STATE OF MICHIGAN

COURT OF APPEALS

JEFFREY M. SNYDER,

Plaintiff-Appellee,

v

JESSICA M. SNYDER,

Defendant-Appellant.

UNPUBLISHED
January 2, 2014

No. 314832
Oakland Circuit Court
Family Division
LC No. 09-763441-DM

Before: WILDER, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right the order granting plaintiff's motion to modify custody and parenting time of the parties' minor children. We affirm.

Defendant first argues that the Oakland Circuit Court lacked personal jurisdiction over her and lacked jurisdiction to hear the motion. A challenge to personal jurisdiction must "be raised in a party's first [summary-disposition] motion . . . or in the party's responsive pleading, whichever is filed first, or [it is] waived." MCR 2.111(F)(2); *Robert A Hansen Family Trust v FGH Industries, LLC*, 279 Mich App 468, 477 n 7; 760 NW2d 526 (2008). Defendant did not file an answer or other pleading in response to plaintiff's initial motion to change custody. She waived her challenge to the Oakland Circuit Court's personal jurisdiction over her when she failed to raise the issue in her brief (which she filed in propria persona after she objected to the referee's recommendation concerning plaintiff's motion), and when she submitted to the circuit's court jurisdiction in the parties' divorce action. "[F]or purposes of personal jurisdiction any subsequent action based on the original judgment is deemed to be a continuation of the original action." *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 459; 674 NW2d 731 (2003) (internal quotations and punctuation omitted). See also *Ewing v Bolden*, 194 Mich App 95, 100-101; 486 NW2d 96 (1992) (holding that the circuit court retained personal jurisdiction over the defendant father to enforce a child-support obligation when that court issued the original judgment of divorce).

The assertion that a court lacks subject-matter jurisdiction "may be raised at any time and the parties to an action cannot confer jurisdiction by their conduct or action nor can they waive the defense by not raising it." MCR 2.116(D)(3); *Hillsdale Co Senior Services, Inc v Hillsdale Co*, 494 Mich 46, 51 n 3; 832 NW2d 728 (2013). "Subject-matter jurisdiction is not subject to

waiver because it concerns a court's abstract power to try a case of the kind or character of the one pending and is not dependent on the particular facts of the case." *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 204; 631 NW2d 733 (2001)(internal quotation omitted). "Whether a court has subject-matter jurisdiction is a question of law reviewed de novo." *Hillsdale Co Senior Services, Inc*, 494 Mich at 51.

For a circuit court to have subject-matter jurisdiction over a divorce proceeding in Michigan, either the plaintiff or defendant must have "resided in the county in which the complaint is filed for 10 days immediately preceding the filing of the complaint." MCL 552.9(1); *Kar v Nanda*, 291 Mich App 284, 287; 805 NW2d 609 (2011). "Once a circuit court obtains jurisdiction over divorce proceedings, it retains that jurisdiction over custody and visitation matters until the child attains the age of 18." *Porter v Porter*, 285 Mich App 450, 462; 776 NW2d 377 (2009).

Plaintiff filed a complaint for divorce asserting that he "has been a resident of the County of Oakland for more than ten (10) days." At no point during the divorce proceedings nor in preparation for the hearing that resulted in this appeal did defendant contest this fact; to the contrary, her answer admitted it. To the extent defendant complains that the motion was heard in the incorrect venue, "the trial court which granted the divorce had continuing jurisdiction and venue" over this custody dispute. See *Eigner v Eigner*, 79 Mich App 189, 197-198; 261 NW2d 254 (1977) (holding that the trial court which granted the divorce had continuing jurisdiction and venue over children of divorced parents and the decrees concerning the custody, care and maintenance of such children). Defendant's challenges to both personal and subject-matter jurisdiction thus fail.

Defendant next argues, in several subarguments, that the trial court erred when it granted plaintiff's motion to change custody. We disagree.

Custody orders "shall be affirmed 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; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). Under this standard, the trial court's factual determination will be affirmed unless the factual determination evidence clearly preponderates in the opposite direction. *Pierron*, 486 Mich at 85. "The trial court's ultimate custody decision is reviewed for an abuse of discretion." *McIntosh v McIntosh*, 282 Mich App 471, 475; 768 NW2d 325 (2009). "An abuse of discretion exists when the trial court's decision is palpably and grossly violative of fact and logic." *Dailey v Kloenhamer*, 291 Mich App 660, 664-665; 811 NW2d 501 (2011) (internal quotations omitted). Appellate review of parenting-time orders is de novo but subject to the restrictions set by MCL 722.28. *Gaudreau v Kelly*, 298 Mich App 148, 156; 826 NW2d 164 (2012). Questions of law are reviewed for clear error, and a clear legal error occurs when the trial court "incorrectly chooses, interprets, or applies the law." *Dailey*, 291 Mich App at 665.

