STATE OF MICHIGAN

COURT OF APPEALS

ERIKA M. PATTERSON, Plaintiff-Appellant,	UNPUBLISHED May 14, 2015
v	No. 325368 Sanilac Circuit Court Family Division
JEFFREY M. PATTERSON, Defendant-Appellee.	LC No. 12-034615-DM

Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's denial of her motion to change custody of the parties' minor child. We affirm.

I. BACKGROUND

The parties married in 2008, had one child, RP, in 2009, and divorced in 2013. At the time of divorce, the court awarded the parties joint legal and physical custody of RP, with his primary residence being with plaintiff. Defendant was awarded parenting time during the school year consisting of overnight visits every Thursday and every other weekend and parenting time every Tuesday after school until 8:00 p.m. Each party had RP for alternating weeks during the summer. The divorce judgment also provided that RP would remain enrolled in Sandusky Public Schools, as both parties lived in Sandusky.

In July 2014, plaintiff moved for a change of custody and for a change of RP's school. Plaintiff sought to move RP's residence to Washington Township, which is approximately 70 miles away from Sandusky. She asserted that she had been offered a full-time cosmetology position at a salon in Rochester Hills. Although it is not clear on the face of her motion, it appears that plaintiff proposed a parenting-time schedule under which defendant would have four overnight visits with RP every month rather than the eight he currently had. The trial court referred the matter to a referee for a hearing. Following the hearing, the referee recommended that plaintiff's motion be denied. She found that plaintiff's proposed move would modify the established custodial environment that RP had with defendant, and that plaintiff had not proven by clear and convincing evidence that the move was in RP's best interests. Plaintiff objected and

requested a de novo hearing. At the conclusion of that hearing, the trial court essentially adopted the referee's findings and consequently denied plaintiff's motion.

II. MODIFICATION OF ESTABLISHED CUSTODIAL ENVIRONMENT

Plaintiff first argues that the trial court erred in holding that her proposed move would have modified the established custodial environment that RP had with defendant. "Whether an established custodial environment exists is a question of fact to which the great weight of the evidence standard applies." *Kubicki v Sharpe*, 306 Mich App 525, 540; 858 NW2d 57 (2014). "Under the Child Custody Act, MCL 722.21 *et seq*., '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.' " *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010), quoting MCL 722.28. This Court will not hold that a finding of fact is against the great weight of the evidence unless it determines that the evidence clearly preponderates in the opposite direction. *Id.* In considering the matter, we will "defer to the trial court's credibility determinations given its superior position to make these judgments." *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). "This Court reviews discretionary rulings, including a trial court's custody and parenting-time decisions, for an abuse of discretion." *Mitchell v Mitchell*, 296 Mich App 513, 522; 823 NW2d 153 (2012). A trial court abuses its discretion when its "decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id*. (internal quotation marks and citation omitted).

"The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c). Not every change in parenting time will result in a modification of an established custodial environment. *Pierron*, 486 Mich at 86. "If the required parenting time adjustments will not change whom the child naturally looks to for guidance, discipline, the necessities of life, and parental comfort, then the established custodial environment will not have changed." *Id*. In this circumstance, the party looking to alter the parenting-time schedule must prove by a preponderance of the evidence that the change is in the child's best interests using the factors listed in MCL 722.23. *Id*. at 89-90. However, if the proposed change would modify an established custodial environment, the moving party must establish by clear and convincing evidence that the change is in the child's best interests. *Id*. at 86.

In the present case, plaintiff concedes that RP has an established custodial environment with both parties. However, she argues that the proposed move to Washington Township would not alter the established custodial environment with defendant, and therefore only the preponderance of the evidence standard, and not the clear and convincing evidence standard, applied to her motion. The court held that the proposed change would affect RP's established custodial environment with defendant, explaining, "In this case changing custody would affect [defendant]'s custodial time and affect his ability to be actively involved in the child's schooling and sports."

We conclude that the trial court's decision was not against the great weight of the evidence. Defendant regularly exercised his parenting time, even though the parties sometimes

switched days. Defendant described himself as a "hands-on" parent, and it is clear that he took an active interest in RP's upbringing. He coached RP's t-ball team and was involved in his schooling. Defendant saw RP twice during the week, including an overnight visit, and every other weekend. This meant that defendant usually would not go more than four days without seeing RP. If custody were changed, weekday visits, overnight or otherwise, would have been impractical for a five-year-old child given the distance between Sandusky and Washington Township is approximately 70 miles. The trial court did not err in finding that plaintiff's proposed move would have modified the established custodial environment that RP had with defendant.

