Here, the trial court primarily relied on evidence of defendant's decision to surreptitiously record DHW's therapy session. The trial court reasoned that defendant's decision to do so, and defendant's subsequent decision to withhold that information for more than nine months while waiting to catch Dr. Waldron in a purported lie, revealed that defendant had

developed a dangerous disregard for DHW's well-being. Defendant's decision to attach a recording device to DHW to record his therapy session was directly relevant to defendant's capacity and disposition to give DHW guidance under best-interest factor (b), and defendant's capacity and disposition to provide DHW with medical care under best-interest factor (c). See MCL 722.23.

Considering DHW's precarious mental health, which was well-established throughout the proceedings, defendant's lack of concern for DHW's mental health revealed that defendant's behavior was "of such magnitude to have a significant effect on the child's well-being." *Vodvarka*, 259 Mich App at 512. This conclusion is supported by the fact that, even when defendant obtained the information that he purportedly sought—DHW telling Dr. Waldron he had been hit by plaintiff's mother—defendant waited more than nine months before acting on the information. The record supports a conclusion that the driving force behind defendant's decision to record DHW's therapy had nothing to do with DHW's mental health and everything to do with defendant's personal vendetta against Dr. Waldron. In light of DHW's obvious and significant need for proper guidance and mental-health care, defendant's actions were relevant to DHW's best interests and had the possibility of significantly harming DHW's well-being. We conclude that the trial court's factual findings were not against the great weight of the evidence and its application of law was not clearly erroneous. Therefore, the trial court's decision does not require reversal. See *Fletcher*, 447 Mich at 881.

In addition to finding that proper cause existed, the trial court also determined that there had been a change of circumstances warranting review of the previous custody order. The trial court relied on evidence that defendant had abandoned all pretense of coparenting and caring about DHW's health, and instead had focused on his anger at plaintiff and others. By doing so, defendant thrust DHW into the middle of the parties' dispute, which caused the child significant mental distress.

First, the evidence of defendant recording DHW's therapy session supported the trial court's finding that defendant had abandoned his concern for DHW's well-being and had decided to focus on his personal anger and vendettas. Second, the trial court's finding was also supported by evidence that defendant had no interest in coparenting. Specifically, defendant refused to engage with plaintiff in seeking a dentist, and even refused to agree with plaintiff on a barber and haircut style for the child. Defendant's only attempt at coparenting was to suggest that he and plaintiff should take DHW to the dentist together, despite the parties' stipulation to a mutual restraining order.

While there was evidence that the parties had trouble coparenting before the JOA, there also was evidence that defendant's obstinate and combative behavior had intensified after the JOA. Moreover, defendant's decision to disregard DHW's mental health to focus on his problems with plaintiff, the GAL, and Dr. Waldron were newly developed since the entry of the JOA. Indeed, defendant consented to the term in the JOA that DHW would treat with Dr. Waldron. As discussed earlier, defendant's attitude toward DHW's mental health was directly relevant to best-interest factors (b) and (c). See MCL 722.23. Defendant's abandonment of any pretense at effective coparenting was also relevant to his "willingness and ability . . . to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent," under best-interest factor (j). MCL 722.23. Furthermore, given the precarious state of

DHW's mental health, the change of circumstances in this case "could have a *significant* effect on the child's well-being." *Vodvarka*, 259 Mich App at 513. Therefore, the trial court's factual findings that a change of circumstances existed that warranted a review of the previous custody order were not against the great weight of the evidence and its application of law was not clearly erroneous. Therefore, the trial court's decision does not require reversal. *Fletcher*, 447 Mich at 881.

Defendant also makes a laundry list of arguments regarding other issues such as his filing of unsubstantiated CPS reports, DHW's absences at school, defendant's alleged racism and inappropriate social behaviors, DHW's behavioral problems at school, and defendant's violation of trial-court orders. Those issues were not considered by the trial court when it determined whether a proper cause or change of circumstances existed. Thus, they are not relevant to this issue on appeal. Moreover, almost all of the evidence on which defendant relies for his arguments regarding these issues was introduced during the best-interests portion of the evidentiary hearing. Evidence from the best-interests portion of a custody hearing is not relevant to the threshold question of whether there existed a proper cause or change of circumstances warranting review of a previous custody order. See *Bowling v McCarrick*, 318 Mich App 568, 572; 899 NW2d 808 (2017). Thus, defendant's argument is without merit.

C. JUDICIAL BIAS

Defendant next argues that we must reverse the trial court's decision regarding custody and parenting time because the trial judge was biased against him. Because defendant has failed to meet his burden to prove that the trial judge was biased, he is not entitled to relief on this issue.

