STATE OF MICHIGAN

COURT OF APPEALS

HANNAH M. MILLER f/k/a HANNAH M. SAXTON, Plaintiff-Appellee,	UNPUBLISHED July 2, 2013
v	No. 312272 Crawford Circuit Court
RICHARD W. SAXTON, Defendant-Appellant.	LC No. 09-007973-DM

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

PER CURIAM.

Defendant, Richard Saxton, appeals as of right the trial court's order granting plaintiff, Hannah Miller, primary physical residence of the parties' minor child and holding that the minor child will attend school in Northern Michigan. We affirm.

Plaintiff resides in Michigan, and defendant resides in Florida. The parties' judgment of divorce provided for joint custody, for the child to be with each parent 50 percent of the time, and for the child to be domiciled in Michigan. Ultimately, the parties agreed to have a three-month rotating schedule, as the child was not yet of school age. However, plaintiff signed an agreement in January 2011 to allow the child to attend pre-school in Florida and afterwards realized that the agreement also provided for future schooling. Citing the agreement as a change in circumstance and a reason to justify the child attending school in Florida, defendant moved for modification of the custody provision and parenting time.

After a hearing, a referee determined that it was in the child's best interests for defendant to have primary physical custody and for the child to attend school in Florida. Ultimately, plaintiff objected to the referee recommendation, and the trial court held a de novo hearing. The trial court denied defendant's motion to change custody but determined that it was in the child's best interests to both attend school and have her primary physical residence in Michigan.

"When a modification of custody (either by changing custody or parenting time) would change the established custodial environment of a child, the moving party must show by clear and convincing evidence that it is in the child's best interest." *Brown v Loveman*, 260 Mich App 576, 585; 680 NW2d 432 (2004). Defendant argues that the trial court erred by finding that best-interest factors (b), (d), (e) and (*l*), set forth in MCL 722.23, favored plaintiff. This Court reviews the trial court's findings of fact under the great-weight-of-the-evidence standard.

Pierron v Pierron, 486 Mich 81, 85; 782 NW2d 480 (2010). Under this standard, we will affirm the trial court's determination unless the evidence clearly prevails in the other direction. *Id.*

The Child Custody Act, MCL 722.21 *et seq.*, promotes the best interests of the child and is used to govern custody disputes. *Harvey v Harvey*, 470 Mich 186, 191-192; 680 NW2d 835 (2004). Under the act, the trial court is obligated to consider the best-interest factors laid out in MCL 722.23 when resolving custody disputes. *Id.* at 192. The disputed factors are:

> (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.
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> * * *
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> (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
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> (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
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> * * *
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> (*l*) Any other factor considered by the court to be relevant to a particular child custody dispute.

When evaluating the best-interest factors, the trial court has discretion in determining what weight to give each factor. *Kessler v Kessler*, 295 Mich App 54, 64; 811 NW2d 39 (2011). We defer to the trial court's credibility determinations because of the trial court's position to judge witness credibility. *Id.*; *Fletcher v Fletcher*, 229 Mich App 19, 28; 581 NW2d 11 (1998).

Regarding factor b, the trial court indicated that the parties were equal in regards to the love, affection, guidance, and religion aspects of this factor. However, the trial court determined that defendant's uncertain housing situation could result in a school change for the child; therefore, plaintiff was slightly favored. The trial court also determined that plaintiff was more clear and persuasive in her plans to volunteer during school for the child. Defendant testified that the child would attend North Broward Academy of Excellence. However, defendant and his new wife were looking to purchase a home, and his new wife testified that changing school districts was a possibility. Plaintiff testified that she did not plan on moving any time soon and that the child was enrolled in a school in the community. Plaintiff believed that the child should remain in the same school after starting and testified that her schedule would allow her to help out at school and participate in field trips. Defendant was less clear on this point; however, he did testify that his schedule would allow him to be with the child. The trial court's determination that plaintiff was slightly favored on this factor was not erroneous because there was evidence that plaintiff was not going to move anytime soon and that she had the ability to volunteer during school hours. Defendant has failed to demonstrate how the trial court's finding was against the great weight of the evidence. The trial court was in the best position to judge credibility, and it did not err by finding plaintiff's evidence on this point more persuasive. See *Fletcher*, 229 Mich App at 28.