Plaintiff argues that the trial court placed undue emphasis on defendant's t-ball coaching, and that there was no evidence that defendant could not continue coaching or that RP could not continue playing t-ball in Sandusky. We do not agree that undue emphasis was given to defendant and RP's involvement in t-ball. The trial court did not mention t-ball by name, but only generally stated that plaintiff's move "would affect Jeffrey Patterson's custodial time and affect his ability to be actively involved in the child's schooling and sports." The court was simply recognizing that defendant's involvement in RP's activities was evidence of an established custodial environment. Defendant has been actively involved in all aspects of RP's life, and plaintiff's proposed move would have had a significant impact on that involvement.[1]

III. BEST-INTEREST FACTORS

Plaintiff argues second that the trial court erred in assessing three of the statutory best-interest factors. This Court reviews the trial court's findings regarding the best-interest factors found in MCL 722.23 under the great weight of the evidence standard. *McIntosh v McIntosh*, 282 Mich App 471, 475; 768 NW2d 325 (2009). This Court will not hold that a finding of fact is against the great weight of evidence unless it determines that the evidence clearly preponderates in the opposite direction. *Pierron*, 486 Mich at 85.

[1] Plaintiff's reliance on *Pierron* is unavailing. In that case, the defendant had sole physical custody of the parties' two children, and the plaintiff exercised parenting time three out of every four weekends, occasionally took the children out to dinner during the week, and took them out to lunch one week out of every seven. *Pierron*, 486 Mich at 84, 87. In the present case, plaintiff and defendant share physical custody of RP, and the evidence demonstrates that he is actively involved with the child throughout the week. Although the 70-mile travel distance between Sandusky and Washington Township is not much greater than the distance at issue in *Pierron*, we note that there is no major highway between Sandusky and Washington Township, as there was between the residences of the *Pierron* parties. Further, the children at issue in *Pierron* were aged 13 and 8 when the defendant moved. *Pierron v Pierron*, 282 Mich App 222, 225, 228; 765 NW2d 345 (2009).

The best-interest factors at issue here are the following:

> (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.
>
> * * *
>
> (*l*) Any other factor considered by the court to be relevant to a particular child custody dispute. [MCL 722.23(d), (e), (*l*).]

A. MCL 722.23(d)

The trial court found the parties equal on this factor. It concluded that the parties had followed the parenting-time schedule and that both parties had provided satisfactory homes. It noted that although plaintiff believed she could earn a higher salary in Rochester Hills, she "admitted that it could take several years before she earns significantly more than she earns now." Finally, the trial court found that "[t]he move would impact [defendant's] ability to be involved in school functions and other activities." Plaintiff argues regarding that neither party has been able to offer RP a stable environment because each does not have independent housing (plaintiff lives with her mother and defendant lives with his parents), but that her proposed move would eventually allow her to provide such stability. She argues that neither party's parents are obliged to continue to allow the parties to live with them. Additionally, she asserts that the move would allow her to spend more time with RP because she would only have one job rather than three.

The trial court's findings regarding factor (d) were not against the great weight of the evidence. After the divorce, the parties followed, with some flexibility, the parenting-time schedule, and each had stable housing in Sandusky, albeit with relatives. Contrary to plaintiff's suggestion, there is nothing inherent in living with parents/grandparents that makes the home environment unstable. In any event, there is no indication in the record that either party's parents had threatened or intended to evict them. The trial court apparently found that it was desirable to maintain the current environment.

Moreover, the trial court correctly found that it was speculative whether the move would benefit RP by reason of increased earnings by plaintiff. Plaintiff would only be paid by commission at the salon in Rochester Hills, and she admitted that it could take a long time before she established a stable clientele that would provide a consistent income. She testified that it had taken her five or six years to establish such a clientele in Northville where she had previously worked. The trial court's findings on this factor were not clearly erroneous.

B. MCL 722.23(e)

The trial court found the parties equal on this factor, stating, "There is no evidence presented to suggest that the children are at risk of separation from either home." Plaintiff again

argues that neither party has offered permanence up to this point because they are living with their parents, but that her proposed move would eventually allow her to obtain housing, which will provide permanence.

The trial court's findings regarding factor (e) were not against the great weight of the evidence. The "focus" of this factor "is the child's prospects for a stable family environment" and not the acceptability of that environment. *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996). RP had a stable family environment with both parties, and the fact that plaintiff might obtain independent housing at some point in the future does not mean that RP will have a more stable family environment with her rather than defendant. Such considerations go to acceptability rather than the permanence of the family unit. Further, as with factor (d), the presumption that housing independent of her parents is inherently more permanent than defendant's custodial home is speculative.

C. MCL 722.23(*l*)

The trial court found that there were no other factors that were relevant. Plaintiff argues that the trial court should have compared the schools in Sandusky and Washington Township and considered their quality and the extracurricular activities they offered.

The trial court's findings regarding factor (*l*) were not against the great weight of the evidence. Plaintiff only generally testified that she believed that the schools in Washington Township were better and had more to offer. She did not present any evidence to corroborate that assertion. Therefore, she has failed to establish that she should have been favored on this factor.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Stephen L. Borrello