

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

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SANDRA M. MANSSUR,

Plaintiff-Appellee,

v

DENNIS N. MANSSUR,

Defendant-Appellant.

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UNPUBLISHED

June 10, 2014

No. 319330

Genesee Circuit Court

Family Division

LC No. 06-266883-DM

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right the order awarding plaintiff sole legal custody of the parties' two minor children, AM (DOB: 9/22/02) and RM (DOB: 11/19/04), and modifying parenting time and child support. We affirm.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

This case arises from defendant's April 3, 2013 motion to change parenting time and plaintiff's August 14, 2013 motion to change custody of the children. The parties are operating under a judgment of divorce that was entered on August 23, 2007. The divorce judgment awarded the parties joint legal custody and awarded plaintiff primary physical custody of the children. Under the parenting time schedule, defendant would have parenting time from Saturday to Monday at 6:00 p.m., and then from Tuesday after school to Thursday at 6:00 p.m. Defendant then would have the next alternating weekend, from Saturday to Monday at 6:00 p.m., and then from Tuesday after school to Friday morning. There is no specific time that defendant is supposed to pick up the children on Saturday.

Defendant argued in his motion that since the judgment of divorce, the parties were unable to agree on parenting time, despite defendant's changed work schedule. Defendant argued that there was a change of circumstances because of several factors, including the change in his work schedule. Defendant sought week on/week off parenting time and argued that the modification would not change custody. Plaintiff argued in her motion that a change of custody was in the children's best interest and that there was proper cause. She requested sole legal and physical custody of the children.

After several pretrial proceedings, including the appointment of a lawyer guardian ad litem (LGAL), a bench trial was held on September 10, 2013 regarding the defendant's motion to modify parenting time and plaintiff's motion to change custody. The LGAL testified that the children did not express problems with either parent. She further testified that the parties were unable to agree on "just about everything" including activities, school, and when projects should be completed. They were unable to communicate about homework. The LGAL testified that "[defendant] wants to be involved in everything and [plaintiff] wants to have her independence and manage her time in her household and [defendant] sort of wanted to operate like they're still married." The LGAL recommended week on/week off parenting time during the summer. She recommended that, during the school year, defendant have parenting time every other weekend, from Thursday after school to Monday morning. This recommendation was based on the fact that defendant worked every other weekend and the LGAL did not believe week on/week off parenting time would work during the school year because it requires communication and cooperation. The LGAL believed that defendant told the children that plaintiff was being unfair. The LGAL opined that "the problem" was that defendant did not have any other activities, his whole life revolves around the children, and "it's likely obsessive." Accordingly, when plaintiff has the children, "his whole world is gone and so he wants [plaintiff] then to make up for that deficient [sic] in his life. He wants her to give him all this information . . . and she can't do enough." According to the LGAL, defendant's involvement at the school was harmful to the children. Defendant was at the school 44 days out of 170 days for lunch, recess, going to the library, or assisting with an activity. Defendant also participated in boy scouts and martial arts with the children.

Defendant testified that the current schedule was created based on the parties' work schedules at the time, the fact that the children were not in school, and further that the children did not have many activities. Defendant believed that as their schedules changed and the children got older and involved in more activities, the parenting time schedule could be modified. The judgment of divorce indicated that a changing of defendant's work schedule was a basis to revisit the parenting time schedule.

Defendant is a pharmacist. He no longer works eight consecutive days of 10-hour shifts. He now works primarily from 7:00 a.m. to 3:15 p.m. Defendant also works the second shift, from 2:00 p.m. to 10:00 p.m., three or four times a month. When defendant has to leave for work in the morning, his sister assists in getting the children off to school. During the first and fourth marking periods, the children get out of school at 3:05 p.m. and go to daycare at the school for a short period of time. During the second and third marking periods, the children get out of school at 3:35 p.m. The children have become more involved in activities such as soccer, martial arts, cub scouts, football, and baseball.

