STATE OF MICHIGAN

COURT OF APPEALS

ANDREW MEDFORD, Plaintiff-Appellee,	UNPUBLISHED April 19, 2018
v	No. 340554 Ottawa Circuit Court
SARAH VERKADE, Defendant-Appellant.	LC No. 16-083793-DP

Before: GLEICHER, P.J., and M. J. KELLY and CAMERON, JJ.

PER CURIAM.

This custody dispute involves the parties' minor child RV. Following a custody hearing, the trial court entered an opinion and order awarding full legal and primary physical custody of RV to plaintiff, Andrew Medford. The trial court also awarded parenting time to defendant, Sarah Verkade. Subsequently, Verkade moved for reconsideration of the custody order. The trial court denied the motion for reconsideration in part but held its ruling on reconsideration of legal custody in abeyance to allow the parties to supplement the record. The trial court ultimately denied Verkade's motion for reconsideration as to the issue of legal custody. Verkade now appeals by right. For the reasons stated in this opinion, we affirm the trial court's custody order with respect to physical and legal custody, reverse the trial court's order with respect to parenting time, and remand for a redetermination of parenting time.

I. CUSTODY DETERMINATION AND PARTING TIME

A. STANDARD OF REVIEW

An order resolving a child custody dispute "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." MCL 722.28. A factual finding is against the great weight of the evidence when "the evidence clearly preponderates in the opposite direction." *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994) (quotation marks omitted). We review a trial court's ruling on a motion for reconsideration for an abuse of discretion. *St John Macomb-Oakland Hosp v State Farm Mut Auto Ins Co*, 318 Mich App 256, 261; 896 NW2d 85 (2016). "An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Id.* (quotation marks and citation omitted). "A trial court necessarily abuses its discretion when it makes an error of law."

Ronnisch Constr Group, Inc v Lofts on the Nine, LLC, 499 Mich 544, 552; 886 NW2d 113 (2016).

B. ANALYSIS

The Child Custody Act, MCL 722.21 *et seq*., governs a trial court's custody determination. "To determine the best interests of the children in child custody cases, a trial court must consider all the factors delineated in MCL 722.23(a)-(*l*) applying the proper burden of proof." *Foskett v Foskett*, 247 Mich App 1, 9; 634 NW2d 363 (2001). A trial court's findings with respect to the best-interest factors "need not include consideration of every piece of evidence entered and argument raised by the parties." *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 452; 705 NW2d 144 (2005). "However, the record must be sufficient for this Court to determine whether the evidence clearly preponderates against the trial court's findings." *Id*. In this case, the trial court determined that there was no established custodial environment with either parent; Verkade does not challenge that finding. Accordingly, the trial court was required to apply the preponderance of the evidence standard in determining the best interests of RV. See *LaFleche v Ybarra*, 242 Mich App 692, 696; 619 NW2d 738 (2000).

1. BEST-INTEREST FACTORS

Verkade challenges the trial court's findings and conclusions with respect to best-interest factors (b), (c), (d), (f), (g), (h), (j), and (*l*). We address each in turn.

Factor (b) concerns 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." MCL 722.23(b). The trial court determined that this factor favored both parties equally, and the record supports the trial court's finding. The testimony of both parties showed that they loved RV, had affection for her, and could provide guidance and raise RV in her religion. Both parents wanted to be involved in RV's life, and they both took advantage of parenting time. The parties' families were also involved in RV's life. Finally, the record reflects that the parties attended church and brought RV to church. Thus, the trial court's finding on factor (b) was not against the great weight of the evidence.

Factor (c) concerns "[t]he 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). The trial court weighed this factor in favor of Medford, finding that he ensured that RV was caught-up on her vaccinations. Verkade argues that the trial court erred in weighing this factor because the court should have considered that the child's insurance—provided by the State of Michigan—did not cover the vaccinations, which suggests they were not necessary. However, the trial court considered the evidence that it found relevant with regard to this factor, and the record does not clearly preponderate in the opposite direction of that finding. Medford testified that he recently started his own business and grossed approximately $5,000 per month in earnings. He also testified that he had a health insurance plan that covered RV. He stated that in February 2017 when RV came to live with him, she had not received her "four-month and six-month vaccinations." Medford testified that RV's medical records indicated that the vaccinations were incomplete because they were not covered by MI-Child health insurance. Medford testified that

he brought RV to a medical provider to obtain the missing vaccinations. There was no other evidence to support Verkade's argument that the vaccinations may not have been vital or necessary. Instead, the trial court was free to consider this evidence in weighing the factor. Evidence that Medford ensured RV had the missing vaccinations was relevant to factor (c) and the trial court's finding was not against the great weight of the evidence.

