STATE OF MICHIGAN

COURT OF APPEALS

JOSHUA DOUGLAS BROWN,

Plaintiff-Appellee,

v

SHARAYAH LAYNE BROWN, also known as SHARAYAH LAYNE WEINBERGER,

Defendant-Appellant.

UNPUBLISHED
November 27, 2018

No. 343493
Kent Circuit Court
LC No. 13-001652-DM

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

Defendant, Sharayah Layne Brown, appeals as of right the trial court's orders denying her motion to set aside the parenting-time schedule in the judgment of divorce.[1] We affirm.

I. BACKGROUND

Defendant and plaintiff, Joshua Douglas Brown, married in 2010. They had one child born in May 2012. Plaintiff filed a complaint for divorce in February 2013. In September 2013, the trial court issued the judgment of divorce, which granted the parties joint legal custody of the child, stated that the child would primarily reside with defendant, and provided for a gradual increase in parenting time for plaintiff. The parenting-time schedule began with parenting time for plaintiff on alternate weekends, starting on Saturday morning, and one weekday evening. Starting May 1, 2014, plaintiff's alternate weekends began on Friday evenings, he retained the weekday evening, and he would also receive two nonconsecutive weeks of parenting time each summer, set to increase to three nonconsecutive weeks starting May 1, 2016. Beginning May 1, 2018, the child was scheduled to spend alternate weeks with each parent with one midweek evening visit during the other parent's week, equally dividing the child's time with both parents.

[1] Plaintiff raises several jurisdictional challenges. We conclude that those challenges are without merit. We note that defendant's claim of appeal was timely filed from the trial court's April 2, 2018 order, which denied defendant's motion at issue in this appeal.

In November 2017, plaintiff filed a motion to modify parenting time, asking the trial court to accelerate the final increase in parenting time. The trial court ultimately denied that motion. Around the same time, defendant filed a motion to set aside the final increase in plaintiff's parenting time, arguing that the parenting-time provision in the judgment of divorce was invalid because the trial court did not consider whether the increase was in the best interests of the child. The trial court denied defendant's motion. Defendant appeals the denial of her motion to set aside the scheduled change in parenting time.

II. DISCUSSION

Defendant argues that the trial court erred by denying her motion to set aside the increase in parenting time contained in the judgment of divorce because that increase constituted a change of custody that necessitated a showing of proper cause or changed circumstances. Defendant further argues that the increase in plaintiff's parenting time in the judgment of divorce is invalid because it did not ask whether the modification is in the child's best interests. We disagree.

This Court applies "three standards of review in custody cases." *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000).

> The great weight of the evidence standard applies to all findings of fact. A trial court's findings . . . should be affirmed unless the evidence clearly preponderates in the opposite direction. An abuse of discretion standard applies to the trial court's discretionary rulings such as custody decisions. Questions of law are reviewed for clear legal error. A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law. [*Id*. (citations omitted).]

"The finding of the trial court concerning the validity of the parties' consent to a settlement agreement will not be overturned absent a finding of an abuse of discretion." *Rettig v Rettig*, 322 Mich App 750, 754; 912 NW2d 877 (2018) (quotation marks and citation omitted).

Our Supreme Court has held that a trial court must "ensure that the resolution of any custody dispute is in the best interests of the child." *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004). The Supreme Court qualified that holding when the parties have agreed to a certain custody arrangement:

> Our holding should not be interpreted, where the parties have agreed to a custody arrangement, to require the court to conduct a hearing or otherwise engage in intensive fact-finding. Our requirement under such circumstances is that the court satisfy itself concerning the best interests of the children. When the court signs the order, it indicates that it has done so. A judge signs an order only after profound deliberation and in the exercise of the judge's traditional broad discretion. [*Id*. at 192-193 (citations omitted).]

In this case, defendant challenged the parenting-time arrangement in the judgment of divorce. "[A] party seeking a change in custody [must] first establish proper cause or a change of circumstances . . . ." *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003). Defendant did not argue that circumstances had changed since the entry of the judgment of divorce that necessitated a change in custody, and the judgment of divorce contains the parties'

original agreement pertaining to custody and parenting time. Therefore, the standard for a change in custody does not apply to defendant's challenge. Rather, this case is indistinguishable from *Rettig*, 322 Mich App 750, in which this Court rejected a challenge to a valid judgment of divorce that included a custody and parenting-time provision.[2]

In this case, defendant does not challenge the validity of the judgment or divorce. Before the trial court entered the judgment of divorce in 2013, the parties participated in mediation, and they were both represented by counsel. At the settlement conference held on the record, the trial court admitted the parties' mediation agreement, which contained the provision regarding custody and parenting time, as a working exhibit. Both parties waived their right to trial, and both parties agreed to the inclusion of the mediation agreement in the judgment of divorce. By entering the judgment of divorce, the trial court signaled its understanding that the custody and parenting-time arrangement served the child's best interests. The trial judge, who entered the judgment of divorce and who presided over the current parenting-time dispute, confirmed his consideration of the child's best interests when he entered the judgment of divorce. The trial court stated that if it believed that there was a reason to go on the record to discuss the child's best interests, it would have done so. Further, defendant complied with the increases in plaintiff's parenting time without complaint for approximately four years. Defendant provided no reason to call into question her agreement to the judgment of divorce or the trial court's consideration of the child's best interests when it entered that judgment. Therefore, the trial court did not abuse its discretion by denying defendant's motion to set aside the parenting-time provision in the judgment of divorce.

We affirm.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering

[2] Citing the judgment of divorce in *Rettig*, defendant argues that *Rettig* is distinguishable because the judgment of divorce in *Rettig* provided for reviews of parenting time and custody to protect the child's best interests and did not provide for an automatic change in custody. *Rettig*, 322 Mich App at 754-758, relied on the parties' mutual agreement to the custody and parenting-time arrangement, not the details of that arrangement, to enforce the judgment. Defendant's attempt to distinguish *Rettig* on a factual basis not contained in *Rettig*'s rationale is unavailing.