Defendant believed the current parenting time schedule was burdensome on the children. He testified that some days it was difficult to fit in the children's activities, homework, and baths. Defendant testified that items got left at the other party's house. Defendant requested week on/week off parenting time because AM told defendant that he wanted week on/week off parenting time. The parties now live approximately 10 minutes apart. Defendant lives approximately five minutes from the school and plaintiff lives approximately 15 minutes from the school.

Defendant testified to three disputes with plaintiff over the children that resulted in plaintiff calling the police to remove defendant from her home. The children were present for both incidents.

Defendant did not believe that the LGAL's proposed parenting time schedule would allow him to have daily interaction with the children or help with their homework. Defendant volunteers at the school to help with recess and lunch on the days he is not working. Defendant also volunteers, at the teacher's request, in the library and for field trips. Other parents also volunteer for lunch and recess. The school requests volunteers for various activities. Defendant has assisted with spirit wear, book fairs, in the classroom, in the library, recess, coaching, the carnival, the ice cream social, and field trips. The school requests 10 hours of volunteer time or the payment of a stipend.

Defendant agreed that there was a lack of communication between him and plaintiff. Plaintiff did not respond to his telephone calls, text messages, and emails. Defendant stated that he never threatened plaintiff, although both parties had raised their voices. Defendant has concerns with plaintiff's parenting, including that: (1) the children sleep in the same bed as her, (2) she has pictures of nude women hanging in her house, (3) she posts photographs of the children on Facebook, and (4) she allows the children to ride their bicycles around the block, in the street, without supervision.

Defendant stated that plaintiff did not agree to one of the children receiving allergy testing. He stated that there have been only two instances when plaintiff called and was unable to speak with the children. Defendant testified that his current home is in better condition than the previous home. During their arguments, plaintiff has told defendant, "you like men, I like women," and told the children that "dad doesn't think he's your father." Defendant testified that the children have been told not to answer the phone when he calls. Defendant has gone a week without hearing from the children.

Plaintiff testified that when defendant speaks to her "his voice is pressured, escalates to level of loudness and . . . is usually mean." Plaintiff and defendant are not able to discuss important decisions about the children and agree about what is best for the children. Defendant never contacted plaintiff about signing AM up for football and did not get her agreement to sign up the children for other activities. Plaintiff stated that there have been more than two occasions that she has been unable to speak with the children while they were with defendant. She testified that when the children are with plaintiff and defendant calls and no one answers, he will keep calling the land line, plaintiff's cell phone, and the children's cell phone.

Defendant takes the children to martial arts on the days plaintiff is supposed to get the children back at 6:00 p.m., even though she has asked him not to do so. Plaintiff testified that after class, defendant has "a long drawn out goodbye," and then instructs her on what she needs to do in order to be a good mother. Sometimes defendant then calls them while they are on the way home or when they get home.

Plaintiff stated that she has called the police five times in the past six years. On one occasion, defendant threw something at plaintiff. On another occasion, defendant met plaintiff to drop off the children to her and then followed her, yelling at her. On a third occasion, defendant

spit at plaintiff. The children witnessed these incidents. Defendant called plaintiff names and attacked her personal appearance. Each time the police came, they instructed defendant to leave.

Plaintiff stated that she tried to trade in her van, but needed defendant's signature on the title. He refused to sign because he did not believe the vehicle she was getting was safe.

In the spring of 2013, the family attended a sports banquet and defendant sat with AM at a table despite the fact that the other children were sitting together. AM hid in the bathroom during most of the presentation. AM also hid in the bathroom during a football practice that defendant was coaching. Defendant volunteered to be the football coach, but was subsequently removed from the position. Plaintiff stated that she believes that the children repeat derogatory comments defendant has said about plaintiff's car, bedding, clothing, cooking, and yard. Plaintiff admitted that she has probably said derogative things about what was going on at defendant's house.

