

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

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MELISSA RENEE POAG-EMERY,  
  
Plaintiff-Appellant,

UNPUBLISHED  
April 22, 2014

v

MATTHEW JOHN EMERY,  
  
Defendant-Appellee.

No. 318401  
Kent Circuit Court  
Family Division  
LC No. 08-001251-DM

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Before: METER, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Plaintiff-mother appeals from the trial court order that awarded sole legal custody of the parties' minor child to defendant-father. Because the trial court did not err by finding that father established the proper cause or change of circumstances necessary to revisit a custody order nor err by finding that granting father sole legal custody was in the child's best interests, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

This case began in February 2008, when divorce proceedings between mother and father were initiated. At the time, mother was approximately five months pregnant with the child. The parties' marital home was located in Grand Rapids.

On May 30, 2008, mother gave birth to the child in Chicago, where she had recently moved. On July 14, 2008, the trial court entered an order that provided, in relevant part: (1) the parties shared joint legal custody of the child; (2) mother was granted temporary primary physical custody; (3) mother was ordered to "cooperate in allowing [father] reasonable parenting time opportunities with the minor child both in Chicago and Grand Rapids," and was required to notify father when she returned to Grand Rapids and provide father her address in Chicago, both in order to facilitate more parenting time.

In August 2008, mother attempted to initiate custody proceedings in Cook County, Illinois. The trial court conversed with the judge assigned to the case in Illinois and both agreed that Kent County, Michigan had subject-matter jurisdiction over the case and that there was no emergency jurisdiction in Illinois.

After a settlement hearing held on September 10, 2008, the parties entered into a consent judgment of divorce on October 24, 2008. The parties were awarded joint legal custody of the child. The court ruled that parenting time would “be subject to regular review and monitoring,” and awarded father parenting time as follows: (1) unsupervised parenting time from noon to 4:00 p.m. on Saturday and 10:00 a.m. to 2:00 p.m. on Sunday, on alternating weekends, to take place in Chicago; (2) if mother were to bring the child to Grand Rapids, she was required to give father advance notice in order to exercise additional parenting time, and; (3) father was entitled to parenting time on alternating holidays. The court ordered that the parenting time arrangement would be reviewed on March 1, 2009 “for consideration of traditional overnight visitation on these alternate weekends, including spending alternate weekends in Michigan.”

Two months later, on December 23, 2008, mother filed a motion to enforce the divorce judgment, alleging that father breached several of its provisions not directly related to the child. In response, father alleged that mother had violated the parenting time agreement. Specifically, he alleged that mother “has consistently refused to allow unsupervised time with the minor child and disrupts . . . Sunday parenting time by insisting that she take the seven-month-old child to church.” Father also alleged that mother had failed to maintain a phone line to allow the parties to communicate regarding parenting time and custody issues. The court ultimately denied mother’s motion but ordered that mother maintain a phone line for purposes of communication with father regarding the child.

On April 10, 2009, consistent with the provision in the judgment of divorce that provided for the review of the parenting time arrangement on May 1, 2009, father filed a motion to review and modify parenting time. Father alleged that mother had “repeatedly frustrated and restricted Father’s opportunity for [] unsupervised parenting time.” Specifically, he claimed that he had to call the police on one occasion to achieve parenting time and that mother refused to take his phone calls regarding same. He requested additional parenting time, including alternate weekends and two one-week vacation periods.

On May 20, 2009, the trial court modified the parenting time provisions of the judgment of divorce: (1) starting immediately, father was awarded two eight-hour periods on alternate weekends from 9:00 a.m. to 5:00 p.m. on Saturday and Sunday; (2) starting August 1, 2009, father was awarded alternate weekends from 9:00 a.m. Saturday morning to 6:00 p.m. Sunday evening; (3) father was awarded two one-week vacations, and; (4) the trial court provided a holiday parenting time schedule. The court ordered that the parenting time exchanges were to occur in Michigan City, Indiana, and that, “absent a change of circumstances” or additional court order, the arrangement was to remain in effect until the child reached three years of age.

On December 28, 2009, mother moved the court to amend the child support arrangement and also requested that the court bar father from exposing the child to mother’s parents (the child’s maternal grandparents) on the grounds that mother was currently estranged from them. Father responded, again asserting that mother had been uncommunicative regarding the child’s care and that he believed it to be beneficial for the child to be exposed to his maternal grandparents.