Verkade next argues that the trial court should have considered that Medford did not pay all of his child support and that he recently started his own business. However, as noted above, in considering the best-interest factors, a trial court "need not include consideration of every piece of evidence entered and argument raised by the parties." *MacIntyre*, 267 Mich App at 452. Moreover, the trial court could have found that Medford's failure to pay child support was related to the multiple physical custody transitions when Verkade went in and out of jail. Additionally, the trial court could have found that the child support payments and Medford's new business were not indicative of Medford's ability to provide food, clothing, shelter, and medical care to RV in the future. Overall, the court's findings on factor (c) were not against the great weight of the evidence.

Next, factor (d) concerns "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(d). Verkade argues the trial court erred in weighing this factor in favor of Medford. However, the record showed that Verkade did not have a history of a stable living arrangement. She also has a criminal history that includes five felonies. The court also found that Verkade had spent 19 months in jail during the past four years. The record reflects that Verkade lived in six different places in the past five years, her marital home was foreclosed on, she was on probation, and she had 42 days remaining on her jail sentence. In contrast, Medford testified that he lived in Elkhart, Indiana, his hometown. He did not plan to leave Elkhart, and there was no evidence that he had a history of relocating or serving extended time in jail. On this record, the trial court's finding with respect to factor (d) was not against the great weight of the evidence.

Factor (f) concerns the "moral fitness of the parties involved." MCL 722.23(f). The trial court weighed this factor in favor of Medford, noting Verkade's extensive criminal history. A parent's "questionable conduct is relevant to factor f only if it is a type of conduct that necessarily has a significant influence on how one will function *as a parent.*" *Fletcher*, 447 Mich at 887. "Examples of such conduct include, but are not limited to, verbal abuse, drinking problems, driving record, physical or sexual abuse of children, and other illegal or offensive behaviors." *Berger v Berger*, 277 Mich App 700, 712-713; 747 NW2d 336 (2008) (quotation marks and citation omitted). "Trial courts must look to the parent-child relationship and the effect that the conduct at issue will have on that relationship." *Id*. at 713 (quotation marks and citation omitted). "Thus, under factor f, the issue is not who is the morally superior adult, but rather the parties' relative fitness to provide for their child, given the moral disposition of each party as demonstrated by individual conduct." *Id*. (quotation marks and citation omitted).

The trial court articulated Verkade's past criminal conduct and the effect that conduct would have on a parent-child relationship. The court found that Verkade had engaged in a pattern of conduct that involved stealing from employers. The trial court considered that this conduct reflected poorly on Verkade's judgment, which, in turn, shed light on "how is she evaluating what she does in her life in regard to her own needs as opposed to other people's

needs." This was appropriate conduct to consider for purposes of factor (f). Specifically, the record showed that Verkade was convicted of felonious conduct involving theft and attempted theft from her employers. Verkade engaged in this conduct when she had three daughters from a previous marriage. Her conduct allowed for an inference that she failed to consider the impact that her behavior would have on her children. Thus, Verkade's criminal conduct was relevant to her fitness to provide for RV because it concerned her fitness to function as a parent. Moreover, the trial court did not hold Verkade to a different standard than Medford. Instead, the trial court noted that both parents had issues of "moral fitness" that weighed against them, but it found that, on the whole record, the factor weighed slightly in favor of Medford. In sum, the trial court did not err in considering Verkade's past criminal conduct in weighing factor (f), and its findings were not against the great weight of the evidence.

Factor (g) concerns "[t]he mental and physical health of the parties involved." MCL 722.23(g). The trial court weighed this factor in favor of Medford, finding that Verkade admitted that she wrote to the circuit court in her criminal proceeding about a time when her counselor disused the issue of borderline personality disorder. Verkade argues that the trial court erred and abused its discretion in weighing this factor in favor of Medford. She contends that a counselor once discussed borderline personality disorder with her, but that there was never a diagnosis. We conclude, however, that the trial court did not err in weighing factor (g) in favor of Medford. At trial, Verkade referenced a letter she wrote to the circuit court in her criminal proceeding in which she stated that she discussed borderline personality disorder with her counselor. The trial court could reasonably infer that if the discussion concerning the borderline personality disorder was significant enough to write about in a letter to the court in the criminal proceeding, then it was an issue that should be considered in weighing factor (g). Therefore, the trial court's finding was not against the great weight of the evidence.