In general, disqualification of a judge is warranted if the judge "is biased or prejudiced for or against a party or attorney." MCR 2.003(C)(1)(a). "A trial judge is presumed to be fair and impartial, and any litigant who would challenge this presumption bears a heavy burden to prove otherwise." *In re Susser Estate*, 254 Mich App 232, 237; 657 NW2d 147 (2002). An actual showing of bias or prejudice is required before a trial judge will be disqualified. *Cain v Dep't of Corrections*, 451 Mich 470, 494; 548 NW2d 210 (1996). "This requirement has been interpreted to mean that disqualification is not warranted unless the bias or prejudice is both personal and extrajudicial." *Id*. Stated differently, "the challenged bias must have its origin in events or sources of information gleaned outside the judicial proceedings." *Id*. at 495-496. "Opinions formed by a judge on the basis of facts introduced or events occurring during the course of the current proceedings, or of prior proceedings, do not constitute bias or partiality unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg v Rochester, Mich, Lodge No 2225 of the BPOE*, 228 Mich App 20, 39; 577 NW2d 163 (1998). In fact, "judicial rulings, in and of themselves, almost never constitute a valid basis for" finding that a judge is biased. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001).

Defendant first argues that the trial judge demonstrated bias because she revealed an intention to grant plaintiff's motion as the evidentiary hearing progressed. Defendant alleges that the trial judge did so even before he presented any evidence. Although the trial judge indicated throughout the evidentiary hearing that she likely would grant plaintiff's motion for sole custody,

she did not do so in a manner that revealed a deep-seated bias. Rather, the trial judge merely reflected on the evidence that had been admitted. The record is replete with evidence that defendant failed to consider DHW's well-being over defendant's own vendettas, refused to follow the trial court's orders as a matter of course, acted in a belligerent manner, and had an obsession with plaintiff, her family, and her boyfriend.

Even at the end of the evidentiary hearing, after the trial court had learned of defendant's conduct, the trial judge still impartially considered defendant's argument that Dr. Waldron was not properly licensed and ruled in defendant's favor, striking Dr. Waldron's testimony from the record and requiring that she provide proof of appropriate licensing before continuing to treat DHW. Moreover, throughout the proceedings, the trial judge ruled in defendant's favor on a multitude of occasions, including her refusal to reduce defendant's supervised parenting time and her agreement with defendant that it was unfair to him when his parenting time was cancelled at the last minute. In addition, over plaintiff's vigorous objection, the trial judge permitted defendant to present evidence that Dr. Waldron was not properly licensed, and ruled that defendant's licensing expert did not have to be sequestered during Dr. Waldron's testimony. While the trial judge expressed exasperation with defendant's refusal to follow rules and trial-court orders, and expressed her opinion that plaintiff would likely prevail on the custody motion, she did so based on evidence admitted in the case and did not do so in a manner that indicated a "deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg*, 228 Mich App at 39.

D. BEST-INTERESTS FACTORS

Defendant next argues that the trial court's factual findings regarding the best-interest factors were against the great weight of the evidence and that the trial court applied the law to the case in a clearly erroneous manner. On review of the record, we discern no grounds for reversal.

"Once a party has met the initial burden of showing a change in circumstances or proper cause to revisit the custody order, the next step is for the circuit court to determine the applicable burden of proof for the custody hearing." *Dailey*, 291 Mich App at 666-667. Here, the parties stipulated that DHW had an established custodial environment with both parents. Therefore, the trial court could award a change of custody only where there was "clear and convincing evidence that modification was in the child's best interest." *Id*. at 667.

"In determining whether a change of custody is in the best interests of a child, the best-interest factors set forth in MCL 722.23 are the appropriate measurement." *Riemer v Johnson*, 311 Mich App 632, 641; 876 NW2d 279 (2015). The trial court's findings and conclusions regarding these factors "need not include consideration of every piece of evidence entered and argument raised by the parties." *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 452; 705 NW2d 144 (2005). "In reviewing the findings, this Court defers to the trial court's determination of credibility." *Berger v Berger*, 277 Mich App 700, 707; 747 NW2d 336 (2008) (cleaned up).

Defendant first challenges the trial court's findings under MCL 722.23(b), which requires consideration of "[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 found that factor (b) favored plaintiff based on defendant's failure to provide appropriate guidance to DHW.

