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STATE OF MICHIGAN

COURT OF APPEALS

JENNIFER SUZANNE JOHNSON, Plaintiff-Appellee, v KORY JAMES JOHNSON, Defendant-Appellant.	UNPUBLISHED September 16, 2026 10:00 AM No. 378882 Allegan Circuit Court LC No. 2023-068064-DM

Before: LETICA, P.J., and RICK and GARRETT, JJ.

PER CURIAM.

Defendant, Kory James Johnson, appeals as of right from the trial court's divorce judgment. During trial, defendant and plaintiff, Jennifer Suzanne Johnson, agreed that they would share joint legal custody, that plaintiff would have physical custody, that they would follow the holiday parenting-time schedule, and that they would alternate weeks of parenting time during the summer. But they did not agree on parenting-time during the school year or child support. On appeal, plaintiff challenges the trial court's parenting-time determination and its Uniform Child Support Order (UCSO). We affirm.

I. FACTS AND PROCEEDINGS

In 2011, plaintiff and defendant married. In 2015, they had the first of their five children. Although plaintiff took time off for the children's births, she continued to work full-time. Defendant worked as an orthopedic surgeon and owned an interest in his orthopedic surgery practice and an ambulatory surgery center. Defendant also had other business and professional interests. During the marriage, defendant worked many hours a week and often left for work early and returned home late at night. In 2018, the family moved to a house in Allegan County, and, thereafter, they also bought a lakefront house as a vacation home.

It is undisputed that defendant began a romantic relationship that contributed to the breakdown of the marital relationship. In November 2023, plaintiff filed a complaint for divorce. The parties eventually settled numerous issues and agreed that the trial court would address two issues: parenting time during the school year and child support.

After trial, the court granted defendant parenting time with the children on Tuesday from 5 p.m. to 7:30 p.m. along with alternating weekends from Thursday at 5 p.m. through Sunday at 5 p.m. The trial court also calculated the parties' incomes from evidence presented and used defendant's average annual income in the Michigan Child Support Formula for the final UCSO. The court further denied defendant's motion for reconsideration and his request to modify the child support order. This appeal followed.

II. PARENTING TIME DURING THE SCHOOL YEAR

Defendant argues that the trial court erred in awarding him less parenting time than plaintiff during the school year. We disagree.

Our Supreme Court set forth the standards of review in *Sabatine v Sabatine*, 513 Mich 276, 284; 15 NW3d 204 (2024):

> Under MCL 722.28 of the Child Custody Act, MCL 722.21 *et seq*., "[t]o expedite the resolution of a child custody dispute by prompt and final adjudication, 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 incorporates three standards of review into the act: (1) "a reviewing court should not substitute its judgment on questions of fact unless the factual determination clearly preponderates in the opposite direction," *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010) (cleaned up); (2) "an abuse of discretion occurs if the result is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias," *Maier v Maier*, 311 Mich App 218, 221; 874 NW2d 725 (2015) (cleaned up); and (3) clear legal error exists when "a court incorrectly chooses, interprets, or applies the law," *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994).

In March 2024, the Friend of the Court (FOC) recommended that the parties share joint legal and physical custody of their children and the court entered an order to that effect. Because the parties continued to live together at that time, the court's parenting time order was not in effect until they stopped living together. At that point, the parties could agree on parenting time; however, if they could not agree, they would follow a 2-2-3 schedule with alternating weekends and a separate court holiday schedule. Plaintiff objected to the FOC's recommendation and plaintiff left the marital home in June 2025, when a week-on-week off parenting time schedule was in place.

Plaintiff's objection to the FOC recommendation was not resolved until trial. During trial, the parties placed a partial settlement on the record. They agreed to share joint legal custody with plaintiff being awarded physical custody. The parties further agreed to holiday and summer parenting time schedules; however, parenting time during the school year remained to be litigated. The parties' settlement was reduced to writing and signed by them and their attorneys.

Thereafter, defendant discharged his attorney and represented himself.[1] Defendant sought equal parenting time during the school year. Defendant argued that there was no reason he should have alternate weeks with the children during the summer but not be able to have equal parenting time during the school year. On the other hand, plaintiff advocated for defendant to have the children on alternate weekends and perhaps one school night given the children's young ages.

The trial court ruled that the minor children had an established custodial environment with both plaintiff and defendant and that plaintiff had to show by clear and convincing evidence that a change to that environment during the school year was in the children's best interests. See MCL 722.27(1)(c). To make that determination, the trial court considered the best-interest factors set forth in MCL 722.23 and made specific findings under each factor. See *Johnson v Johnson*, 329 Mich App 110, 128-129; 940 NW2d 807 (2019). The trial court also considered the parenting-time factors under MCL 722.27a. The trial court then awarded defendant parenting time during the school year on Tuesday evening and on alternating weekends from Thursday evening through Sunday evening.

