

STATE OF MICHIGAN
COURT OF APPEALS

PAULA M. POBANZ a/k/a PAULA M. KIRBY,

Plaintiff-Appellee,

v

LARRY J. POBANZ,

Defendant-Appellant.

UNPUBLISHED

August 13, 2009

No. 291262

Huron Circuit Court

Family Division

LC No. 94-009004-DM

Before: Owens, P.J., and Talbot and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying his request for specific parenting time and for an immediate custody hearing. Defendant also challenges a previous order transferring this case from Judge M. Richard Knoblock to Judge David L. Clabuesch and the validity of a power of attorney executed by plaintiff to her mother, Joanne Rinnert. We affirm in part, reverse in part and remand to the trial court.

Defendant first argues that the trial court erred by not ordering specific parenting time with his daughter Jennifer. “Orders 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); see also MCL 722.28. “An abuse of discretion exists when the trial court’s decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias.” *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). A trial court commits clear legal error when it “incorrectly chooses, interprets, or applies the law.” *Id.* at 706.

At a hearing conducted on January 28, 2009, defendant requested the trial court award him specific parenting time with his daughter, Jennifer. After Jennifer stated that she did not want parenting time with defendant, the trial judge denied defendant’s request indicating that because she is within a year of attaining her majority, the court would not force her to participate in parenting time.

Parenting time must “be granted in specific terms if requested by either party at any time.” MCL 722.27a(7). “The controlling factor in determining [parenting time] is the best interests of the child.” *Deal v Deal*, 197 Mich App 739, 742; 496 NW2d 403 (1993); see also

MCL 722.27a(1). According to MCL 722.27a(1), “[i]t is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents.” While not the only factor to be evaluated, a child’s preference does comprise a significant factor to be considered in determining what is in that child’s best interests. See *Curylo v Curylo*, 104 Mich App 340, 349; 304 NW2d 575 (1981). In this instance, we believe that substantial deference should be given to the child’s preference based on her age and personal history of interaction with defendant and family situation. However, because the trial court erred in failing to articulate, on the record, how the other best interest factors weighed in favor of its ruling we remand this matter to the trial court for the review and elucidation of its reasons to deny parenting time based on all of the factors impacting Jennifer’s best interests.

Next, defendant contends that the trial court abused its discretion by not conducting an evidentiary hearing on his motion for change of custody within 56 days of its filing. We review this unpreserved issue for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

MCR 3.210(C)(1) provides, in pertinent part:

When the custody of a minor is contested, a trial court must conduct a hearing within 56 days

(a) after the court orders, or

(b) after the filing of notice that a custody hearing is requested.

However, MCR 3.210(C)(7) indicates that a trial court may extend the time required to conduct a hearing for “good cause.” Based on the stipulation of the parties to adjourn several of the scheduled hearings, in addition to the existence of pending neglect and juvenile cases, we conclude that good cause for the adjournments existed.

Defendant further argues that the trial court erred by transferring his divorce case from Judge Knoblock to Judge Clabuesch. Judge Knoblock was originally assigned to this case when it was initiated in 1994. On September 19, 2008, an order was entered reassigning this matter to Judge Clabuesch under paragraph B of the 52nd Circuit Court Family Division Plan because Judge Clabuesch was assigned a case involving this family in the juvenile section of the court’s family division. Defendant argues that it was error to transfer his divorce case from Judge Knoblock to Judge Clabuesch.

In 1996, our Legislature reorganized Michigan’s court system, creating a family division in the circuit court to handle most of the juvenile cases that were formerly given to the probate courts. MCL 600.1001; see also *In re AP & BJ*, 283 Mich App 574; ___ NW2d ___ (Docket No. 286431, issued May 5, 2009), slip op, p 10. This Court recently explained the requirements and purpose of the reorganization:

It required each judicial circuit to develop a “family court plan” under which the family division of each circuit has “sole and exclusive jurisdiction” over, but not limited to, actions under the CCA, child protective actions, and paternity actions. This reorganization, and the mandate that each judicial circuit create a family

court plan tailored to its community's needs, is intended to "promote more efficient and effective services to families" As part of this goal, [the Act] added a provision intended to better serve families who face multiple matters before different judges and encompasses the concept of "one judge, one family." [*Id.*, slip op at 10-11 (internal citations omitted; deletion in original).]

In accordance with the concept of "one judge, one family," MCL 600.1023 provides that where two or more matters involving the same family members are within the jurisdiction of the circuit court's family division, "those matters, whenever practicable, shall be assigned to the judge to whom the first such case was assigned."

Judge Knoblock was first assigned to the divorce case in 1994. However, MCL 600.1023 is not absolute and states that the matters should be assigned to the first judge "*whenever practicable.*" See also *In re AP & BJ, supra*, slip op at 13 n 18. Because of the pending juvenile petition, it was not practicable to assign these matters to Judge Knoblock. Judge Clabuesch had the juvenile case pending before him, which is a specialized area of the law.¹ Further, MCL 600.1021(3) "specifically gives a judge presiding over a juvenile matter the 'power and authority' to hear actions under the CCA." *In re AP & BJ, supra*, slip op at 11, quoting MCL 600.1021(3). Therefore, the transfer was consistent with the Huron Circuit Court's family court plan and the trial court did not err in effectuating the transfer of defendant's divorce case.

Finally, defendant argues that the trial court clearly erred in allowing plaintiff to give her mother power of attorney over Jennifer for more than six months. MCL 700.5103(1). This issue is moot because the second power of attorney has expired. *Attorney Gen v Pub Service Comm*, 269 Mich App 473, 485; 713 NW2d 290 (2005). In addition, although MCL 700.5103(1) limits the length of time parental authority can be delegated, it does not restrict the number of instruments that can be executed or preclude an agent from serving more than once in that capacity.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher

¹ Indeed, all juvenile cases in Huron County are assigned to Judge Clabuesch pursuant to Administrative Order 2003-03.