After a hearing on January 15, 2010, the court found that mother had interfered with and caused father to miss his scheduled parenting time on Labor Day 2009 and modified parenting

time to allow father to pick up the child from day care in order to limit mother's interference. The court also denied mother's request to prohibit father from exposing the child to his maternal grandparents. Nearly constant litigation between the parties not directly involving the child's care or custody continued until early 2011.

On April 7, 2011, mother moved the trial court for an emergency ex parte protective order, alleging that the child had been injured while in father's custody. Specifically, mother alleged that the child had been returned from parenting time with father with two marks on his back "consistent with, or similar in appearance to, burn marks from, possible, a cigarette." Mother acknowledged that she had first pursued this motion in Illinois court, which again ruled that jurisdiction was proper in Michigan. Mother stated that when confronted, father said that the marks came as a result from the child falling on a chair. Mother attached medical records that she claimed supported her allegations. On April 7, 2011, the court denied mother's motion, finding that she did not clearly state a change of circumstances, adding: "[Mother] has at other times attempted to keep this case and/or child in Illinois. [Mother]'s previous activities have appeared to be an attempt to prevent father's contact with the child."

Following these proceedings, father moved for a change of custody, citing mother's refusal to abide by the court's parenting time orders, false allegations of child abuse, and repeated meritless jurisdictional challenges. Father attached a medical report wherein a treating professional opined that mother's concern over the child's injuries, which were termed consistent with those of a 22-month-old child, were perhaps a pretext to report father for abuse or neglect. Father further alleged that mother accused him of taking pornographic pictures of the child. Police found the allegation meritless after reviewing the pictures, which were of the child, at six months of age, in his diaper.

The trial court found that father had established the proper cause or change of circumstances necessary to require an evidentiary hearing on his motion for a change of custody. In preparation for the hearing, the court ordered both parties to undergo a psychological assessment with Thomas Spahn, M.S.W., and ordered mother to submit to an assessment by Randy Flood, M.A., L.L.P., due to the court's concern that mother was "engaging in parental alienation of the minor child towards his father."

Before the evidentiary hearing could be held, the parties reached a settlement on the record. The parties maintained joint legal custody and physical custody of the child was to proceed on a two-weeks-on, two-weeks-off basis. The court added:

. . . I have a historical prospective of [mother]'s actions. And that will provide me the context of determining if her future actions are for the purposes of being manipulative, controlling, or obtrusive. . . . Therefore, if [mother] does take actions that are deemed inappropriate by this Court, then those actions shall be considered by this Court to be a change of circumstances to warrant a review of custody.

I'm talking about actions such as the following but not limited to the following, but the following: Calling CPS inappropriately. Taking the child to the hospital inappropriately. Attempting to obtain or obtaining a Personal

Protection Order inappropriately. These are just a few examples. They're not limited to these.

The parties agreed to the agreement on the record and an order was entered on October 7, 2011. On September 19, 2011, mother filed, "through her attorney and pro se as a fully licensed attorney," an "emergency motion to determine the date of return of the minor child." Mother requested the court order father to return the child to her custody at 6:00 p.m. on October 2, 2011. On the same day, the court, considering the motion one for ex parte relief, denied mother's request, noting that the court contacted mother's attorney, who stated that he did not request that the petition be filed nor did he agree with the filing of the petition. The court ruled that it would not entertain a pleading that it knew contained such a false statement.

On the following day, September 20, 2011, mother filed an amended motion, merely removing the language "through her attorney." The same day, the court denied mother's motion, noting that she failed to provide a supporting affidavit as required and failed to contact father's attorney. The court also ordered that mother show cause as to why she should not be assessed \$2,575.30 in costs for the improperly filed motion.

The next day, September 21, 2011, mother filed a third emergency motion *in propria persona*. The court again denied relief, noting that there was still no evidence that mother or her attorney had contacted father's attorney regarding the time and place to return the child to mother's custody. The court also ordered that mother show cause as to why she should not be assessed \$1,485.75 in additional fees for another improperly filed motion. After a combined show-cause hearing, the court ordered mother to pay \$2,575.30 and \$1,485.75.