Defendant kept the marital home in the divorce and lived there until the fall of 2012. Defendant said he was walking away from the house and was not going to pay the mortgage. Plaintiff testified that the house was filthy and unsafe and plaintiff considered calling Child Protective Services (CPS). She testified that defendant has "hoarding [sic] tendencies" and did not repair or maintain things. There was mouse feces, moldy bread, rotten fruit, bugs, and clutter at the previous home.

Plaintiff is a nurse practitioner. Plaintiff works from 8:00 a.m. to 4:30 p.m. She is a member of the parent teacher organization (PTO). In the fall of 2012, plaintiff took off work to attend AM's field trip. When she arrived, defendant had already left with AM and his friends, so plaintiff had to drive other children.

During the parties' marriage, defendant was prescribed an anti-depressant. Plaintiff did not believe RM had allergies and believed he was mimicking defendant when he made noises with his throat. Plaintiff did not refuse to have RM allergy tested, but told defendant that she needed to think about it. Plaintiff testified that defendant believes he has health issues that doctors do not confirm, and "then he projects them on the children." Defendant has taken the children to several specialists and plaintiff asked the pediatrician's office not to send the children to every specialist that defendant requests. Plaintiff attends counseling. Plaintiff believes defendant has anger issues, is controlling, and interferes with the children's social development.

The children do well in school, have near perfect attendance, and are healthy. Defendant signed up the children for kuk sool won, but she is currently in agreement regarding their involvement. Although defendant signed up AM to play football without plaintiff's consent, plaintiff went to watch and support the team. Plaintiff told defendant that AM did not enjoy football and he no longer plays. Defendant did not force AM to continue, but, at that time, defendant had already been removed as the coach. Plaintiff opined that AM no longer plays soccer because he fears defendant being the coach. Before a baseball game, plaintiff expressed her dissatisfaction with defendant being the coach in front of the other parents and possibly AM. Plaintiff testified that defendant made AM so upset about baseball that he pretended to be sick for two days before a game and cried on the way there, begging plaintiff not to make him play. Plaintiff was concerned about baseball because defendant tried to make AM play right-handed

and without his glasses. Plaintiff testified that defendant finds an excuse to bring something over to plaintiff's house almost every day. Defendant has signed the children out of after school care on plaintiff's days. Plaintiff denied telling the children that defendant did not believe he was their father. Plaintiff admitted to saying things about defendant on Facebook.

On October 17, 2013, the trial court stated its opinion and findings of fact. The trial court found that an established custodial environment existed with both parties and that, in order to change custody, plaintiff was required to show that the change was in the children's best interest by clear and convincing evidence. The trial court found that there was proper cause or a change of circumstances to change custody based on the parties' disagreements. It found that defendant was controlling, excessively involved in the children's day to day activities, and unable to co-parent. The trial court also found that there was increased animosity, disputes regarding school and medical care, police involvement, and inability to communicate. With regard to the best interest factors, the trial court found that many factors favored the parties equally and six factors favored plaintiff. The trial court concluded that there was clear and convincing evidence to change custody and awarded plaintiff sole legal custody. The trial court agreed with the LGAL's recommendation regarding parenting time. It ordered that defendant have parenting time on alternate weekends from Thursday after school to Monday morning during the school year and alternate weeks in the summer. The trial court also ordered that RM attend counseling. On November 18, 2013, the trial court entered an order amending the judgment of divorce consistent with its opinion and findings.

## II. PROPER CAUSE OR CHANGE OF CIRCUMSTANCES

Defendant contends that there was not proper cause or a change of circumstances to modify custody.<sup>1</sup> We disagree.

This Court reviews a trial court's determination regarding whether a party has demonstrated proper cause or a change of circumstances under the great weight of the evidence standard. Under the great weight of the evidence standard, this Court defers to the trial court's findings of fact unless the trial court's findings clearly preponderate in the opposite direction. [*Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009) (citations and internal quotation marks omitted).]