"Parenting time is the time a child spends with each parent." *Lieberman v Orr*, 319 Mich App 78, 80; 900 NW2d 130 (2017). "Whereas the primary concern in child custody determinations is the stability of the child's environment and avoidance of unwarranted and disruptive custody changes, the focus of parenting time is to foster a strong relationship between the child and the child's parent." *Id*. (quotation marks and citation omitted). "A court bases a parenting-time order on its determination of the best interests of the child, and grants parenting time 'in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.' " *Id*., quoting MCL 722.27a(1). The trial court may consider the parenting-time factors set forth in MCL 722.27a(7) along with the best-interest factors in MCL 722.23. In pertinent part, 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:
>
> * * *

[1] Defendant thereafter questioned when the physical custody issue was decided; however, the record is clear that the parties agreed to plaintiff having physical custody and to joint legal custody. The parties' under-oath agreement and signed writing was binding. See MCR 2.507(H) ("An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney."). And even though defendant's attorney later objected to another portion of the settlement agreement, there was no objection to plaintiff having physical custody. To the extent that the trial court addressed physical custody after trial, any error was harmless. MCR 2.613(A) ("An . . . error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.").

(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.

* * *

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

* * *

(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.

"A court need not give equal weight to all the factors, but may consider the relative weight of the factors as appropriate to the circumstances." *Sinicropi v Mazurek*, 273 Mich App 149, 184; 729 NW2d 256 (2006).

On appeal, defendant contends that the trial court erroneously ruled that the evidence favored plaintiff under Factors (b), (c), (h), and (j). Defendant analyzes Factors (b), (c), and (h) together, arguing that the trial court made findings of fact that were contrary to the great weight of the evidence and effectively punished him for working outside the home while also not crediting him for financially supporting the family. He further argues that the trial court should not have held it against him that he engaged with the children less when plaintiff prevented him from doing so.

The trial court ruled that Factors (b), (c), and (h) weighed in plaintiff's favor, and it also gave greater weight to those factors because of the children's young ages. When the trial court considered Factor (b), MCL 722.23(b), it relied on evidence showing that plaintiff enrolled the children in school and regularly attended school activities, she bathed and dressed the children and put them to bed, and she provided consistent guidance and discipline for the children. In contrast, the trial court concluded that defendant disciplined the children, but engaged much less in their daily care, schooling, and activities.

The trial court ruled that Factor (c), MCL 722.23(c), also favored plaintiff. Although defendant earned more money, plaintiff had a better capacity and disposition to provide their young children with food, clothing, medical care, and other remedial care. As the trial court recognized, "Factor c does not contemplate which party earns more money; it is intended to evaluate the parties' *capacity and disposition* to provide for the children's material and medical needs." *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008). The trial court relied on evidence that plaintiff provided all the children's food, clothing, other necessary items, and toys. The trial court

further determined that plaintiff arranged for and took the children to all medical and dental appointments.[2]

The trial court further ruled in plaintiff's favor on Factor (h), which considers the home, school, and community record of the children. See MCL 722.23(h). The record showed that plaintiff was very involved in community and school activities with the children. The trial court observed that plaintiff described, attended to, and supported the different interests and activities of each child. She also went to parent-teacher conferences, got the children ready for school, ensured that they did their homework, and encouraged friendships in the community and through school. The trial court generally observed that defendant's work hours prevented him from performing some day-to-day childcare, which was a concern that plaintiff and defendant both testified they discussed during their marriage.

Defendant argues that this case is similar to *Bofysil v Bofysil*, 332 Mich App 232; 956 NW2d 544 (2020), and that the trial court clearly erred by failing to follow its reasoning. In *Bofysil*, this Court vacated the trial court's award of legal and physical custody of the parties' minor child to the stay-at-home parent because evidence showed that the working parent arranged her work schedule to spend several hours a day with the minor child, played an important role in the child's daily routines, and plainly participated in the child's day-to-day feeding, family time, and care. *Id*. at 237-241, 243-244.

Defendant's reliance on *Bofysil* to establish clear error is misplaced, and his claim that he spent as much, if not more, time with the children as plaintiff is not supported by the evidence presented at trial. Unlike in *Bofysil*, the evidence in this case did not show that defendant arranged his work schedule so that he could—and did—provide significant regular care for the children during the school year. Moreover, despite saying that he would change his work hours to spend more time with them, the evidence did not show that defendant did so to any significant degree at the time of trial.