Mother also filed a motion *in propria persona* requesting that the trial judge recuse himself. The chief circuit judge denied the motion, finding that mother could not file such a motion while represented by competent counsel and that she represented to the chief judge that she had full custody of the child, despite her agreement to joint custody on the record at the August 11, 2011 hearing.

On October 18, 2011, father filed an emergency petition requesting the trial court order mother to turn over the child to father's custody. Father averred, in an attached affidavit, that mother failed to turn over the child on October 16, 2011, as ordered by the court. Father also attached an email from mother, written October 17, 2011, wherein she claimed that the trial court "has no jurisdiction whatsoever" and proposing a custody arrangement alternative to that ordered by the court and agreed to by mother at the August 11, 2011 hearing. The trial court granted father's motion the same day, ordering law enforcement to assist father in obtaining custody of the child. The court suspended mother's parenting time pending a November 4, 2011 hearing.

On October 24, 2011, father moved for a change of custody, asserting that mother had violated various courts orders by: failing to respond to communications within 48 hours; failing to turn over the child to father, and; failing to provide Skype sessions between father and the child.

On November 4, 2011, the court entered an order requiring mother to appear on January 6, 2012 and show cause as to why she should not be held in contempt for failing to pay the

\$4,061.05 as ordered. At the hearing held the same day, the court found that father had demonstrated a change of circumstances necessary to set the matter for an evidentiary hearing on his motion to change custody. Specifically, the court cited mother's "erratic" actions, continual frivolous pleadings, and refusal to turn over the child. The court ordered that mother's parenting time continue to be suspended with only supervised visitations and phone calls to take place and ordered that mother undergo a psychological evaluation. The court's orders were reduced to writing on November 16, 2011.

On November 15, 2011, mother moved the trial court to vacate all its orders issued in the entire case and transfer the case to Illinois courts, arguing again that the trial court was without jurisdiction. Mother, now represented by her sixth different attorney in these proceedings, also moved the court for reconsideration of its November 16, 2011 order. The court denied the motion.<sup>1</sup>

On April 18, 2012, the parties appeared before the court and again stated that they had reached a settlement. An order memorializing the settlement was entered on May 17, 2012. The court ordered that the parties were to continue to share joint legal custody but that father was awarded sole physical custody. Mother was to be allowed "reasonable phone communication with the child" and was required to report any change in her employment status to the court. Most importantly, the court ordered the parties to "accept and comply with the recommendations of Randy Flood, M.A., L.L.P., a licensed psychologist, as detailed in his report to this Court."

A. That [mother]'s parenting time with the minor child shall continue to be supervised through the YWCA Safe Connections Program, Journey's, or a mutually agreeable third-party supervisor. Supervision shall continue until the [mother] demonstrates more accountability and insightfulness into her Parental Alienation Behaviors. Neither party is to discuss with the minor child any matters related to this case and, specifically, shall make no statements relative to any anticipated changes in the current supervised parenting time schedule unless specifically directed by Randy Flood.

B. Randy Flood shall be the parenting coordinator in this case and shall be primarily responsible for the management and reporting to the Court and counsel of the [mother]'s progress in dealing with her Parental Alienation Behaviors. The parties shall equally share the cost of the parenting coordinator's fee.

C. The [mother] will engage in a counseling program to address her Parental Alienation Behaviors. Randy Flood shall select the counselor which shall be someone who is experienced and trained in dealing with Parental Alienation Behavior issues. The counselor shall be a Chicago based therapist and preferably a minority. The [mother] shall be solely responsible for the cost of this

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<sup>1</sup> Mother sought leave to appeal this decision to this Court, but later withdrew the application. *Poag-Emery v Emery*, order of the Court of Appeals, entered April 5, 2012 (Docket No. 308009).

therapy. The Parties shall sign any releases needed to allow Randy Flood and the counselor to exchange information on the case.

D. Randy Flood shall periodically report to the Court and to counsel the [mother]'s progress in therapy and also in cooperative co-parenting.

E. The parenting coordinator shall also make recommendations to the Court for any changes in the supervised parenting arrangement. Counsel for both parties reserve the right to bring this matter back to the Court on a Motion if they have disagreement with the recommendations of the parenting coordinator.

F. In the [mother] successfully completes the counseling program on Parental Alienation Behaviors and positively participates in the co-parenting process as reported by Randy Flood, then this Court will consider that to be a change of circumstances for purposes of a request by Plaintiff for a custody review. Any custody review shall focus on what is in the best interest of the minor child and is not to be constrained by any prior Custody Orders in this case.

