

STATE OF MICHIGAN
COURT OF APPEALS

CINDY LOU CONTE,

Plaintiff-Appellant,

v

PAUL JAMES CONTE,

Defendant-Appellee.

UNPUBLISHED

June 30, 1998

No. 206850

Macomb Circuit Court

LC No. 95-001792 DM

Before: Griffin, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiff appeals the circuit court order granting custody of the parties' minor child to defendant. We affirm.

To expedite the resolution of a child custody dispute by prompt and final adjudication, we affirm all orders and judgments of the lower court on appeal unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue. MCL 722.28; MSA 25.312(8), *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). Findings of fact are to be reviewed under the "great weight" standard, discretionary rulings are to be reviewed for "abuse of discretion", and questions of law for "clear legal error". *Id.*

Here, contrary to plaintiff's claim on appeal, it is abundantly clear from the lower court record that the consent judgment of divorce did not provide a final custody order and that an interim order of custody was entered until the custody issue was resolved. Further, the trial court specifically and clearly found that there was no established custodial environment in this case, and the evidence of frequent changes in the child's physical custody supports that finding.

Where, as here, no established custodial environment exists, the trial court may modify a custody order upon a showing by a preponderance of the evidence that the change is in the child's best interest. *Hayes v Hayes*, 209 Mich App 385, 387; 532 NW2d 190 (1995). The trial court's determination regarding best interest is made by weighing the "sum total" of twelve statutory factors. MCL 722.23; MSA 25.312(3), *Ireland v Smith*, 214 Mich App 235, 243; 542 NW2d 344 (1995),

modified 451 Mich 457 (1996). However, the court need not comment on every matter

in evidence or declare acceptance or rejection of every proposition argued. *Fletcher v Fletcher*, 447 Mich 871, 883, 900; 526 NW2d 889 (1994). The trial court's findings in this case were adequate.

Plaintiff contends that the trial court improperly used the Friend of the Court report as evidence. The statutorily authorized report and recommendation of the Friend of the Court are not admissible as evidence at a custody hearing unless both parties agree to admit the evidence. *Duperon v Duperon*, 175 Mich App 77, 79; 437 NW2d 318 (1989). However, even if not admitted as competent evidence, the report may be used by the trial court as an aid to understanding the issues to be resolved; and it may be used to establish a background and context for the proceedings. *Id.* The Friend of the Court report was appropriately used in this case.

There is no merit to plaintiff's claim that the trial court erred in its findings on each of the statutory factors. The trial court held a number of hearings in this matter, including three days of evidentiary hearings. Although the trial court's findings are concise, they are not contrary to the evidence. We find no abuse of discretion or clear legal error on a major issue in this case. *Fletcher, supra.*

Affirmed.

/s/ Richard Allen Griffin

/s/ Roman S. Gibbs

/s/ Michael J. Talbot