Regarding factors d and e, the trial court looked at the parties' living situations. Plaintiff had testified that despite several moves since the judgment of divorce, she had no plans on moving anytime in the future. However, defendant had recently moved in with his mother, and he and his new wife were going to be moving again. Given the uncertainty of when defendant and his new wife would be moving, the trial court did not err by determining that plaintiff had a more stable environment. The trial court's finding was not against the great weight of the evidence.

Defendant takes issue with the trial court's comment that "while not perfect or what would be envisioned as the ideal setting for [the child], [plaintiff's] residence appears to be the more stable environment." Defendant asserts that this comment indicates that there were negative aspects to plaintiff's situation that actually favored defendant. However, defendant neither indicates what these supposed negative aspects were nor cites caselaw indicating that the trial court had to explain its reasoning in a different way. The trial court does not need to address every piece of evidence in making the best-interest determination. *Kessler*, 295 Mich App at 65. Furthermore, the trial court's failure to specifically address defendant's remarriage and new familial situation does not mean it was overlooked when determining factor e. See *id*. Again, in light of the uncertainty of defendant's planned move, the trial court did not clearly err by determining that plaintiff's home was more permanent. The trial court may consider the same piece of evidence or circumstance in respect to more than one factor; factors d and e overlap. See *Fletcher*, 229 Mich App at 24-25.

Defendant also argues that the trial court erred by discrediting the child's relationship with her step and half siblings and focusing solely on her relationship with her maternal family. However, the trial court did not discredit any of the child's familial ties. The trial court specifically said, "[T]he point is made not to discount her relationship with her paternal grandmother . . ." and "sibling relationships are important." The trial court is responsible for determining what weight to give each factor. *Kessler*, 295 Mich App at 64. Just because the trial court did not discuss in detail the child's newly developing relationship with her siblings does not mean that the trial court overlooked that evidence. See *id.* at 64-65.

There was plenty of evidence establishing that the child has close ties with her maternal family. There was testimony that the child calls her grandmother and aunt from Florida. There was also testimony that the child's maternal grandmother, great-grandmother, and aunt all live next door to each other and that the child visits them frequently while in Michigan. Furthermore, the child is very close with her maternal cousins, and the children spend a lot of time together. The trial court did not err by determining that this was a positive environment for the child. Defendant is mistaken in characterizing the trial court's determination as discounting the child's relationship with her paternal family; the trial court was simply noting that her maternal familial ties were strong and positive. There was no error with this determination.

Next, defendant argues that the trial court erred by not conducting a change-of-domicile analysis. We disagree. Because the trial court did not change the child's domicile, there was no change in domicile to consider. The trial court did not err by determining that a change-in-domicile analysis was not indicated.

Next, defendant argues that the trial court erred by refusing to enforce the parties' written agreement. We disagree. The Child Custody Act gives trial courts the authority to determine custody issues, and contract principles do not govern custody matters. *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000). Although parties are encouraged to work together, the trial court has jurisdiction over the child until the age of majority. *Id.* Furthermore, the trial court must determine what is in the child's best interests independent from agreements reached by the parties. *Id.*

Defendant argues that the trial court erred by not enforcing the agreement because it dealt with choice of school and not actual custody. Furthermore, defendant relies heavily on the dissenting opinion in *Phillips* to support his position. However, this Court is bound to follow the majority opinion of *Phillips*, see *Klein v Kik*, 264 Mich App 682, 686; 692 NW2d 854 (2005), citing MCR 7.215(J)(1), and the trial court did not err by independently determining where the child should attend school, see *Phillips*, 241 Mich App at 21.

Defendant is mistaken that the agreement did not affect custody. The parties were sharing custody 50/50 and were using either a three- or six-month rotation. With the child entering school in either Michigan or Florida, a 50/50 custody split was no longer practicable. Therefore, an agreement between the parties on where the child would attend school would actually be an agreement to change the custody arrangement. The trial court correctly engaged in an independent best-interests analysis and did not err by not enforcing the written agreement. See *id.*

Finally, defendant argues that the trial court erred by denying his motion for summary disposition. Defendant has not provided this Court with a transcript or other record of the lower court's decision regarding his motion for summary disposition. Therefore, we decline to address this issue. See *PT Today, Inc v Comm'r of Fin & Ins Servs*, 270 Mich App 110, 151-152; 715 NW2d 398 (2006); see also *Reed v Reed*, 265 Mich App 131, 160-161; 693 NW2d 825 (2005).

Affirmed.

/s/ Jane M. Beckering
/s/ Henry William Saad
/s/ Peter D. O'Connell