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<sup>1</sup> We note that, in his motion to change parenting time, defendant argued that there was a change of circumstances. Plaintiff suggests that defendant admitted that there was a change of circumstances. However, this Court has held "that a more expansive definition of 'proper cause' or 'change of circumstances' is appropriate for determinations regarding parenting time when a modification in parenting time does not alter the established custodial environment." *Shade v Wright*, 291 Mich App 17, 28; 805 NW2d 1 (2010). Given the more expansive definition of change of circumstances for modifications of parenting time, a change of circumstances may be sufficient to modify parenting time, but not custody; accordingly, defendant did not make a contrary argument below.

“A trial court may only consider a change of custody if the movant establishes proper cause or a change in circumstances.” *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011).

To establish proper cause, the moving party must establish by a preponderance of the evidence an appropriate ground that would justify the trial court’s taking action. Appropriate grounds should include at least one of the 12 statutory best-interest factors and must concern matters that have or could have a significant effect on the child’s life. [*Mitchell v Mitchell*, 296 Mich App 513, 517; 823 NW2d 153 (2012) (citations omitted).]

[T]o establish a “change of circumstances,” a movant must prove that, since the entry of the last custody order, the conditions surrounding 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 must be at least some evidence that the material changes have had or will almost certainly have an effect on the child. [*Vodvarka v Grasmeyer*, 259 Mich App 499, 513-514; 675 NW2d 847 (2003) (emphasis in original).]

“[E]vidence of the circumstances existing at the time of and before entry of the prior custody order will be relevant for comparison purposes, but the change of circumstances must have occurred *after* entry of the last custody order.” *Id.* at 514 (emphasis in original).

In *Dailey v Kloenhamer*, 291 Mich App 660, 666; 811 NW2d 501 (2011), this Court stated:

The record demonstrates that the parties’ disagreements have escalated and expanded to topics that could have a significant effect on the child’s well-being. The parties disagree over the proper educational course for the child. More significantly, since the date of the last custody order, the parties have continued to disagree about the child’s medical treatment. Plaintiff scheduled an appointment at Mott for a pulmonary function test without defendant’s knowledge, but defendant opposed the child’s going to Mott and filed a motion to prevent the test. Later, the parties were unable to agree on when and how to wean the child from his asthma medications. Additionally, defendant wished to proceed with the allergist’s recommendation of a skin test for the child, but plaintiff opposed the test absent express instructions from the Mott physician. The parties’ recurrent disagreements delayed the child’s medical treatment; further delay could have a detrimental effect on the child’s well-being. These medical delays are directly relevant to the best-interest factor set forth in MCL 722.23(c) (capacity and disposition to provide the child with medical care). Given these facts, it was not against the great weight of the evidence for the circuit court to have determined that either proper cause or a change of circumstances existed to revisit the custody decision.

The trial court found that there was proper cause or a change of circumstances to modify custody. The trial court relied on *Dailey* and found that it applied. It found that plaintiff was no longer willing to acquiesce to defendant and the parties were unable to make decisions together. The trial court noted the parties' increased animosity, recent disputes regarding school and medical care, increased level of police involvement, and the parties' inability to communicate. Defendant argues that plaintiff created the dispute regarding school and withdrew her motion, and the only medical issue was with regard to allergy testing. He argues there was no effect on the children's well-being.

The trial court's finding that there was proper cause or a change of circumstances to revisit the custody decision was not against the great weight of the evidence. See *Corporan*, 282 Mich App at 605. The LGAL testified that the parties disagreed on "just about everything," including activities, school, and when projects should be completed. Although plaintiff indicated that she agreed to the children attending St. John Vianney for the 2013-2014 school year, this was only because the children had already started. Plaintiff testified that she did, in fact, have concerns about the school. The parties are also unable to communicate regarding homework. Plaintiff called the police approximately five times in the past six years during disputes with defendant. Some of these incidents involved domestic violence, including defendant throwing an item at plaintiff and spitting at her. The children have been present and witnessed the police arriving. The parties disagreed on medical issues, including whether the children should visit specialists and receive allergy testing. Similar to *Dailey*, 291 Mich App at 666, "the parties' disagreements have escalated and expanded to topics that could have a significant effect on the [children]'s well-being." Although the children are doing well in school and are generally healthy, the parties' disagreements regarding school and medical issues, arguments resulting in the police being called in front of the children, and lack of communication could have a significant effect on the children's well-being. These issues also relate to best interest factors (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 his 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), and (k) (domestic violence). Accordingly, there was proper cause or a change of circumstances sufficient to consider whether to modify custody.

