STATE OF MICHIGAN

COURT OF APPEALS

MELISSA ANN INMAN,

Plaintiff-Appellant,

v

TYLER JAMES INMAN,

Defendant-Appellee.

UNPUBLISHED
August 19, 2021

No. 356046
Livingston Circuit Court
Family Division
LC No. 18-053501-DM

Before: STEPHENS, P.J., and BORRELLO and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order adopting the recommendations of the Friend of the Court referee, granting primary physical custody of the parties' minor child, while also changing the minor child's school. Plaintiff argues that by so ruling the trial court abused its discretion by making findings which were against the great weight of the evidence. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

The parties were married for five and a half years, divorcing in December 2018. The only child of the marriage is the minor child who is the subject of this appeal. Toward the end of their marriage, the parties lived together in a house in Whitmore Lake. Plaintiff continued to live in the marital home after defendant moved out in June 2018. Following the divorce, defendant moved to Fowlerville to live with his new girlfriend and her three children; defendant and his girlfriend subsequently had a child together. Initially, the parties were awarded joint custody and divided parenting time equally.

In October 2019, plaintiff was evicted from the marital home in Whitmore Lake. According to plaintiff, as a result of the eviction she did the "practical" thing by moving in with her boyfriend and his mother in Sterling Heights. The minor, who was in the first grade, continued to attend school in Whitmore Lake. Plaintiff's new home was approximately 60 miles from the minor's daycare. As a result, when the minor was with plaintiff the pair would need to leave home at 5:30 a.m. and would not return home until 7:30 p.m. Meanwhile, plaintiff's home in Sterling Heights was only a five-minute commute to the local elementary school. Accordingly, plaintiff

filed a motion in the circuit court, requesting an order transferring the minor to the Utica school district and awarding her primary physical custody. Following a six-day evidentiary hearing spread over several months, the trial court instead ordered that the minor transfer to the Fowlerville school district and reside primarily with defendant.

II. ANALYSIS

In her appeal, plaintiff argues that the trial court improperly weighed factors c, d, f, h, j and l, with respect to several best-interests' factors. As a result of this improper weighing, plaintiff argues, the trial court's rulings were against the great weight of the evidence. Accordingly, plaintiff argues, the trial court's custody order constituted an abuse of discretion.

Our Supreme Court explained that MCL 722.28 "distinguishes among three types of findings and assigns standards of review to each." *Dailey v Kloenhamer*, 291 Mich App 660, 664; 811 NW2d 501 (2011) (quotation marks and citation omitted). Factual findings "are reviewed under the 'great weight of the evidence' standard." *Id.* "A finding of fact is against the great weight of the evidence if the evidence clearly preponderates in the opposite direction." *Pennington v Pennington*, 329 Mich App 562, 570; 944 NW2d 131 (2019). "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.* (quotation marks and citation omitted). "Discretionary rulings, such as to whom custody is awarded, are reviewed for an abuse of discretion. An abuse of discretion exists when the trial court's decision is palpably and grossly violative of fact and logic." *Dailey*, 291 Mich App at 664-665 (quotation marks, citations, and alteration omitted).

Child custody in Michigan is governed by the Child Custody Act, MCL 722.21 *et seq*. "When resolving important decisions that affect the welfare of the child, the court must first consider whether the proposed change would modify the established custodial environment." *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). "If the proposed change alters the established custodial environment, the party seeking the change must demonstrate by clear and convincing evidence that the change is in the child's best interests." *Marik v Marik*, 325 Mich App 353, 361; 925 NW2d 885 (2018). In this case, it is undisputed that the minor had an established custodial environment with both parents and that changing schools would disrupt the custodial environment.

When reviewing custody and parenting time 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." MCL 722.28. "A trial court must consider the factors outlined in MCL 722.23 in determining a custody arrangement in the best interests of the children involved." *Bofysil v Bofysil*, 332 Mich App 232, 244; 956 NW2d 544 (2020). MCL 722.23 provides:

> As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:
>
> (a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) 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.

(c) 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.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The 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. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(*l*) Any other factor considered by the court to be relevant to a particular child custody dispute.

A. CAPACITY AND DISPOSITION TO PROVIDE FOOD, CLOTHING, AND MEDICAL CARE

Plaintiff argues that factor (c), the capacity and disposition of the parties involved to provide the child with food, clothing, medical care, and other material needs, should have favored her rather than defendant. Plaintiff takes issue with the trial court's finding that plaintiff had struggled financially since the divorce, seemingly unable to independently provide for herself and the minor. Review of the testimony does not reveal any error by the trial court in so finding.

Plaintiff's testimony was that she earned $22.45 an hour when employed at the University of Michigan, but when she moved, her new job paid $18.38 an hour. Defendant testified that he was employed as a mover at the University of Michigan and earned $63,025.71 in 2019 but made

less money in 2020 because of the pandemic. More importantly, plaintiff testified that she could not obtain housing independent of her boyfriend.[1] We note that this factor is not determined solely by who makes more money as long as each party has enough money to meet the child's needs. See *Berger v Berger*, 277 Mich App 700, 711; 747 NW2d 336 (2008). However, it is worth noting as we do below, that defendant not only earned more money than plaintiff, but plaintiff, despite being financially unstable, left a high paying job so that she could live with her boyfriend.

