

STATE OF MICHIGAN
COURT OF APPEALS

MATTHEW M. MCNUTT,

Plaintiff-Appellant,

v

MELISSA L. MCNUTT,

Defendant-Appellee.

UNPUBLISHED
December 2, 2010

No. 298480
Lapeer Circuit Court
LC No. 05-035949-DM

Before: OWENS, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

In this child custody action, plaintiff appeals by right from an order that denied his motion to change custody and ordered that the parties' minor children remain in the primary physical custody of defendant with the parties continuing to share joint legal custody. We affirm.

On appeal, plaintiff argues that the trial court erred in its decision because the great weight of the evidence revealed that plaintiff had an advantage over defendant with regard to three of the statutory best interest factors. We disagree.

This Court must affirm the trial court's child custody decision "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; see also *Baker v Baker*, 411 Mich 567, 573; 309 NW2d 532 (1981). We review the trial court's discretionary rulings for an abuse of discretion. *Vodvarka v Grasmeyer*, 259 Mich App 499, 507; 675 NW2d 847 (2003) (citation omitted). A court abuses its discretion when its decision is outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

The best interest factors are set forth in MCL 722.23. Plaintiff challenges the weight of the evidence regarding: (g) the mental and physical health of the parties; (j) the willingness of the parties to work together and foster the relationship between the child and the other parent;

and (l) any other factor considered by the court to be relevant.¹ Over a five-day custody hearing, the court considered ample evidence involving the best interest factors and provided a detailed opinion recounting the evidence and outlining its findings pertaining to each best interest factor.

In reviewing the trial court's findings, this Court should defer to the fact-finder's determination of credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000). Under the great weight of the evidence standard, a trial court's findings regarding each custody factor "should be affirmed unless the evidence clearly preponderates in the opposite direction." *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000) (citations omitted). Notably, the trial court was not required to weigh the statutory best interest factors equally. *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998).

Ultimately, the trial court was obligated to determine the weight and credibility of the evidence presented, and it complied with that requirement. *Gorelick v Dep't of State Hwys*, 127 Mich App 324, 333; 339 NW2d 635 (1983). The court's opinion addressed the parties' history and the evidence presented by both parties. The court concluded that neither party exhibited mental or physical health issues, found that both parties were unwilling to facilitate a close relationship between the child and the other parent, and found that the minor children had been subjected to psychological or emotional harm from both parents.

Based on the evidence, and deferring to the trial court's determination of credibility, the trial court's decision on these factors was not against the great weight of the evidence. MCL 722.28; *Mogle*, 241 Mich App at 201. The court's review of the evidence was thorough and thoughtful, as was its opinion. The trial court's conclusion was supported by the evidence and was within the range of principled outcomes. See *Maldonado*, 476 Mich at 388.

Plaintiff next argues on appeal that the court's order regarding plaintiff's other minor son from a previous relationship was impermissible because the court did not have jurisdiction over plaintiff's son, and its decision was against the great weight of the evidence. We disagree.

In its order, the court provided conditions for the parties to follow in order to prevent further abuse and for the best interests of the children. In part, the court ordered that plaintiff's son not be present while plaintiff was parenting his daughters unless they were in public or during non-overnight family functions at the home of friends or relatives. This condition was similar to the requirement stated in the original parenting time order dated August 29, 2006. Clearly the parties and the court had previously recognized the benefit of restricting the unsupervised interaction of the children. During plaintiff's testimony, he acknowledged that he planned to continue the restrictions to prevent further allegations, but noted that it was not an ideal situation because it interfered with family functions and vacations.

¹ We note that plaintiff's brief on appeal does not comply with MCR 7.212(C)(6) because it does not contain all material facts, both favorable and unfavorable.

Nevertheless, the court was authorized to add conditions to the parenting time order, as needed. MCL 722.27a(8) provides, in pertinent part, the following:

A parenting time order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent, including 1 or more of the following:

(c) Restrictions on the presence of third persons during parenting time.

(i) Any other reasonable condition determined to be appropriate in the particular case.

In its order, the court prefaced the conditions placed on the parties by indicating that they were necessary in order to prevent further abuse of the children and to satisfy the best interests of the children. Even though the court stated that the disputed condition was for the safety of plaintiff's son, it appears that this condition was required for both his safety and as a precaution for the minor children. In fact, the condition was one previously exercised by plaintiff voluntarily to avoid further allegations of misconduct by defendant. The court did not exercise jurisdiction over plaintiff's son by stating when or where plaintiff's son could spend time with plaintiff. Instead, it exercised jurisdiction over the custody and parenting time arrangement with the parties as it related to their daughters, taking into consideration the relationship between plaintiff and the girls. This was a proper exercise of jurisdiction.²

Affirmed.

/s/ Donald S. Owens
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood

² We note also that the court was concerned with the actions by both parents and imposed additional conditions upon the parties. Specifically, the court required both parents to engage in counseling and to submit progress reports to the court. In light of the continued monitoring by the court, we cannot conclude that the trial court erred in its ruling.