### III. CHANGE OF CUSTODY

Next, defendant contends that there was not clear and convincing evidence that a change of custody was in the children's best interest. We disagree.

MCL 722.28 provides that 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. Our Supreme Court has explained that MCL 722.28 distinguishes among three types of findings and assigns standards of review to each. Findings of fact, such as the trial court's findings on the statutory best-interest factors, are reviewed under the great weight of the evidence standard. Discretionary rulings, such as to whom custody is

awarded, are reviewed for an abuse of discretion. An abuse of discretion exists when the trial court's decision is palpably and grossly violative of fact and logic. . . . Finally, clear legal error occurs when a court incorrectly chooses, interprets, or applies the law. [*Dailey*, 291 Mich App at 664-665 (citations and internal quotation marks omitted).]

#### A. BEST INTEREST FACTORS

Defendant disputes the trial court's findings that factors (b), (d), (g), (j), (k), and (l) favored plaintiff.

##### 1. FACTOR (b)

Factor (b) is “[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.” MCL 722.23(b). The trial court found that the parties agreed to raising the children in the Catholic faith, but did not agree regarding whether the children should attend Catholic school or public school. The trial court also found that both parties were involved in the children's education, but defendant's involvement was inappropriate, he was at the school an excessive amount, and he did not realize that the children needed to develop social relationships. Accordingly, with regard to making appropriate decisions and providing guidance, the trial court found that this factor favored plaintiff. Defendant argues that an expert did not testify that defendant's conduct interfered with the children's development of social relationships, there was evidence that the children had friends and were doing well, the children expressed no problems at school, and only plaintiff complained about his involvement at the school.

There is no requirement that the trial court rely on expert testimony in considering factor (b) and the parties' capacity and disposition to provide guidance. The trial court properly relied on the testimony at trial. Although neither child expressed concern with social functions, making friends, or defendant's involvement at school, and the school solicited volunteers, the LGAL testified that defendant was at the school 44 days out of 170 days for lunch, recess, going to the library, or assisting with an activity, and his behavior was “likely obsessive.” Plaintiff testified regarding two incidents, involving defendant, in which AM hid. She also testified that AM did not enjoy when defendant coached his soccer team and he no longer wanted to play soccer. Plaintiff testified that she believes defendant interferes with the children's social development. The trial court's finding that this factor favored plaintiff was not against the great weight of the evidence. See *Dailey*, 291 Mich App at 664.

##### 2. FACTOR (d)

Factor (d) is “[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.” MCL 722.23(d). The trial court found that defendant's previous home was dirty and unsafe and defendant provided no testimony regarding his current home. The trial court noted that plaintiff never called CPS, but the trial court questioned whether defendant's environment was satisfactory. The trial court found that this factor favored plaintiff. Defendant argues that the trial court used the condition of his previous

home against him, which was not relevant, and that he did testify that his current home was in much better condition.

Plaintiff testified that defendant's previous home was dirty and unsafe. Contrary to the trial court's finding, defendant did testify that his current home was in much better condition. Defendant did not, however, present any photographs or other witness testimony regarding his new home. Nonetheless, defendant had only lived in the new home for approximately one year. Thus, the children had lived with defendant in a satisfactory environment for, at most, one year out of the last six years. Accordingly, the trial court's finding that this factor favored plaintiff was not against the great weight of the evidence. See *Dailey*, 291 Mich App at 664.