Almost one year later, on May 10, 2013, father moved for sole legal custody and/or the authority to place the child in counseling and school. Father asserted that mother had violated various requirements of the court's May 16, 2012 order. Specifically, father averred that mother: failed to cooperate with or complete any therapy; had little to no contact with the child in the preceding year; refused to cooperate with father in obtaining counseling for the child as recommended by his day care workers, and; failed to participate in seeking kindergarten enrollment for the child and refused father's choice of such enrollment. Father asserted that these circumstances indicated that mother could not cooperate effectively regarding the child's care and requested that he be granted sole legal custody in order to "provide timely and needed assistance for the minor child."

Mother, represented by yet another attorney, responded, leveling various factual allegations against father and blaming Flood for her failure to complete the court-ordered therapy. On June 13, 2013, the trial court ordered that the child should be counseled through Arbor Circle in Grand Rapids, that mother was to be provided with any current information about the child's health care and schooling, and that mother was to provide all current information regarding her employment.

On July 30, 2013, the trial court received a letter from mother's counsel stating that mother "has requested that I respectfully re-raise the issue of your judicial disqualification." Specifically, counsel stated that mother was concerned that the trial judge's son-in-law was employed by the law firm retained by mother and the judge's alleged bias. The chief circuit judge again denied mother's motion. The chief found that: (1) mother failed to file the motion with 14 days of the discovery of the grounds for disqualification in violation of MCR 2.003(D)(1)(a); (2) mother filed only an oral motion before the trial court without a required affidavit in violation of MCR 2.003(D)(2); (3) the parties had already waived any potential conflict posed by mother's law firm's employment of the judge's son-in-law, and; (4) "all unfavorable rulings against the [mother] were the result of her own actions/inactions and [the

trial judge] felt his long-history [sic] with the case was both important and did not amount to bias.”

The evidentiary hearing regarding father’s motion for sole legal custody was held on July 1 and August 12, 2013. On August 21, 2011, the trial court issued its opinion from the bench. Having previously determined that father had established proper cause or a change of circumstances, the court ruled that the child had an established custodial environment only with father. The court then found that father proved, under the applicable preponderance standard, that his proposed change in custody was in the child’s best interests. A written order, issued September 11, 2013, complimented the court’s oral opinion and awarded sole legal custody of the child to father, but allowed mother to seek supervised parenting time through the YWCA Safe Connections program and/or Journeys as provided by the May 17, 2012 order.

## II. PROPER CAUSE OR CHANGE OF CIRCUMSTANCES

Child custody orders may be modified or amended “for proper cause shown or because of change in circumstances[.]” MCL 722.27(1)(c). Mother first argues that the trial court erred by finding that proper cause or a change in circumstances existed.<sup>2</sup>

[T]o establish “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. The appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors [in MCL 722.23], and must be of such magnitude to have a significant effect on the child’s well-being. [*Vodvarka v Grasmeyer*, 259 Mich App 499, 512; 675 NW2d 847 (2003).]

[I]n order to establish a “change of circumstances,” a movant must prove that, since the entry of the last custody order, the conditions surrounding the custody of the child, which have or could have a *significant* effect on the child’s well-being, have materially changed. Again, not just any change will suffice, for over time there will always be some changes in a child’s environment, behavior, and well-being. 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

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<sup>2</sup> There are [] three different standards of review applicable to child-custody cases. The clear legal error standard applies when the trial court errs in its choice, interpretation, or application of the existing law. Findings of fact are reviewed pursuant to the great weight of the evidence standard. In accord with that standard, this Court will sustain the trial court’s factual findings unless the evidence clearly preponderates in the opposite direction. Discretionary rulings, including a trial court’s determination on the issue of custody, are reviewed for an abuse of discretion. [*Shulick v Richards*, 273 Mich App 320, 323; 729 NW2d 533 (2006) (quotation marks and citations omitted).]

must be at least some evidence that the material changes have had or will almost certainly have an effect on the child. This too will be a determination made on the basis of the facts of each case, with the relevance of the facts presented being gauged by the statutory best interest factors [in MCL 722.23]. [*Vodvarka*, 259 Mich App at 513.]

Mother focuses her arguments on two circumstances: counseling for the child and the choice of the child's school.