A party seeking a change in custody must first establish proper cause or a change of circumstances. MCL 722.27(1)(c); *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003). The moving party must show proper cause or a change in circumstances since entry of the last custody order, by a preponderance of the evidence, as a precondition to the trial court's reconsideration of the established custodial environment and best-interests factors.

Vodvarka, 259 Mich App at 508-509, 514. "[P]roper cause means one or more appropriate grounds that have or could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken." *Id.* at 511. A sufficient demonstration of a change in circumstances requires the moving party to "demonstrate something more than the normal life changes (both good or 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." *Killingbeck v Killingbeck*, 269 Mich App 132, 145 n 5; 711 NW2d 759 (2005). If modification or amendment of a custody order would change the established custodial environment of a child, the moving party must present clear and convincing evidence that the change is in the best interests of the child. MCL 722.27(1)(c); *Vodvarka*, 259 Mich App at 508-509. "Above all, custody disputes are to be resolved in the child's best interests. Generally, a trial court determines the best interests of the child by weighing the twelve statutory factors outlined in MCL 722.23." *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001) (internal citation omitted).

Plaintiff filed a motion to change custody alleging that, since the consent judgment of divorce, defendant lost her job and may have been homeless, and that one of the minor children was repeatedly late for school. The trial court found that there was "proper cause" and "a change of circumstances" since the previous custody order because the minor children "had numerous moves. They have acted out, [and t]hey have mental health concerns." These findings were not against the great weight of the evidence, *Pierron*, 486 Mich at 85, and defendant does not challenge them on appeal. The trial court found that an established custodial environment existed with defendant and acknowledged that the burden was on plaintiff to demonstrate, by clear and convincing evidence, that modifying the minor children's custodial environment was in their best interests. It applied the statutory best-interests factors, MCL 722.23, finding that factors (b), (c), (d), (g), (h), and (j) favored plaintiff, and that factors (a), (e), (f), (i), and (k) favored neither party.

Defendant appears to challenge the trial court's findings on at least three of the best-interests factors. She argues that the minor children were "unrepresented and unheard," but this argument lacks merit because reversal is not required where the trial court fails to interview a child. And the child's preference, which the court is required to consider as factor (i),[1] would not overcome the weight of the other factors. *Treutle v Treutle*, 197 Mich App 690, 694-696; 495 NW2d 836 (1992).

Defendant also argues that the trial court "ignored and/or weighted to be insignificant" evidence of plaintiff's domestic abuse. MCL 722.23(k) provides that the court must consider "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." See *Kessler v Kessler*, 295 Mich App 54, 67; 811 NW2d 39 (2011) (interpreting MCL 722.23(k)). The judge found that this factor favored neither party:

[1] "The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference." MCL 722.23(i).

> K is the domestic violence factor, and I'm going to equally credit that one, as well. I recall the [personal protection order]. I recall the domestic violence allegations, and I think [plaintiff's attorney] is exactly right. There is not a pattern of domestic violence in this case. The parties certainly had an altercation. Again, I think [plaintiff's] conduct there was outrageous[;] nonetheless, I don't find that he is someone who is exercising the type of power and control that I would have concerns about regarding domestic violence. If anything, he's been restrained. He has . . . probably not come forward soon enough in this instance.

Rather than ignoring or diminishing the importance of this factor, the trial court examined the evidence, including plaintiff's guilty plea and probation stemming from an incident four years before the evidentiary hearing on plaintiff's motion, and was not concerned that plaintiff's behavior suggested a pattern of domestic violence. The trial court "may consider the relative weight of the factors as appropriate to the circumstances." *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006). Moreover, even if the trial court's finding on this factor were against the great weight of the evidence, the balance of the best-interests factors, none of which defendant specifically challenges, favored plaintiff.