### 3. FACTOR (g)

Factor (g) is "[t]he mental and physical health of the parties involved." MCL 722.23(g). The trial court found that plaintiff testified that defendant has "hoarding [sic] tendencies," was prescribed antidepressants, and was obsessive and controlling of her parenting time. The trial court noted that plaintiff was seeing a therapist and found that it would be beneficial for defendant to also see a therapist, but defendant did not recognize that he has a problem. The trial court found that this factor favored plaintiff. Defendant argues that an expert did not testify that he has mental health issues and it was plaintiff that had mental health issues.

Again, there is no requirement for an expert's opinion. The trial court properly relied on plaintiff's testimony that defendant had hoarding tendencies, was prescribed an antidepressant, and was controlling and interfered with the children's social development. Blankenship also testified that defendant was "likely obsessive." Although plaintiff admitted attending counseling, there was no indication that she had any specific mental health issues. Also, plaintiff's conduct suggested that she admitted having a problem and was seeking help, unlike defendant. The trial court's finding that this factor favored plaintiff was not against the great weight of the evidence. See *Dailey*, 291 Mich App at 664.

### 4. FACTOR (j)

Factor (j) is "[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." MCL 722.23(j). The trial court found that defendant degrades plaintiff in front of the children, is abusive, controlling, and disrespectful, and interferes with plaintiff's parenting time. The trial court found that this factor favored plaintiff. Defendant argues that the trial court ignored plaintiff's abusive behavior and that this factor was, at best, equal.

Defendant testified that both parties raised their voices. He testified that plaintiff told the children that defendant did not think he was their father and told defendant "you like men." Plaintiff denied telling the children that defendant did not think he was their father, but admitted challenging defendant's "sexual proclivities," expressing her disappointment with defendant being the coach in front of the other parents, and possibly AM, and saying derogatory things about what goes on in defendant's home. Defendant also believed that the children were told not to answer his calls. Nonetheless, there was significantly more evidence of defendant's

controlling plaintiff, disrespecting her, and interfering with her parenting time. Blankenship testified that “[defendant] wants to be involved in everything and [plaintiff] wants to have her independence and manage her time in her household and [defendant] sort of wanted to operate like they’re still married.” Plaintiff testified that defendant calls multiple times while she has the children and finds an excuse to bring something to her house almost every day. Plaintiff testified that defendant yells at her, threw something at her, spit at her, calls her names, attacks her personal appearance, and has tried to take the children from afterschool care on her parenting time days. Plaintiff testified that defendant has anger issues, is controlling, and interferes with the children’s social development. She testified that defendant instructs her on how to care for the children on her time. She also believes that the children repeat derogatory comments defendant has said about plaintiff’s car, bedding, clothing, cooking, and yard. The trial court’s finding that this factor favored plaintiff was not against the great weight of the evidence. See *Dailey*, 291 Mich App at 664.

#### 5. FACTOR (k)

Factor (k) is “[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child.” MCL 722.23(k). The trial court found that defendant was controlling and, although he may not have physically harmed plaintiff, his statements and attempts to control her constituted domestic violence. The trial court found that this factor favored plaintiff. Defendant argues that the police told both parties that they needed to learn to communicate, he never threatened plaintiff, he was never arrested, they both raised their voices, and plaintiff admitting saying inappropriate things.

There is no requirement that defendant have threatened plaintiff or been arrested in order for the trial court to find that this factor favors plaintiff. Although there was evidence that both parties raised their voices and said inappropriate things, defendant also spit at plaintiff and threw something at her. There was also evidence of his controlling behavior. The trial court’s finding that this factor favored plaintiff was not against the great weight of the evidence. See *Dailey*, 291 Mich App at 664.