Further, in contrast to the stay-at-home parent in *Bofysil*, plaintiff worked full-time outside the home and provided income and benefits for the family. She also provided the overwhelming majority of the care for the children in the months and years preceding the divorce trial. As the trial court reasoned, defendant's various statements during his testimony about changing his working hours to be with the children appeared to be more of a plan for the future rather than something he did during the pendency of the case. Defendant offered evidence of his schedule at his orthopedic practice in 2024, but he agreed that it only showed when patient appointments occurred and did not show when he actually arrived at or left work each day. Defendant also testified that he was sometimes able to leave work earlier, but he also testified that, in addition to his many hours of surgical work, he continued his involvement in various organizations and

[2] We note that the trial court erred in finding that defendant provided the children's medical insurance when evidence showed that plaintiff paid for their medical insurance through her employment.

committees. His testimony that he was going to "be pulling back from a lot of those duties and responsibilities," showed that he planned to do so, not that he had done so.[3]

And, even if defendant could show that he worked fewer hours in an effort to spend more time with the children, plaintiff testified that defendant did not participate in the children's day-to-day care even when he was at home. No evidence showed that, during the school year, defendant played a role in getting the children up, feeding them, dressing them, packing their lunches or snacks, getting them to school and daycare, picking them up from school and daycare, cooking and feeding them dinner, completing homework, bathing them, brushing their teeth, or putting them to bed. Unlike the situation in *Bofysil*, defendant did not play an active role in the children's daily routines during the school year even when he was not at work; however, plaintiff did so while also working full-time.

We further disagree with defendant's assertion that plaintiff prevented him from participating in the daily care of the children. The parties shared the marital home after plaintiff filed for divorce in November 2023 until June 2025 when plaintiff was financially able to buy another home in the same community. Defendant testified that he was not historically involved in the children's routines but that, since she hired her counsel, plaintiff made it clear that he was not welcome to spend time in the kitchen or main living area of the home, and he also asserted that plaintiff would not let him touch the children's clothes.

But plaintiff testified that defendant did not allow her to sleep in the bedroom after she filed for divorce, so she had to sleep on a couch. She also testified that, when defendant was with her and the children, he often tried to engage her in arguments and said belittling things about her. Plaintiff further asserted that defendant did not ask to, or show any interest in, helping with the children's care when he was at home before or after the divorce filing. Moreover, defendant chose to be on his phone or elsewhere on the property when he was at home. There was also evidence that defendant often traveled with his girlfriend without telling anyone where he was going or when he would return. While traveling, defendant did not check on the children, who remained with and were cared for by plaintiff.

Appellate courts have limited powers when reviewing custody and parenting-time decisions and must recognize the trial court's authority to weigh the evidence and assess the credibility of witnesses. *Sabatine*, 513 Mich at 284-285. The trial court acknowledged the difficulty of sharing the marital home during a contentious divorce. The trial court was free to consider defendant's claim that plaintiff preferred to be in different areas of the house, but it was not required to accept as true defendant's argument that he would have provided much more childcare if plaintiff had only let him. Indeed, that assertion is not supported by the vast majority of the evidence, and, although the trial court acknowledged defendant's commitment to providing financially for the family, it also carefully considered the best-interest factors in light of all the evidence presented. We affirm the trial court's ruling that best-interest Factors (b), (c), and (h)

[3] With his trial brief, defendant appended two earnings statements and argued that they showed he reduced his hours. But both statements showed that defendant worked a full-time schedule, and nothing on the statements established that he worked fewer hours in 2024 than he did in 2023.

favored plaintiff because its findings of fact were not contrary to the great weight of the evidence or founded on clear legal error.

Defendant also challenges the trial court's ruling that evidence established that Factor (j) weighed in favor of plaintiff. Under Factor (j), the trial court must consider "[t]he 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." MCL 722.23(j).

The trial court ruled that plaintiff showed a willingness to encourage a relationship between defendant and the children because she provided access to the children, she did not speak disparagingly about him in front of the children, and she did not express her feelings about defendant's affair and girlfriend. When the children asked sensitive questions about defendant's relationship or leaving home for extended periods, plaintiff told the children to talk about those issues with defendant. The trial court also cited plaintiff's testimony that defendant tried to lure her into arguments in front of the children and that he questioned her mental health and belittled her job and her intelligence. Plaintiff also testified that defendant told the children, when they were all under the age of 10, that plaintiff was destroying their family by divorcing defendant. Although defendant testified that he felt like a "prisoner" at home, plaintiff testified that she did not interfere with defendant spending time with the children. Plaintiff also testified that, shortly before her testimony, she provided transportation both ways for the children when defendant wanted to take them roller skating, which helped facilitate his time with them when defendant chose to drive a vehicle that could not accommodate all five children.