One of the child's day care workers testified that, due to the child's occasional bouts of aggressiveness, they strongly recommended that the child receive counseling prior to entering kindergarten. Father promptly arranged for a counselor to meet with the child. At least five sessions had occurred before the counselor realized that mother had joint legal custody. He then asked for mother's approval and she denied it. At the time of the evidentiary hearing, mother still maintained that the child needed no counseling and only "needs his mother." The child's need for counseling directly concerns the child's schooling and remedial care under best-interest factors MCL 722.23(c) and (h). It also has a "significant" effect on the child's well-being. *Vodvarka*, 259 Mich App at 513. There was ample testimony that the child is bright and has the potential to do very well in school. However, as father testified, if the child's aggressiveness is not addressed now, it could pose enormous problems for the child as he ages.

As mother notes, father should have contacted her about the counseling before it occurred. However, once she learned of the counseling, mother simply refused to grant consent. She still maintains that the child needs no counseling of any kind and, as a result, the child missed several months that could have resulted in progress. This is manifestly contrary to the qualified opinion of the child's day care provider. Mother also takes issue with the fact that father chose a counselor that he knew as a child. There is no evidence that the counselor was unqualified or that he favored father over mother. Again, as the trial court later noted, mother could have proposed an alternative counselor or petitioned the court to order another counselor. Her refusal to consent to counseling of any kind significantly affected the child's well-being and, accordingly, the trial court did not err by finding that father demonstrated proper cause or change of circumstances on this basis.

Mother also takes issues with father's decision to reserve a place for the child in a Catholic elementary school. The school's principal testified that the school would offer the child a smaller class size than that of a public school and that the school's academic scores were significantly above average. Father felt that the smaller class size would be beneficial to the child. Mother, who is not Catholic, objected when father told her of his decision and called the school and demanded that the child be disenrolled. Again, as mother notes, father should have contacted her about the school, which significantly affects the child under MCL 722.23(h). However, again, mother failed to provide any reasonable alternative and, instead of discussing the matter with father, simply called the school and demanded that the child be disenrolled. Mother's only proposed alternative was the Disney School in Chicago, a school located over 175 miles from the child's sole physical custodian. She also raised the Disney School with the child, in direct contravention of court order, who was no doubt extremely confused as to how he could attend school so far from home. In sum, the child was required to start kindergarten soon and mother refused to cooperate in locating a mutually acceptable school. Accordingly, the trial

court did not err by finding that father demonstrated proper cause or change of circumstances on this basis.

### III. BEST INTERESTS

“When a movant has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors.” *Vodvarka*, 259 Mich App at 512. Having determined that the trial court did not err by finding that father established proper cause or a change of circumstances, we now turn to its best-interests analysis.

If a proposed change in custody will not change the child’s establish custodial environment, the party seeking the change in custody must establish, by a preponderance of the evidence, that the change is in the child’s best interests. MCL 722.27(1)(c). The trial court found that the child had an established custodial environment only with father. Mother does not appear to dispute this finding on appeal. However, mother does challenge the trial court’s finding that father established, by a preponderance of the evidence, that the change in custody was in the child’s best interests under MCL 722.23, which provides:

As used in this act, “best interests of the child” means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) 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 her or her religion or creed, if any.

(c) The 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.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(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.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

l) Any other factor considered by the court to be relevant to a particular child custody dispute.

When analyzing joint-custody situations, a trial court must also consider “[w]hether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.” MCL 722.26a(1)(b).

In analyzing the best-interest factors, a trial court need not address every argument or piece of evidence entered, but must make a record sufficient to allow “this Court to determine whether the evidence clearly preponderates against the trial court’s findings.” *Rains*, 301 Mich App at 329 (quotation marks and citation omitted). “This Court will defer to the trial court’s credibility determinations, and the trial court has discretion to accord differing weight to the best-interest factors.” *Id.* (quotation marks and citation omitted).

The trial court found that factors (a), (g), and (k) favored neither party and that factors (b), (c), (d), (e), (f), (h), (j), and (l) favored father. The court did not interview the child and made no finding as to factor (i). The court found that no factors favored mother. Mother argues that the trial court’s findings as to factors (d), (e), (f), (h), (j), and (l) were against the great weight of the evidence.

