STATE OF MICHIGAN

COURT OF APPEALS

KAYCEE DEE MICHELLE KERN,

Plaintiff-Appellee,

v

HANS DELMAR KERN,

Defendant-Appellant.

UNPUBLISHED
April 30, 2020

No. 350782
Genesee Circuit Court
Family Division
LC No. 16-320201-DM

Before: BORRELLO, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

In this custody dispute stemming from the parties' divorce, defendant appeals as of right the trial court's order modifying the custody and parenting-time arrangement concerning the parties' son. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

The parties' judgment of divorce provided that the parties would have joint legal and joint physical custody of their son, with the parties having equal parenting time. Defendant moved the trial court for a change in custody and parenting time based on issues of domestic violence occurring in plaintiff's home between plaintiff and her new husband. The trial court awarded defendant primary physical custody of the child but ruled that the parties would continue to share joint legal custody. The trial court reduced plaintiff's parenting time to five overnights per every two weeks during the school year, ordered that the parties would have parenting time on alternate weeks during the summer break, and ordered that the parties would alternate spending major holidays with the child. Additionally, the trial court ordered that plaintiff's new husband was not to be present during parenting time exchanges and was not to be left alone with the child. Defendant, who prevailed, now appeals.

II. ANALYSIS

Defendant explicitly states in his appellate brief that he "does not dispute the trial court's findings of fact." Defendant has thus clearly abandoned any claim that the trial court's factual findings were erroneous. Defendant does not explicitly raise any other appellate issues in his

statement of the questions presented other than those that he abandoned. In light of defendant's puzzling presentation of his appellate argument and apparent failure to properly raise and argue any cogent claim of error for our review, we could end our analysis and deem defendant's entire appeal abandoned. "A party cannot simply assert an error or announce a position and then leave it to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitchell v Mitchell*, 296 Mich App 513, 524; 823 NW2d 153 (2012) (quotation marks and citation omitted).

However, our review of defendant's brief leads us to conclude that contrary to defendant's characterization of the nature of his arguments, he does "…dispute the trial court's findings of fact." Defendant argues that "although the trial court ostensibly awarded him 'primary' physical custody, the change was so slight that it did not really affect custody, nor did it affect the custodial environment of the child or adequately protect him given the serious risk of harm." Again, we are puzzled as to the nature and scope of defendant's argument. We glean from the entirety of his brief that defendant's claim of error is based on his opinion that the trial court should have granted defendant more overnights with the child and granted fewer overnights to plaintiff. Defendant further argues that the trial court order should have completely prohibited plaintiff's new husband from being present during parenting time rather than only prohibiting him from being present during parenting time exchanges and from being left alone with the child. Hence, defendant's appellate arguments, regardless of how he has attempted to characterize, label, or frame them in his brief, actually amount solely to a challenge to the propriety of the specific terms of the custody order. We will therefore address these arguments raised by defendant on this basis.

"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." *Riemer v Johnson*, 311 Mich App 632, 640; 876 NW2d 279 (2015) (quotation marks and citations omitted); see also MCL 722.28. "Discretionary rulings, including the ultimate award of custody, are reviewed for an abuse of discretion," which occurs if the trial court's decision is "palpably and grossly violative of fact and logic." *Riemer*, 311 Mich App at 641 (quotation marks and citation omitted).

In this case, defendant's argument fundamentally rests on his contention that the trial court's terms were not in accordance with his own desires and that the changes were not significant enough. Mere disagreement with the trial court's decision does not demonstrate that the ruling was "palpably and grossly violative of fact and logic." *Id*. (quotation marks and citation omitted). Moreover, the trial court's order provided defendant with roughly two-thirds of the overnights during the school year, which makes up the vast majority of the calendar year, whereas the parties previously had 50/50 physical custody. The trial court's order simultaneously reduced plaintiff's overnights with the child to roughly one-third of the school-year overnights. A significant reduction in the number of overnights a child spends with a parent can have the effect of changing physical custody. See *Lieberman v Orr*, 319 Mich App 68, 85-86, 93; 900 NW2d 130 (2017).

Accordingly, defendant has not demonstrated that the trial court's order constituted an abuse of discretion.[1]

Affirmed.

/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron

[1] We further note that although we have given defendant the benefit of the doubt in attempting to glean the nature of his intended appellate argument from his brief, despite the confusing manner in which it was presented, defendant has nonetheless failed to cite any legal authority that would give us any basis to rule in his favor with respect to his apparent challenge to the terms of the trial court's order. Thus, we could also consider defendant's appeal abandoned in this respect as well. *Mitchell*, 296 Mich App at 524.