Factor (h) concerns the "home, school, and community record of the child." MCL 722.23(h). Verkade argues that the trial court erred by weighing this factor equally. We disagree. Medford called two witnesses who testified that they observed his interactions with RV. Both witnesses offered testimony that showed that RV was a healthy and happy child, which reflected positively on both parties. Accordingly, the record supported the trial court's weighing factor (h) evenly between both parents.

Factor (j), in relevant part, concerns "[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 both parties were "disadvantaged" by this factor and it did not weigh it in favor of either party. Verkade argues that the trial court did not create an adequate record with respect to its findings on this factor. Nevertheless, based on our review of the record, it is apparent that the trial court considered factor (j) and, given the court's awareness of the record, it found that neither parent was good at facilitating a parent-child relationship with the other parent. In doing so, the trial court complied with the statutory requirement to consider and evaluate the factor. See MCL 722.23. Moreover, the trial court's finding was not against the great weight of the evidence. The record showed that the parties were involved in disputes regarding exchanging RV, and neither party presented compelling evidence to show that they facilitated a relationship with the other parent. Consequently, the evidence did not support weighing this factor in favor of either party.

Finally, factor (*l*) concerns "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." MCL 722.23(*l*). The trial court made the following findings with respect to this factor:

> I am interested in the relationship between the defendant and her other children and the fact that she is not more aggressively pursuing a relationship with those kids, and I don't understand that and I fear that there's a lack of commitment there and I wonder if that could carry through with this child. Although she is showing interest in this child right now, for the long term and some of those kids are older for the long term what's going to happen to that relationship. That's another thing in my mind with regard to this child.

Verkade argues that the trial court erred in finding that she would become "bored" with RV. This argument lacks merit. This factor allows a trial court to consider "[a]ny other factor" that it deems relevant to the proceeding. MCL 722.23(*l*). In this case, the trial court deemed Verkade's relationship with her three older daughters to be relevant to the proceeding. This did not amount to error. The custody hearing took place on July 17, 2017. Verkade was released from jail in June 2017. Verkade testified that she was awarded three hours of parenting time with her daughters every week and that she last saw her daughters in January 2017. Verkade did not explain why she had not exercised parenting time with her daughters since January 2017 even though she was released from jail in June 2017. The trial court could have considered this reflective of Verkade's lack of commitment to building a strong relationship with her other children, which, in turn, was relevant to the custody determination in this proceeding. Therefore, we conclude that the trial court did not err in considering this factor.

In sum, the trial court findings with respect to factors (b), (c), (d), (f), (g), (h), (j), and (*l*) were not against the great weight of the evidence and the trial court did not otherwise abuse its discretion or commit clear legal error in considering the best-interest factors.

2. LEGAL CUSTODY

Next, Verkade argues that the trial court erred in awarding full legal custody to plaintiff. After the trial court made its findings on the best-interest factors, the court proceeded to award legal custody to plaintiff as follows:

> The parties would struggle if he has primary physical custody, the child's going to be in Elkhart, Indiana, for the foreseeable future so school and medical care issues will be difficult for the defendant to participate in. . . . But I'm going to award sole legal custody to the plaintiff because it doesn't make sense to have him with physical custody in Elkhart, Indiana, and have him have to check with somebody in the Grand Rapids area with regard to decisions like education, medical care, and religious decisions.

Following Verkade's motion for reconsideration, the trial court provided the parties an opportunity to supplement the record on the issue of legal custody regarding the parties' ability or inability to "communicate, cooperate, and agree regarding important decisions affecting the minor child would [sic] be helpful to the Court and might cast further light on this question."

Thereafter, the parties submitted additional documentation to the trial court. The bulk of Verkade's supplemental materials consisted of multiple pages of text messages sent between the parties regarding various issues involving RV.

Following the parties' offers of proof, the trial court denied defendant's motion for reconsideration, explaining as follows:

> First, the facts demonstrate that the best interest factors favor an award of sole legal custody to the plaintiff. Second, the facts show that the parties are unable to cooperate and generally agree on the important decisions involved in raising a child. Therefore, an award of joint legal custody would be unworkable and not in the minor child's best interests. For these reasons, as to the issue of legal custody, the Court denied defendant's motion for reconsideration, as defendant has failed to demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition must result from the correction of said error.