**A. FACTOR (D): THE LENGTH OF TIME THE CHILD HAS LIVED IN A STABLE, SATISFACTORY ENVIRONMENT, AND THE DESIRABILITY OF MAINTAINING CONTINUITY**

Finding that factor (d) favored father, the trial court stated:

I find that this strongly favors [father]. I do not believe that the child has had a stable environment with [mother]. [Mother], as we all know, initially took [the child], went down to Chicago. She fought this Court for jurisdiction for a year or so. She brought – tried to bring an emergency order through kind of like a personal protection order down there, to get emergency jurisdiction, and this Court went through the UCCJEA procedure, and made the determination that that was not appropriate, and the Illinois court again said, no, this child goes back to Michigan.

The child has moved various places when [mother] was in Chicago. The stability here with this child has been with [father]. Excuse me.

I find a strong preference in favor of [father] under this factor.

At the time of the evidentiary hearing, the child had been in father's sole physical custody for over 15 months. He appeared to be progressing well, and father had enrolled him in day care and was planning on enrolling him in school. Father still lives in the marital home and, due to the child's very young age, this is likely the only home he has ever known. Mother has moved several times in Chicago. Accordingly, the trial court's finding that factor (d) favored father was not against the great weight of the evidence.

**B. FACTOR (E): THE PERMANENCE, AS A FAMILY UNIT, OF THE EXISTING OR PROPOSED CUSTODIAL HOMES**

Finding that factor (e) favored father, the trial court stated:

[Father]'s home has a – [the child] has a step-sibling. [Father] has a wife.

[Mother] indicates that she has family, but as I've indicated, I haven't really seen that. I did see the person who called herself a surrogate mother and I saw her aunt appear here. But there's never really been a family here, a support system. And, I find a strong preference in favor of [father] under Factor E.

At the evidentiary hearing, father testified that he was planning to marry his long-term girlfriend soon, who will become the child's stepmother. He also had a child with his girlfriend, resulting in a stepsibling for the child at issue in this case. He has lived in the marital home throughout the duration of this case. Mother, on the other hand, lives by herself in Chicago and appears to be estranged from the majority of her family. Her aunt and "surrogate mother" testified in broad generalities about mother's parenting ability and do not constitute a "family unit." There was also evidence that father exposes the child to both his and mother's parents. Accordingly, the trial court's finding that factor (e) favored father was not against the great weight of the evidence.

**C. FACTOR (F): THE MORAL FITNESS OF THE PARTIES INVOLVED**

Finding that factor (f) favored father, the trial court stated:

. . . I feel very strongly that alienating a child against a father or a mother and consistently attempting to do that and denying that it's occurring; and consistently calling on the – other parent, saying the parent sexually abused the child, when it didn't occur; saying the parent neglected or abused the child, and calling CPS when it didn't occur; taking the child to the hospital and saying there's injuries when – when you shouldn't; taking the child into another state in an attempt to keep the child from the parent, I believe this goes to a parent's moral fitness.

And, that's very concerning to me.

It's interesting that Mr. Flood indicates that [mother] is maybe delusional because he – of the belief system that – that [father]'s trying to do something. But, even if you have that belief system, [mother] seems to any time she has contact with [father], attempt to somehow do something to put him in a bad light,

either saying there's an assault, saying something else, and you're consistently doing this, and you're consistently alienating or attempting to alienate a child from a parent, I think that goes to a parent's moral fitness and I really question [mother]'s moral fitness.

And, I find a strong, strong preference in favor of [father] under this factor. And, I have to say, also, that this could be – going through the process, very, very strenuous and painful on behalf of a parent. And, I think [father] has consistently done what he needed to do. He's contacted his attorney. I can't imagine the attorney's fees he's spent to keep coming back to court here, but he's done what he needs to do. And, I find a strong, strong preference under this factor in favor of [father].

Throughout these proceedings, mother consistently obstructed the legal process, violated court orders, and generally indicated that she was incapable of caring for the child. When mother still had physical custody, she repeatedly and falsely reported father to CPS, alleging abuse. These claims were never substantiated. She once reported father to the police for child pornography for taking pictures of the six-month-old child wearing a diaper. She refused to return the child to father's care, a situation that required police involvement to resolve. She has attempted to contact the child in violation of court order. She has also refused to consent to counseling that the child needs or approve a feasible school. Finally, she has refused to comply with the requirements of Flood for psychological treatment to address her parental alienation behavior, which she still denies has ever occurred despite ample objective evidence to the contrary. By contrast, father acknowledges that he suffers from anxiety and takes the proper prescribed medication to address that issue. It is true that father violated court order by making decisions for the child without conferring with mother. However, these decisions all appear to have been made with the child's best interests in mind and are somewhat understandable given mother's history of obstruction. In any event, father's violations pale in comparison to those of mother and, accordingly, the trial court's finding that factor (f) favored father was not against the great weight of the evidence.

