

STATE OF MICHIGAN  
COURT OF APPEALS

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DONALD JASTER,

Plaintiff-Appellant,

v

MELISSA LAPRATT,

Defendant-Appellee.

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UNPUBLISHED  
November 2, 2004

No. 254392  
Tuscola Circuit Court  
LC No. 99-017986-DP

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order that granted the parties joint legal custody, and defendant sole physical custody, of their son, Chance Wellington Jaster LaPratt. We affirm.

Plaintiff first argues that the trial court erred in finding that no established custodial environment existed with plaintiff, which resulted in plaintiff bearing the burden to show by clear and convincing evidence instead of by a preponderance of the evidence that a change in the established custodial environment was in Chance's best interests. We disagree.

This Court reviews a trial court's findings of fact under a great weight of the evidence standard. MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 877-879; 526 NW2d 889 (1994). A trial court's findings regarding the existence of an established custodial environment should be affirmed unless the evidence clearly preponderates in the opposite direction. *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). In reviewing the trial court's findings, this Court should defer to the trial court's determination of credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000).

"Whether an established custodial environment exists is a question of fact that the trial court must address before it makes a determination regarding the child's best interests." *Mogle, supra* at 197. A custodial environment is established if

over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the

custodian and the child as to permanency of the relationship shall also be considered. [MCL 722.27(1)(c).]

An established custodial environment is one of significant duration, one both physical and psychological, in which the relationship between the custodian and the child is marked by security, stability, and permanence. *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981); *Mogle, supra*.

The evidence in this case showed that both parties had been actively involved in their child's life since he was born. Chance resided with defendant since his birth, and plaintiff regularly exercised his visitation and parenting rights and sought to be involved in Chance's daily care even before proceedings began. During the times that the parties resided together, they shared responsibility for Chance's care, and during the times Chance was in either party's sole care, they were individually and solely responsible for meeting his needs and providing his day-to-day care. Further, both parties presented a substantial amount of evidence that Chance looked to them for comfort, discipline, and guidance during the time that Chance was in their care.

However, Chance's primary residence throughout his entire life had been with defendant. Moreover, although Chance had regularly been in plaintiff's care for short periods of time, the amount of extended time that Chance had spent with plaintiff was limited. By the time Chance was approximately eighteen months old, he had only spent three nights outside of defendant's care. Chance lived virtually exclusively with defendant during the first eighteen months of his life, with the exception of the two short periods of time when the parties lived together in 1999. Since June 2001, when he was approximately 2½ years old, Chance had spent three or four consecutive days every other week in plaintiff's care, but had spent the longer periods between these visits in defendant's care. Further, although plaintiff had enjoyed more extensive custody of Chance during the summer since 2001, this extended visitation time only amounted to three weeks total in addition to his regular parenting time, and only two of those weeks were consecutive. Under these circumstances, we conclude that the trial court did not err in finding that Chance had an established custodial environment with only defendant because the evidence did not clearly preponderate in plaintiff's direction. *Mogle, supra*.

Plaintiff's argument that the court's alleged error in failing to find that an established custodial environment also existed with him resulted in the imposition of a higher burden of proof is based on a false premise. If a custodial environment is found with both parties, the party moving for a change in the custodial relationship must prove by clear and convincing evidence that a change in custody is in the best interest of the child. *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001). It is only "if the court finds that no established custodial environment exists [with either party that] . . . the court may change custody if the party bearing the burden proves by a preponderance of the evidence that the change" is in the best interest of the child. *Id.* at 6-7. Therefore, the trial court also did not err in requiring plaintiff to meet the clear and convincing evidence standard in order to obtain a change in Chance's established custodial environment. MCL 722. 27(1)(c).

Defendant next argues that the trial court abused its discretion when it granted sole physical custody to defendant, because this award was not supported by the trial court's own findings of fact concerning the best interest factors. Again, we disagree.

"Above all, custody disputes are to be resolved in the child's best interests," *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001), as measured by the factors set forth in MCL 722.23, *id.* However, a court need not give equal weight to all of the factors, but may instead consider the relative weight of the factors as appropriate to the circumstances. *McCain v McCain*, 229 Mich App 123, 130-131; 580 NW2d 485 (1998). To whom custody is granted is a discretionary ruling. *Fletcher, supra* at 880. This Court reviews discretionary rulings under a palpable abuse of discretion standard. *Id.* at 879. An abuse of discretion occurs when 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." *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959); see also *Fletcher, supra* at 879-880.

The trial court found the parties mostly equal under the majority of the "best interest factors." MCL 722.23. Plaintiff was favored regarding the parties' physical and mental health and regarding the parties' willingness and ability to facilitate a close and continuing relationship between Chance and the other parent. However, the court concluded that defendant was favored regarding the length of time Chance had lived in a stable, satisfactory environment and the desirability of maintaining continuity. Ultimately, the court found that in light of the factor favoring defendant and despite the factors in favor of plaintiff, plaintiff had not carried his burden of proof under the clear and convincing evidence standard to justify a change in custody. A trial court need not give equal weight to all of the factors, but may instead consider the relative weight of the factors under the particular circumstances. *McCain, supra* at 130-131.

Under these circumstances, we find that the trial court's grant of sole physical custody to defendant was not so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *Spalding, supra* at 384-385. Accordingly, the trial court did not abuse its discretion when it awarded sole physical custody of Chance to defendant.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Joel P. Hoekstra  
/s/ Donald S. Owens