Throughout the hearing, defendant repeatedly disobeyed court orders. For example, defendant repeatedly broke the rules while attending supervised parenting-time sessions—including bringing his cell phone, whispering to DHW, interrogating him about school and church, questioning the supervisor's authority in DHW's presence, writing on his hand where the supervisor could not see, and using an electronic device while shielding it from the supervisor's view. Defendant also refused to follow a number of trial-court orders, as evidenced by his hiring a private investigator to follow plaintiff and refusing to take DHW to therapy. Considering defendant's blatant disregard for rules and orders, the trial court's decision that defendant lacked the ability to provide appropriate guidance to DHW was not against the great weight of the evidence.

Defendant argues, however, that the trial court erred by refusing to credit testimony that plaintiff was a member of a cult-like religion that believed in corporal punishment, and his argument that, if plaintiff was granted sole custody, she would homeschool DHW. Defendant relies primarily on his own testimony and that of Dr. Green. Yet, defendant omits reference to Dr. Green's conclusion that defendant was culturally limited and subject to a narrow worldview. The GAL, who had observed plaintiff's home on several occasions, testified that plaintiff was not in a cult-like religion. Plaintiff also testified that she did not practice corporal punishment, she intended to keep DHW in public school, and she would not begin homeschooling him if granted sole custody. Numerous CPS investigations into plaintiff and her family were all unsubstantiated—a conclusion with which the GAL agreed after performing her own independent investigations of each allegation. The trial court's decision was not against the great weight of the evidence.

Defendant next challenges the trial court's findings under MCL 722.23(c), which requires a trial court to consider "[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 determined that this factor favored plaintiff.

Defendant argues that the trial court should have weighed factor (c) in his favor. As discussed earlier, the trial court was well-supported in finding that defendant had discarded any premise of concern regarding DHW's mental health—at a time when DHW needed it most—to pursue a personal vendetta. Defendant argues that the trial court failed to consider relevant evidence that plaintiff engaged in manipulation regarding the child's vaccinations, violated the JOA by unilaterally choosing a dentist, and was involved in alternative medicine. After a thorough review of the voluminous trial-court record, we are convinced that defendant's arguments on this point are without merit and the trial court's findings of fact were not against the great weight of the evidence.

Defendant also challenges the trial court's findings under MCL 722.23(d), which requires consideration of "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity," and MCL 722.23(e), which concerns "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes."

Defendant argues that the trial court should have determined that both of the factors favored him. The trial court relied on the fact that DHW had lived primarily with plaintiff for about three months at the time of the court's decision, and found that it was desirable to continue that situation. In support of that conclusion, the trial court noted that defendant's allegations that plaintiff and her family were abusive and practiced corporal punishment were not true. Additionally, the trial court expressed concern regarding defendant's home environment, where DHW would be exposed to defendant's inability or lack of desire to follow rules and orders. These findings by the trial court were supported in the record and were not against the great weight of the evidence.

Likewise, regarding factor (e), the trial court did not err in refusing to credit defendant's allegations that plaintiff was not providing a permanent home based on her plan to move at some point, and there was nothing in the record to suggest that defendant's family unit and home were not similarly permanent. The trial court's factual findings regarding this factor were not against the great weight of the evidence.

Defendant next challenges the trial court's findings under MCL 722.23(f), concerning "[t]he moral fitness of the parties involved." Defendant argues that the trial court should have found that factor (f) favored him or was equal between the parties.

As noted by defendant, the trial court relied heavily on defendant's history of violating parenting-time rules and court orders. Defendant first argues that to do so was an error of law, because changing custody was not an appropriate punishment for failing to follow court orders. Defendant relies on our Supreme Court's opinion in *Kaiser v Kaiser*, 352 Mich 601, 603-604; 90 NW2d 861 (1958), and this Court's opinion in *Maier*, 311 Mich App at 227, to support his argument. Those cases are inapplicable to the facts of this case.

The trial court considered defendant's refusal to follow parenting-time rules in addition to his refusal to follow the trial court's orders. Further, the trial court considered those violations in a limited manner—in light of their harm to DHW. The evidence indicated that defendant's repeated violations of rules caused DHW mental distress. The GAL and both parenting-time supervisors testified that DHW looked confused and anxious each time defendant broke a rule. The GAL recalled that DHW appeared more uncomfortable than she had ever seen him after defendant angrily confronted one supervisor about a parenting-time rule. Because the trial court considered defendant's violation of rules *and* orders based on their direct effect on DHW's mental health, rather than merely the existence of order violations such as in *Kaiser* and *Maier*, defendant has failed to establish a clear legal error.