#### D. FACTOR (H): THE HOME, SCHOOL, AND COMMUNITY RECORD OF THE CHILD

Finding that factor (h) favored father, the trial court stated:

. . . I find a strong preference in favor of [father], the father, under this factor.

He's attempted to get this child into the school he needs to get into. And, attempt to get the counseling to make sure that he's ready for it and this has been met basically with roadblocks from the non-physical custodial parent.

I find a strong, strong preference in favor of [father] under this factor.

Due to his young age, the child has very little school record. However, father placed him in an acceptable day care. He also researched schools that he believed would provide the child with a smaller class size and more opportunity for enrichment. Mother posed no alternative school besides the Disney School in Chicago, a completely unfeasible suggestion because father

had full physical custody in Grand Rapids. Accordingly, the trial court's finding that factor (j) favored father was not against the great weight of the evidence.

**E. 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**

Finding that factor (j) favored father, the trial court stated:

I have seen that the father has actually attempted to do this, in my opinion. And, [mother] absolutely does not cooperate with this. Again, I go back to the parental alienation. I go back to the fact that she's – she's stopped counseling, she'll stop school, she will not agree to anything regarding this child.

I find a strong, strong preference in favor of the father under this factor.

There is no evidence that father ever violated any parenting time orders or refused to allow mother the parenting opportunities to which she was entitled. Mother claimed that father routinely hangs up the phone when she calls to talk with the child and attempts to damage her relationship with the child. These accusations are completely uncorroborated and we defer to the trial court's determinations of witness credibility. *Rains*, 301 Mich App at 329. Moreover, mother once refused to turn over the child until law enforcement forced her to do so and repeatedly accused father of physically and sexually abusing the child. These accusations were completely unsubstantiated, without merit, and quite obviously an attempt to destroy the child's relationship with father. Accordingly, the trial court's finding that factor (j) weighed in favor of father was not against the great weight of the evidence.

**F. FACTOR (L): ANY OTHER FACTOR CONSIDERED BY THE COURT TO BE RELEVANT TO A PARTICULAR CHILD CUSTODY DISPUTE**

Finding that factor (l) favored father, the trial court stated:

Well, it was brought up by [father's counsel] in his closing that – that – he cited a case, also, and that the parties just can't agree on anything. And, if there was ever, ever a case that in my twelve years on the bench, warranted sole physical custody, I cannot think of a more clear-cut case than this case.

These parents simply can't agree on anything, and I'm – I'm going to go farther than that, I'm going to say [mother] simply won't agree on anything.

[Father] is the, again, physical custodian of the child. The child is living [with father]. A parent can certainly give input to say, how about a different counselor or even go to court and say, I don't like this counselor or this – this person went to school with my husband, and for this reason I don't like him. Well, then propose another counselor and let's get a different counselor in there.

But to simply say, no, to that counselor and then to stop the counseling, that parent is acting directly contrary to that child's best interest in stopping the counseling. I don't care what counselor you want to choose, but in just preventing counseling, that is acting in direct contravention of that child's best interest. That is a huge concern of mine.

It's a huge concern of mine that [mother] apparently would rather fight with, disagree with, or – or undercut [father] than to get the counseling and take care of the needs of [the child].

And, I can't emphasize enough, but a parent has every right if they were a legal custodian to say, here's another counselor, here's another school, here's my opinion, I want my opinion listened to, and then let the Court make a decision.

But to simply not respond or to be obtrusive or obstructive and have the impact the – the negative impact it has on [the child], is almost unconscionable to me.

And, that's a huge concern of mine. And, I find under this factor, a strong, strong preference in favor of the father . . . .