#### 6. FACTOR (l)

Factor (l) is “[a]ny other factor considered by the court to be relevant to a particular child custody dispute.” MCL 722.23(l). The trial court found that the parties were unable to work together and defendant did not appreciate plaintiff’s ability and right to parent. The trial court found that defendant imposed on plaintiff’s parenting time and was controlling. Defendant argues that the parties agreed on many issues, including: (1) the children attending St. John Vianney and being raised Catholic, (2) the children being involved in martial arts, (3) AM signing up for and then stopping football, (4) the payment of tuition, and (5) RM attending acting classes.

The record shows that the parties did not actually agree on all of the issues defendant cites. With regard to schooling, the parties did initially agree that the children would be raised Catholic and sent to St. John Vianney, but plaintiff subsequently had concerns with the school and wanted to discuss other options. With regard to martial arts, the parties agreed that the children should be involved, but they disagreed regarding which days to attend. With regard to

football, plaintiff testified that defendant did not oppose AM stopping. However, she also testified that defendant signed up AM without consulting her, although she did not object. With regard to tuition, defendant wanted plaintiff to pay half, but she refused and defendant ultimately agreed to pay. With regard to acting classes, the parties both attended an informational session, but had not yet agreed that RM would be signed up. Moreover, there were numerous other issues on which the parties did not agree, including homework, projects, baseball, and medical issues. There was evidence that defendant would not compromise and imposed upon and interfered with plaintiff's parenting. The trial court's finding that this factor favored plaintiff was not against the great weight of the evidence. See *Dailey*, 291 Mich App at 664.

## B. CUSTODY DETERMINATION

The trial court found that there was clear and convincing evidence to change custody and awarded sole legal custody to plaintiff. Given that six factors favored plaintiff, no factors favored defendant, and the remaining factors were equal, the trial court's finding that there was clear and convincing evidence that the change of custody was in the children's best interest was not against the great weight of the evidence. See *Dailey*, 291 Mich App at 664. The trial court thus did not abuse its discretion in awarding sole legal custody to plaintiff. See *id.*

## III. ORDER FOR RM TO ATTEND COUNSELING

Finally, defendant contends that the trial court failed to make sufficient factual findings and conclusions of law to order that RM attend counseling. We disagree.

MCL 722.28 provides that 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. Our Supreme Court has explained that MCL 722.28 distinguishes among three types of findings and assigns standards of review to each. Findings of fact, such as the trial court's findings on the statutory best-interest factors, are reviewed under the great weight of the evidence standard. Discretionary rulings, such as to whom custody is awarded, are reviewed for an abuse of discretion. An abuse of discretion exists when the trial court's decision is palpably and grossly violative of fact and logic. . . . Finally, clear legal error occurs when a court incorrectly chooses, interprets, or applies the law. [*Dailey*, 291 Mich App at 664-665 (citations and internal quotation marks omitted).]

MCR 2.517(A)(1) provides: "In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." The trial court found that RM was sensitive and ordered that he attend counseling. This finding was supported by the LGAL's testimony that RM was very sensitive, did not want to talk about any problems, and did not want to hurt plaintiff's feelings. Accordingly, the trial court made sufficient factual findings, which were not against the great weight of the evidence. See *Dailey*, 291 Mich App at 664. Further, the trial court's decision to order that RM attend counseling was permitted under MCL 722.27(1)(d), which allows the trial court to utilize community resources in behavior sciences in the

investigation and study of custody disputes, and MCL 722.27(1)(e), which allows the trial court to take any action considered to be necessary in a particular child custody dispute. Also, under MCL 552.17(1), the trial court is permitted to “revise and alter a judgment concerning the care, custody, maintenance, and support of some or all of the children, as the circumstances of the parents and the benefit of the children require.” Accordingly, the trial court did not commit clear legal error or abuse its discretion in ordering RM to attend counseling. See *Dailey*, 291 Mich App at 664-665.

Affirmed.

/s/ Kathleen Jansen

/s/ Christopher M. Murray

/s/ Mark T. Boonstra