Additionally, plaintiff argues that the trial court should have given more weight to the fact that she would accompany the minor to appointments when the parties were married and the fact that the minor had health insurance exclusively through plaintiff until shortly before the hearing. We cannot ascertain, and plaintiff has failed to cite to any authority concerning the weight these factors should be given. We concur with the trial court, to the extent it did not access any weight to these factors, our review of the record also leads us to conclude that these factors should not be given any weight.

Review of the arguments concerning plaintiff and defendant accusing the other of failing to notify the other party when taking the minor to a walk-in clinic or a specific doctor, we discern no error by the trial court in its ruling. While the trial court expressed concerns about an incident in which plaintiff switched the minor to a new dentist in Sterling Heights without consulting with defendant, contrary to plaintiff's arguments on appeal, the trial court was justified in finding that this was not equivalent to an incident in which defendant took the minor to a new urgent care clinic because defendant was responding to an ongoing situation and kept plaintiff informed as events unfolded.

Our review of the evidence and rulings relative to factor (c) leads us to conclude that the trial court did not err in finding that this factor favored defendant. Accordingly, plaintiff is not entitled to relief on factor (c).

B. STABLE, SATISFACTORY ENVIRONMENT

Plaintiff argues that factor (d), the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity, should have favored her rather than defendant.

The trial court stated that it had "some significant concerns about uprooting the minor child from the Livingston County area so that plaintiff mother [could] pursue her dating relationship." The trial court was also stated its concern that the possibility of plaintiff's boyfriend "moving to

[1] However, in her appeal, plaintiff states that she has the financial means to find a new home in the Sterling Heights area if her relationship with her current boyfriend were to end. We presume plaintiff's representations in her appeal to be made in good faith; however, the testimony presented at the hearing revealed that plaintiff (1) was evicted from the marital home for failure to keep the mortgage current and (2) she left a higher paying job to be able to move in with her boyfriend, because, (3) such a move was the economically prudent course for her.

this area to maintain some stability for [the minor's] life was never seriously considered by plaintiff mother." Moreover, the trial court was concerned that plaintiff made a habit of leaving the minor with third parties overnight during her parenting time. Plaintiff testified that she often left the minor overnight with her best friend or her 19-year-old daughter. Plaintiff testified in September 2020 that she had not exercised all six of her overnights in a given week since the previous July.[2]

Plaintiff argues on appeal that the trial court erroneously found that she relocated on a whim every time she had a new boyfriend. This was not the ruling of the trial court. Rather, the trial court was concerned that plaintiff's conduct was indicative of someone who put their interests ahead of their child's. Furthermore, the trial court was appropriately concerned that the mother was ceding many of her parental responsibilities to her nineteen-year-old daughter. Coupled with its concerns regarding plaintiff's motives for moving, we discern no error in the trial court's findings or rulings. Accordingly, plaintiff is not entitled to relief on factor (d).

C. MORAL FITNESS

The referee initially found that factor (f), the moral fitness of the parties involved, favored neither party; however, the circuit court disagreed and found that this factor slightly favored plaintiff. Plaintiff argues that this factor should have weighed heavily in her favor.

Discourse concerning this factor revolved almost exclusively around an incident in which defendant "euthanized" his dog by shooting it in the back of its head in the backyard because it had bitten multiple children, including one in the face. The trial court found that "the thought of the family dog being shot in the back of the head into a shallow grave is barbaric" and this finding was justified by the evidence. We concur with the trial court's assertion that this behavior is "barbaric," and when examining the totality of the circumstances surrounding defendant's actions, we concur with the trial court that defendant's actions were more the result of a severe lapse in judgment rather than an example of what plaintiff argues are "clear apathy, cruelty, and callousness."[3] However, as barbaric as the act was, the shooting of the dog occurred because the dog presented a danger to children. Testimony was presented from a neighbor that the dog bit her daughter in the face. Lastly, the parties agree that the minor did not witness the shooting and was told that the dog was taken to a better place where it could no longer harm anyone.

It is worthy of note that the trial court did find that this factor weighed in plaintiff's favor; her argument on appeal is that because of the shooting of the dog, this factor should have weighed more heavily in her favor. It is clear from the record that the trial court did not minimize defendant's actions, or in any manner excuse his actions. Hence, we cannot glean from this record on what basis the trial court could have more heavily favored plaintiff as we discern no error in

[2] The parties rotated custody on a weekly basis with one midweek overnight visit.

[3] Contrary to plaintiff's assertions on appeal, such findings do not minimize the actions by defendant. Again, we concur with the trial court that shooting the dog without contacting animal control, a dog trainer, or a veterinarian was a barbaric act.

the findings and rulings by the trial court relative to factor (f). Accordingly, plaintiff is not entitled to relief on factor (f).