There is no doubt that the parties have a contentious relationship that is likely not the sole fault of either party. However, the record demonstrates that father has attempted, far more so than mother, to cooperate in raising the child in a manner that suits his best interest. MCL 722.26a(1)(b). Mother has refused to allow the child to receive important counseling and refused to propose a feasible alternative school. She has repeatedly violated court orders resulting from settlements into which she voluntarily entered. Father's minimal violations of court order, i.e., procuring schooling and counseling for the child without mother's knowledge, were done in the child's best interests. Mother has consistently obstructed the trial court and father's attempts to advance the child's development in an appropriate manner. Accordingly, the trial court's finding that factor (1) favored father was not against the great weight of the evidence.

#### G. CONCLUSION – BEST INTERESTS

The trial court's best-interest findings challenged by mother were not against the great weight of the evidence. Given that the trial court found that eight factors favored father and no factors favored mother, coupled with the court's discretion to accord differing weight to the factors, *Rains*, 301 Mich App at 329, we conclude that the trial court did not err by finding that father established, by a preponderance of the evidence, that granting him sole legal custody of the child was in the child's best interests.

#### IV. JUDICIAL BIAS

Finally, mother argues that the trial judge and the chief circuit judge erred by failing to grant her motion to disqualify the trial judge on the grounds that he demonstrated actual bias against mother. "In reviewing a motion to disqualify a judge, this Court reviews the trial court's findings of fact for an abuse of discretion and reviews the court's application of those facts to the relevant law de novo." *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009).

MCR 2.003(B)(1) provides that a judge is disqualified when the “judge is personally biased or prejudiced for or against a party or attorney.” Generally, a trial judge is not disqualified absent a showing of actual bias or prejudice. *Gates v Gates*, 256 Mich App 420, 440; 664 NW2d 231 (2003). The mere fact that a judge ruled against a litigant, even if the rulings are later determined to be erroneous, is not sufficient to require disqualification or reassignment. *Ypsilanti Fire Marshall v Kircher (On Reconsideration)*, 273 Mich App 496, 554; 730 NW2d 481 (2007). “[J]udicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a “deep-seated favoritism or antagonism that would make fair judgment impossible” and overcomes a heavy presumption of judicial impartiality.” *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001) (citations omitted). [*Henry*, 282 Mich App at 679-680.]

As a preliminary matter, we note that the chief judge correctly found that mother’s disqualification motion was not brought in compliance with the applicable court rules. See MCR 2.003(D). Further, our review of the record reveals absolutely no evidence of bias against mother on the part of the trial judge. Mother consistently violated the court’s orders from the outset of these proceedings, despite being a licensed attorney. She filed at least three motions while concurrently represented by counsel, misrepresented facts to the court on multiple occasions, and repeatedly attempted to enter hearsay testimony despite the court’s frequent admonitions.

Mother claims that her filing of a complaint against the trial judge with the Judicial Tenure Commission (JTC) rendered him biased against her. However, “disqualification is not required until the judge is privately censured or a complaint is filed by the Judicial Tenure Commission itself.” *People v Bero*, 168 Mich App 545, 552; 425 NW2d 138 (1988). The record reveals no actions of the trial court that warranted disciplinary action and there is no evidence that the JTC ever brought a complaint or sought discipline of the trial judge in this or any other matter.<sup>3</sup> Mother also claims that her repeated challenges to the court’s jurisdiction resulted in actual bias. There is no evidence of such bias in the record; the trial court properly considered and rejected mother’s jurisdictional challenges, as did the Illinois courts. Mother’s continued violation of the trial judge’s orders, apparently sometimes based on her insistence that the judge was without jurisdiction, were of her own free will and the resulting rulings against her were not the result of any actual bias.

It appears that the trial judge gave mother every chance to retain custody of the child despite her consistent failure to abide by the judge’s directives. Indeed, the trial judge would not have erred by holding mother in contempt on several occasions or assessing significant monetary sanctions. The court only sanctioned mother twice and did not err by doing so. In sum, there is no evidence to support mother’s accusations of actual bias and, therefore, neither the trial judge

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<sup>3</sup> *Formal Proceedings and Supreme Court Decisions by Respondent’s Name*, [jtc.courts.mi.gov](http://jtc.courts.mi.gov) (accessed March 20, 2014).

nor the chief circuit judge erred by denying mother's motion for the disqualification of the trial judge.

Affirmed.

/s/ Patrick M. Meter  
/s/ Peter D. O'Connell  
/s/ Douglas B. Shapiro