Defendant also argues that the trial court's factual findings that the violations actually existed were against the great weight of the evidence. Defendant argues that he could not have violated the trial court's order prohibiting him from engaging the services of a private investigator because the order in question was entered before entry of the JOA, which did not preserve the order regarding use of a private investigator. In addition to failing to preserve this argument, *Marik v Marik*, 325 Mich App 353, 358; 925 NW2d 885 (2018), defendant has abandoned this issue by citing court rules that do not exist: MCR 3.208(C)(5) and (6). "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no

citation of supporting authority." *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 530; 730 NW2d 481 (2007) (cleaned up). Considering the lack of citation to any caselaw supporting his argument, this Court has not been provided anything to review. *Id*. Even assuming defendant's argument refers to MCR 3.207, that court rule applies to "temporary orders" only, and there is no indication on the record that the trial court's original order regarding private investigators was a temporary order. Thus, there was no requirement to preserve that order in the JOA. MCR 3.207(C)(5). The trial court's factual finding that defendant violated the order against using private investigators is not against the great weight of the evidence.

Next, defendant argues that the trial court improperly found that his decision to surreptitiously record DHW during a therapy session weighed against his moral fitness under factor (f). The trial court's determination that defendant's conduct harmed DHW's mental health was not against the great weight of the evidence. Further, given defendant's apparent inclination to focus on his personal issues, rather than DHW's mental health, the trial court's factual finding that defendant's behavior revealed a lack of moral fitness to be a parent was not against the great weight of the evidence. We affirm the trial court's decision to weigh best-interest factor (f) in favor of plaintiff.

Defendant next challenges the trial court's findings under MCL 722.23(g), which requires consideration of "[t]he mental and physical health of the parties involved." The trial court indicated that it weighed best-interest factor (g) in favor of plaintiff. Defendant argues that the trial court should have weighed best-interest factor (g) in his favor or equally. Defendant primarily argues that the trial court misconstrued Dr. Cotter's testimony. Dr. Cotter testified that he had not treated defendant long enough to truly understand his psychological profile. Upon hearing the array of allegations against defendant, including that he had an obsession with alleged abuse or corporal punishment by plaintiff, which resulted in him surreptitiously recording DHW's therapy session and hiring a private investigator to follow plaintiff, Dr. Cotter stated he was concerned about defendant's mental health. Dr. Cotter also stated that it was important for defendant to learn to take responsibility for his actions, which was something they would work on in therapy, and he agreed that supervised parenting time should continue. Considering that evidence, defendant's argument that the trial court misconstrued the record regarding Dr. Cotter's testimony is without merit. To the contrary, the record fully supports the trial court's findings of fact on the basis of Dr. Cotter's assessment of defendant's mental health, and those findings were not against the great weight of the evidence. The trial court's decision to weigh the factor in favor of plaintiff was against the great weight of the evidence.

Defendant next challenges the trial court's findings under MCL 722.23(j), which requires a trial court to consider "[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 trial court repeatedly admonished both parties for their inability to coparent with the other parent. Notably, however, the trial court focused attention on defendant's unsupported allegations that plaintiff's house was unsafe and that she and her parents used corporal punishment. Our review confirms that the trial court's finding on this factor was not against the great weight of the evidence.

Defendant also argues that the trial court was not permitted to hold those allegations against defendant under factor (j) because "[a] court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent." MCL 722.23(j). Yet, the clause in factor (j) applies to sexual assault or domestic violence, not corporal punishment. Therefore, by defendant's own argument, the clause is not applicable. Furthermore, given that the trial court properly found that the allegations were not true, but amounted to gamesmanship, it was permitted to consider defendant's actions against him where they were not "reasonable" under the statute. *Id*. The trial court's factual findings regarding factor (j) were not against the great weight of the evidence, and the application of law was not clearly erroneous.

Finally, the trial court was permitted to consider "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." MCL 722.23(*l*). The trial court concluded:

> The factors that the Court considered beyond the child custody factors is the wiretapping, the failure of this—the father to follow any court order whatsoever, which makes this Court concerned as to what the next step will be if the father does not get what he wants. It—no matter what the order is, [defendant] has not been able to follow the letter of any order, no matter how minor the order is.

Defendant argues that the trial court improperly weighed the same facts under factor (*l*) that it weighed when deciding other factors. This argument is without merit. The trial court is permitted to consider the same facts insofar as they are relevant to other best-interest factors. For factor (*l*), the trial court weighed against defendant the concern that it could not predict what he would do if he did not get all of the relief sought, and this is amply supported by the record.

Accordingly, there is no reversible error in the trial court's best-interests analysis.