Defendant correctly observes that a trial court should not base a finding of moral unfitness on a party's extramarital affair alone, see *Fletcher*, 447 Mich at 887-888, but the trial court did not conclude that the factor addressing moral fitness, Factor (f), favored plaintiff. Instead, the trial court considered defendant's infidelity only to the extent that it impacted his and plaintiff's ability to coparent the children, particularly when they remained in the marital home during part of the divorce proceedings. The trial court's finding that plaintiff's testimony was more credible about her efforts to encourage a relationship between the children and defendant was within the trial court's authority to weigh evidence and assess the credibility of witnesses. See *id*. at 889-890. The trial court conducted a thorough and well-reasoned analysis of the facts presented at trial and carefully evaluated the best-interest factors under MCL 722.23. Although defendant argues that the trial court should have viewed the evidence in his favor, ample evidence supported the trial court's best-interest findings.[4]

As discussed, we may not reverse a trial court's ruling in a child custody proceeding unless we conclude that the trial court "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 trial court's factual findings were supported by the record evidence and defendant has not

[4] Defendant also fails to acknowledge that the trial court also considered the parenting-time factors under MCL 722.27a and concluded that plaintiff was favored under MCL 722.27a(7)(f) because defendant did not fully exercise his parenting time with the children when he could have done so. That unchallenged finding also supported the trial court's decision to not award defendant more parenting time during the school year.

shown that its determinations clearly preponderated in the opposite direction or that the trial court made a clear legal error on a major issue. See *Sabatine*, 513 Mich at 284.

III. CHILD SUPPORT

Defendant argues that the trial court erred when it calculated his income for purposes of child support. Again, we disagree.

We review a trial court's child support order for an abuse of discretion. *Teran v Rittley*, 313 Mich App 197, 212; 882 NW2d 181 (2015). "An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes." *Loutts v Loutts*, 298 Mich App 21, 26; 826 NW2d 152 (2012). A trial court's findings of fact supporting a child support order are reviewed for clear error. *Ewald v Ewald*, 292 Mich App 706, 714; 810 NW2d 396 (2011). A finding is clearly erroneous if, after reviewing all the evidence, we are left with the definite and firm conviction that a mistake was made. *Loutts*, 298 Mich App at 26.

"The purpose of child support is to ensure that a child's needs are met while in the recipient's care." *Brendel v Morris*, 345 Mich App 138, 148; 4 NW3d 776 (2023). "In determining the appropriate amount of child support, a trial court must presumptively follow the Michigan Child Support Formula (MCSF)." *Carlson v Carlson*, 293 Mich App 203, 205; 809 NW2d 612 (2011) (quotation marks and citation omitted). The MCSF states that the first step to determine a parent's child support obligation is to determine the parties' individual incomes. 2025 MCSF 2.01. The MCSF also contains various rules to determine a parent's income as a business owner or a self-employed individual under 2025 MCSF 2.01(E) to ensure that a court includes all money available for support that may not be reflected as ordinary income on a parent's tax return.

In this case, the parties presented evidence of their individual incomes using their tax returns, forms, and schedules from 2021 to 2023. The documents were admitted at trial without objection, and the parties also testified about their available incomes. In addition, the parties placed their marital property settlement on the record in which they agreed that defendant would receive all his business interests and that plaintiff would receive a one-time payment for her marital interest in the businesses.

Defendant argues that the trial court should not have considered the pass-through income that he earned from his business interests because plaintiff received her marital interest in the property settlement. Although defendant characterizes the settlement by *comparing* it to the amount of his annual pass-through income, the record reflects that, as his counsel conceded, defendant will continue to earn pass-through business income because he received the business interests in full in the settlement. Defendant did not present evidence that plaintiff's settlement payment reduced defendant's income available for child support. Further, if the parties wanted to "deviate from the child support formula and connect a property settlement with the child support obligation, the complete agreement must be clearly stated in the judgment of divorce" under 2025 MCSF 4.04(A) and MCL 552.605. No evidence showed that the property settlement required defendant to turn over his pass-through income to plaintiff each year or that the settlement agreement would impact that income in any other way. And although defendant argued in his closing argument that his pass-through income did "not necessarily correlate with what he actually brought home," defendant did not present any evidence to support that argument during trial.

Defendant also argues that the trial court erred when determining his income available for child support because he substantially reduced his work hours and, therefore, his income decreased. It is undisputed that the parties did not present their 2024 tax return for the trial court's consideration because it was not completed. Nonetheless, defendant could have presented other evidence of his income or documents like his 2024 W-2 or Schedule E to show a change of income, and the trial court stated that defendant could seek an adjustment through the Friend of the Court if his income changed. But as discussed, defendant failed to present evidence that he substantially reduced his work hours during the pendency of the case and, for purposes of this issue, defendant presented no evidence at trial that his income changed because of a reduction in his work hours. Defendant has not shown that the trial court clearly erred when it determined the parties' incomes or that the UCSO constituted an abuse of discretion, so he is not entitled to relief on this issue. See *Teran*, 313 Mich App at 212.

Affirmed.

/s/ Anica Letica
/s/ Michelle M. Rick
/s/ Kristina Robinson Garrett