D. HOME, SCHOOL, AND COMMUNITY RECORD

Plaintiff argues that factor (h), the home, school, and community record of the child, should have favored her rather than defendant.

During the hearing, plaintiff raised allegations that defendant habitually left children unsupervised in the family's pool; however, these allegations were not supported by the evidence, and multiple witnesses testified that the children were always supervised. There was also testimony from plaintiff and her 19-year-old daughter that defendant's house was very messy, and it was even described as a "hoarder's" house. However, both of these witnesses based their opinions on very limited opportunities to observe the home, and multiple witnesses testified that the home was generally kept clean.

Most of the discourse around this factor concerned the minor's educational opportunities with the parties. Defendant wanted the minor to continue attending school in Whitmore Lake because she was established there. However, if the minor did need to transfer schools, both parties wanted the minor to attend school near them; defendant wanted the minor in school in Fowlerville and plaintiff wanted the minor in school in Utica. At the time of the hearing, Utica schools were exclusively virtual while Fowlerville's schools had transitioned back to in-person learning. Plaintiff, who needed to work in person, planned for the minor to do most of her virtual education at her 19-year-old daughter's house. This concerned the trial court leading to its finding that by her actions, plaintiff placed a teenager essentially in charge of the minor's education.

In addition, plaintiff presented data from an online resource that had the schools in Utica ranked higher than the schools in Whitmore Lake; however, this same resource ranked Fowlerville's schools higher than Utica's. Finally, the evidence revealed that plaintiff's decision to relocate to Sterling Heights disrupted the minor's extracurricular activities. Defendant testified that he had enrolled the minor in gymnastics but that he needed to remove the minor after only a couple of months because of plaintiff's relocation. Plaintiff's arguments relative to this issue on appeal are essentially an attempt to relitigate the matters. Our review leads us to conclude that the evidence supported the trial court's finding that factor (h) favored defendant. Accordingly, plaintiff is not entitled to relief on factor (h).

E. WILLINGNESS TO FACILITATE CONTINUING RELATIONSHIP WITH OTHER PARENT

On appeal, plaintiff argues that factor (j), the 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, should have favored her rather than defendant.

The trial court found that the parties effectively coparented prior to plaintiff's move to Sterling Heights. After her move, plaintiff asked the trial court to reduce defendant's parenting time, while defendant wanted to keep the same week-on, week-off parenting schedule. Of particular note to the trial court was the fact that plaintiff informed the minor about the proceedings

and took the minor with her to meet with an attorney. The trial court stated that the minor "was only seven years old and under no circumstances should the plaintiff mother [] injected [the minor] into this conflict." The trial court was also concerned that plaintiff had asked the minor child for her opinion regarding attending school in Utica.

Both parties testified that the other did little to encourage a relationship between the minor and the other parent. Plaintiff never offered defendant the minor on days when she was working, though defendant offered plaintiff more parenting time if she returned to Livingston County. Additionally, defendant had offered to defray some of the day care costs in an effort to assist plaintiff.

We concur with the reasoning and findings by the trial court relative to factor (j). The trial court rightly admonished plaintiff for injecting the minor into a custody battle while noting that plaintiff thought she was doing the right thing. Similar to defendant's actions involving the family dog, the trial court found that when plaintiff involved the minor child she used poor judgment. From this record, plaintiff has failed to reveal evidence that would lead us to conclude that the trial court committed an error in its findings and rulings relative to factor (j). Accordingly, plaintiff is not entitled to relief on factor (j).

F. OTHER FACTORS NOT LISTED

Plaintiff argues that the court should have penalized defendant for his alleged nonchalance toward the COVID-19 pandemic. Defendant was asked about his thoughts on COVID-19, and he responded: "I think it's a flu. I think it's serious. I think some people have overreacted a little bit . . . ." Defendant also testified that he hosted a summer cornhole league that involved a dozen unmasked people congregating outside of his house, often in close proximity. Meanwhile, plaintiff testified that she went on a weekend tubing trip with a group of friends, and defendant argues that these activities were roughly equivalent. The real issue relative to the pandemic is whether there was evidence that either party placed the minor child in harm's way by not adhering to proper safety precautions or clinging to some misguided belief that COVID-19 is not "real." Here it appears that both parties, again, have their failings, but seemingly both parties acknowledge that COVID-19 presents a real danger and from this record we cannot conclude that either party consistently failed to follow proper safety precautions. Accordingly, the trial court had no basis upon which to find that one party more than the other could be faulted more for their failure to adhere to COVID-19 safety guidelines.

G. SUMMARY

Review of the record does not lead this Court to conclude that the trial court committed error in any of its findings or rulings. Additionally, from this record, we discern no basis to conclude that the trial court abused its discretion by ordering the minor to attend school in Fowlerville and reside primarily with defendant. Accordingly, we affirm the decisions of the trial court.

Affirmed. No costs are awarded. MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher