

STATE OF MICHIGAN
COURT OF APPEALS

TAMARA JEAN WATSON,
Plaintiff-Appellee,

UNPUBLISHED
January 28, 2014

v

JAMES WARREN SELNER, III,
Defendant-Appellant.

No. 317274
Allegan Circuit Court
LC No. 01-028606-DP

Before: HOEKSTRA, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right a June 26, 2013 order denying his motion for change of custody in regard to the minor child he shares with plaintiff. We affirm.

Defendant argues on appeal that the trial court erred in failing to find that he showed by clear and convincing evidence that the minor child's best interests dictated that he have custody. In child custody cases "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. The Child Custody Act, MCL 722.21 *et seq.*, "governs child custody disputes between parents, agencies, or third parties." *Mauro v Mauro*, 196 Mich App 1, 4; 492 NW2d 758 (1992). "[C]ustody disputes are to be resolved in the child's best interests" and "[g]enerally, a trial court determines the best interests of the child by weighing the twelve statutory factors outlined in MCL 722.23." *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Those factors are:

- (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.
- (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. [MCL 722.23.]

Under these factors, the trial court found that one factor “slightly” favored mother, one factor favored father, and that nine factors were neutral. These findings were either not against the great weight of the evidence or are unchallenged by defendant on appeal. For the factors that defendant alleges error on the part of the trial court, the allegations consist of the evidence being insufficient in many of the factors that were found to be “neutral” or a credibility question. Where there is evidence for and against each party, it is not against the great weight of the evidence to find a factor to be neutral. See MCL 722.28. “Under this standard [as found in MCL 722.28], a reviewing court should not substitute its judgment on questions of fact unless the factual determination ‘clearly preponderate[s] in the opposite direction.’” *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010), quoting *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994). When a credibility contest ensues, we defer to the trial court’s determination of credibility. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011).

A thorough review of the record supports that defendant failed to show by clear and convincing evidence that changing the minor child’s established custodial environment was in her best interests. *Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009). (To be clear and convincing, the evidence must create in the mind of the fact-finder “a firm belief or

conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact-finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue”(quotation marks omitted). The trial court did not abuse its discretion in denying father’s motion for a change of custody. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008) (a custody decision is reviewed for an abuse of discretion).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Amy Ronayne Krause