E. PARENTING TIME

Defendant next argues that the trial court erred in requiring that his parenting time be supervised. Like all issues involving child custody, "[o]rders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005).

A "child custody determination" means "a judgment, decree, or other court order providing for legal custody, physical custody, or *parenting time* with respect to a child." MCL 722.1102(c) (emphasis added). With regard to parenting-time orders, a trial court is permitted to "modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances." MCL 722.27(1)(c). As discussed earlier, the trial court properly determined that there had been proper cause or a change of circumstances warranting a review of custody and parenting time.

"Parenting time shall be granted in accordance with the best interests of the child." MCL 722.27a(1). Further, "parenting time shall be granted to a parent in a frequency, duration, and

type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time." MCL 722.27a(1). With respect to the best-interest analysis, it is presumed to be in the best interests of a child for the child to have a strong relationship with both of his parents. *Id*. The trial court may consider a list of factors set forth in MCL 722.27a(7), but should not grant parenting time that "would endanger the child's physical, mental, or emotional health." MCL 722.27a(3).

Defendant argues that the trial court erred because its limitation of defendant's parenting time amounted to a change in physical custody, and he argues that the trial court failed to consider the best-interest factors as required. Defendant is correct that a parenting-time change that results in a change of custody requires a trial court to "explicitly address the best interest factors in MCL 722.23." *Shade v Wright*, 291 Mich App 17, 32; 805 NW2d 1 (2010). Defendant is incorrect, however, in asserting that the trial court failed to do so in this case. As discussed earlier in this opinion, the trial court engaged in a lengthy analysis of the best-interest factors as required by *Shade*.

Next, defendant asserts that the trial court made factual findings against the great weight of the evidence by misconstruing the testimony of Dr. Cotter. This argument is without merit. Dr. Cotter expressed concern regarding defendant's mental health considering the allegations made against him, qualified his opinion by stating that he had not treated defendant long enough to have observed any questionable behavior, and stated that supervised-parenting time should be continued. Thus, the trial court's construction of Dr. Cotter's testimony and reliance on it was not against the great weight of the evidence.

Defendant then repeats another argument—the trial court was not permitted to consider defendant's rule-and-order violations when contemplating a motion to change parenting time. For reasons similar to those set forth earlier, the trial court's finding that defendant violated both parenting-time rules and court orders, causing DHW to suffer mental distress, and the trial court's application of that finding to affect defendant's parenting time, was not improper. Moreover, "[w]hether a parent can reasonably be expected to exercise parenting time in accordance with the court order," is a consideration expressly permitted by statute. MCL 722.27a(7)(f).

Defendant also argues that there was no evidence that his decision to sew a recording device into DHW's shirt before a therapy session was harmful to DHS. Despite that argument, the GAL specifically testified about her belief that DHW was aware of the recording device. For the reasons discussed earlier in this opinion, the trial court's determination that defendant's decision to do so harmed DHW, especially given the precarious nature of DHW's mental health, was not against the great weight of the evidence.

For the first time on appeal, defendant also argues that the GAL's testimony in this regard is inadmissible hearsay. Defendant's failure to make this argument before the trial court has resulted in this Court having no record which would allow for appellate review, and therefore, we decline to consider it. See *Gaudreau v Kelly*, 298 Mich App 148, 156-157; 826 NW2d 164 (2012). Furthermore, defendant waived this argument by consenting to the trial court's order appointing the GAL, which provided that the GAL would obtain information from various parties and documents and prepare a report for the trial court. Therefore, defendant specifically

agreed that the GAL would be permitted to provide hearsay evidence to the trial court. See *In re Leete Estate*, 290 Mich App at 655.

Lastly, defendant argues that the trial court failed to consider that it was the supervised parenting time itself that was causing DHW's distress. Defendant reasons that there could be no explanation for DHW's mental distress other than the requirement that his parenting time with defendant be supervised. The record included evidence regarding the causes of DHW's increased mental health problems—defendant's behavior. The trial court appropriately limited defendant's parenting time where unsupervised parenting time "would endanger the child's physical, mental, or emotional health." MCL 722.27a(3).

F. REMOVAL OF THE GAL

Finally, defendant argues in his brief on appeal that the trial court should have granted his request to remove the GAL from the case because the GAL failed to perform her duties and showed a bias against defendant. As noted during oral argument, however, this claim is now moot because the trial court removed the GAL.

Affirmed. Plaintiff, having prevailed in full, may tax costs under MCR 7.219(f).

/s/ Michael J. Kelly
/s/ Karen M. Fort Hood
/s/ Brock A. Swartzle