MCL 722.26a provides in relevant part:

> (1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:
>
> (a) The factors enumerated in [MCL 722.23].
>
> (b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

Verkade has not demonstrated that the trial court's findings of fact in relation to its decision regarding legal custody were against the great weight of the evidence or that the trial court committed a palpable abuse of discretion or a clear legal error in awarding legal custody to plaintiff. See MCL 722.28. As required by MCL 722.26a, the trial court considered whether awarding joint custody would be in RV's best interests. The trial court considered RV's geographic location in determining that Medford should have legal custody. It was reasonable for the trial court to conclude that awarding Medford legal custody was in RV's best interests. Given that he was awarded primary physical custody, it was reasonable for the trial court to conclude that also awarding him legal custody would be in RV's best interests. The trial court noted that the parties previously had difficulty communicating with each other, and the court could have concluded that awarding Medford legal custody would facilitate plaintiff's ability to quickly make important life decisions for RV, such as issues involving medical care and education. The court did not err in finding that this would be in RV's best interests. Additionally, in denying the motion for reconsideration, the trial court noted that the best-interest factors supported awarding legal custody to plaintiff. As discussed above, the trial court's findings on the best-interest factors were not against the great weight of the evidence.

3. PARENTING TIME

Next, Verkade argues that the trial court erred when it awarded her parenting time insufficient to establish a strong bond with RV. "[T]the focus of parenting time is to foster a strong relationship between the child and the child's parents." *Shade v Wright*, 291 Mich App 17, 29; 805 NW2d 1 (2010). MCL 722.27a(1) provides:

> 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. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.

To ensure that parenting-time orders foster a strong parent-child relationship, in addition to the best-interest factors set forth in MCL 722.23, MCL 722.27a(7) provides parenting-time factors that a court may consider when "determining the frequency, duration, and type of parenting time to be granted." In addition, the age of the minor child and the child's stage of development are important factors to take into consideration when crafting a parenting-time schedule. *Shade*, 291 Mich App at 30.

Here, the trial court entered a parenting-time order that limited Verkade's parenting time to every other weekend, three nonconsecutive weeks per year, and certain holidays. Apart from the three weeks and holidays, the order effectively limited her parenting time to four days per month. The trial court did not articulate how this parenting-time arrangement was in RV's best interests, and it did not take into consideration any of the parenting-time factors listed in MCL 722.27a(7). While the factors are not mandatory, the trial court did not articulate how the parenting-time arrangement was in RV's best interests or how the arrangement would foster a strong relationship between RV and Verkade. Further, the trial court did not consider any of the custody best-interest factors when it limited Verkade's parenting time to alternate weekends. The trial court did not take into consideration RV's age, her related stage of development, or how RV was at a formative stage of development in which parenting time is vital to establish a strong bond between parent and child. In addition, the trial court did not consider that RV had spent several months in Verkade's primary physical custody or how limiting RV's contact with Verkade to alternate weekends would continue and strengthen the bond that RV had established with Verkade. Indeed, there was no evidence to show that Verkade could not provide proper care, guidance, love, and affection for RV with expanded parenting time; rather, the evidence showed that RV was happy and healthy, which supported that both parents were providing proper care and guidance to the child.

In short, the trial court legally erred by entering its parenting-time order when it failed to articulate how its parenting-time order was in RV's best interests taking into consideration whether any of the parenting-time factors set forth in MCL 722.27a(7) were relevant to the instant proceeding. The trial court did not consider that the focus of any parenting-time order must be to "foster a strong relationship between the child and the child's parents." *Shade*, 291 Mich App at 29. Accordingly, we vacate the part of the trial court's custody order establishing

Verkade's parenting time and remand to the trial court for entry of a parenting-time order that complies with *Shade*, 291 Mich App at 29, and MCL 722.27a(1) and (7).

4. RECONSIDERATION

Finally, Verkade argues that the trial court erred by denying her motion for reconsideration of the court's order regarding physical custody, legal custody, and parenting time. MCR 2.119(F)(3) provides:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

As discussed above, the trial court did not err in applying the best-interest factors or in awarding Medford legal custody. In addition, the materials Verkade submitted to supplement the record do not support that the trial court committed a palpable error in awarding legal custody to Medford. Accordingly, the trial court did not abuse its discretion in denying reconsideration as to these two issues. However, with respect to the trial court's parenting-time order, as discussed above, the trial court erred as a matter of law in entering the parenting-time order, and reversal and remand is warranted on that issue. Accordingly, Verkade established that the trial court committed a palpable error in entering its parenting-time order and reconsideration was warranted.

III. CONCLUSION

The trial court did not err in applying the best-interest factors or in awarding Medford legal custody, and it did not abuse its discretion by denying reconsideration of those issues. The trial court did, however, err as a matter of law when awarding parenting time. We therefore remand for a redetermination of parenting time.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs, neither party having prevailed in full. MCR 7.219(A).

/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly
/s/ Thomas C. Cameron