Defendant next argues that there was no evidence to support plaintiff's claim that she was unemployed. At the evidentiary hearing, defendant testified that she worked at the Howell Nature Center and had been so employed for approximately nine months. Defendant testified that she earned $9.50 an hour and generally worked 10 to 20 hours per week, although she worked full time during the summer. Plaintiff testified that defendant stopped paying down the mortgage loan on the marital home because she was unemployed, and that defendant has had multiple jobs and multiple periods of time where she's been unemployed. In its findings for factor (c),[2] the trial court found that defendant "has not been consistently employed." It also found, in its analysis for factor (g),[3] that "[t]he fact that she is not able to work, [and] has gone from job to job . . . indicates that she is not capable of maintaining these children because of her own mental health needs." This Court defers to the trier of fact on questions of witness credibility and the weight of the evidence, *Drew v Cass Co*, 299 Mich App 495, 501-502; 830 NW2d 832 (2013), and, because the evidence did not "clearly preponderate[] in the other direction," the trial court's findings relating to defendant's employment were not against the great weight of the evidence, *Pierron*, 486 Mich at 85.

Defendant next argues that the trial court's expedited order for a de novo hearing deprived her of an opportunity to present evidence in her favor. "A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing and that resulted in a statement of findings and a recommended order by filing a written objection . . . ." MCR 3.215(E)(4); *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008). "The

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[2] "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." MCL 722.23(c).

[3] "The mental and physical health of the parties involved." MCL 722.23(g).

judicial hearing must be held within 21 days after the written objection is filed, unless the time is extended by the court for good cause." MCR 3.215(F)(1).

The de novo hearing on plaintiff's motion to change custody was requested by defendant herself when she objected to the referee's recommendation of joint physical custody with primary custody to plaintiff during the school year and defendant during the summer school break. Defendant specifically checked the box requesting a new hearing with the trial judge on her objection form. A December 5, 2012, scheduling order stated that the case would be "tried" on December 10, 2012. There is no record of defendant objecting to that date or requesting an adjournment and defendant has not offered the witnesses she would have presented on her behalf, or what testimony they would have provided, had she been afforded additional time before the evidentiary hearing. Further, defendant participated in the hearing by calling three witnesses and presenting her own testimony, had competent counsel, and had slightly more time—25 days—to prepare for the December 10, 2012, hearing from the filing of her statement of objection than the 21 days prescribed by MCR 3.215(F)(1). Thus, no relief is warranted.

Defendant next argues that the trial court's order that her parenting time be supervised violated her due-process rights. "Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents." MCL 722.27a(1); *Shade v Wright*, 291 Mich App 17, 31; 805 NW2d 1 (2010). "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 . . . [r]equirements that parenting time occur in the presence of a third person or agency." MCL 722.27a(8)(f). The trial judge ordered that defendant

> have supervised parenting time, and I want that to continue until she has begun to receive some mental health treatment, and I want a report before we will have unsupervised parenting time that she is in the kind of emotional state necessary to have these children. She needs to demonstrate the ability to maintain the house, to maintain her employment, and to receive treatment so that she can have a good relationship with the children.

Because defendant cites no applicable case law to support her argument that supervised parenting time implicated her due-process rights, she has waived that argument. "When a party merely announces a position and provides no authority to support it, we consider the issue waived." *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Next, defendant's argument that the trial court's order that she obtain mental-health counseling was "legally incorrect" lacks merit. The trial court's comments on the record demonstrate that, rather than a discrete order to seek treatment, the provision of the order requiring defendant to "obtain mental health counseling" was a condition precedent to defendant receiving unsupervised visitation with the minor children. A parenting-time order may contain "[a]ny . . . reasonable condition determined to be appropriate in the particular case." MCL 722.27a(8)(i). Given the record evidence of defendant's mental health issues, the trial court did not clearly err when it ordered her to seek mental-health counseling because it did not "incorrectly . . . interpret[] or appl[y] the law." *Dailey*, 291 Mich App at 665.

Finally, defendant argues that the trial court "exhibit[ed] a pattern of prejudice, behavior, and . . . adverse decisions against" her. "Judicial 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." *In re Contempt of Henry*, 282 Mich App 656, 680; 765 NW2d 44 (2009)(internal quotation omitted). Defendant failed to properly file a motion to disqualify the judge in the trial court, see MCR 2.003(D); *Kloian v Schwartz*, 272 Mich App 232, 244; 725 NW2d 671 (2006), and failed to provide specific examples of partiality that entitle her to relief, see MCR 7.212(C)(7); *Derderian v Genesys Health Care Systems*, 263 Mich App 364, 388; 689 NW2d 145 (2004) ("Facts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court."). For these reasons, her argument lacks merit.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto