STATE OF MICHIGAN

COURT OF APPEALS

ALYSIA MEDINA

Plaintiff-Appellant,

v

SERGIO MEDRANO,

Defendant-Appellee.

UNPUBLISHED
June 17, 2021

No. 354958
Ionia Circuit Court
LC No. 2011-028698-DP

Before: BOONSTRA, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Plaintiff-mother, Alysia Medina, appeals the trial court's order, entered after remand, granting defendant-father, Sergio Medrano, sole legal and physical custody of the parties' minor child, AM. We affirm.

I. RELEVANT FACTS AND PROCEEDINGS

This child custody action returns to the Court following remand to the trial court for a de novo hearing at which the trial court was to make independent findings regarding the statutory best-interest factors, MCL 722.23.[1] On remand, the court held a de novo hearing that spanned three days. After hearing testimony from witnesses for both parties, the court made findings of fact relevant to the statutory best-interest factors. The court determined that Factors (a) and (j) were neutral, declined to make findings under Factor (i), and found that all the remaining factors favored defendant. The court subsequently entered an order reaffirming the Friend of the Court's recommendation awarding defendant sole legal and physical custody of AM. Plaintiff now appeals.

[1] *Medina v Medrano*, unpublished per curiam opinion of the Court of Appeals, issued April 16, 2020 (Docket No. 350487), p 10.

II. ANALYSIS

Plaintiff contends on appeal that the trial court finding that the majority of the best-interest factors favored defendant was against the great weight of the evidence. Plaintiff further contends that the trial court abused its discretion in granting sole legal and physical custody to defendant.

A. STANDARDS OF REVIEW

"To 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; see also *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). A trial court's finding is against the great weight of the evidence when it is so contrary to the weight of the evidence that it is unwarranted or is so plainly a miscarriage of justice that it would warrant a new trial. *Fletcher v Fletcher*, 447 Mich 871, 877-878; 526 NW2d 889 (1994). This standard applies to all findings of fact, see *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009), including findings concerning each custody factor, see *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). We affirm the trial court's findings under this standard unless the evidence clearly preponderates in the other direction. *Mitchell v Mitchell*, 296 Mich App 513, 519; 823 NW2d 153 (2012). In reviewing the findings, however, this Court defers to the trial court's determination of credibility. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). "An abuse of discretion exists when the trial court's 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." *Berger*, 277 Mich App at 705.

If a trial court improperly adjudicates a child custody dispute, and the impropriety is not harmless, the appropriate remedy is to remand for reevaluation or for a new child custody hearing. See *Fletcher*, 447 Mich at 882, 889 (BRICKLEY, J.), 900 (GRIFFIN, J.); *Rittershaus v Rittershaus*, 273 Mich App 462, 475; 730 NW2d 262 (2007). On remand, the trial court should consider up-to-date information, including the children's current and reasonable preferences and any other changes in circumstances arising since the original custody order. *Pierron v Pierron*, 282 Mich App 222, 262; 765 NW2d 345 (2009).

B. BEST-INTEREST FACTORS

The Child Custody Act of 1970, MCL 722.21 *et seq*., governs the resolution of most custody disputes in Michigan. See *Mauro v Mauro*, 196 Mich App 1, 4; 492 NW2d 758 (1992). "Generally, 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, 753 (2001). A child's best interests means the "sum total" of all those factors, MCL 722.23, and it is the court's responsibility to consider each of them when making a custody decision. See *Maier v Maier*, 311 Mich App 218, 226; 874 NW2d 725 (2015).

As already stated, the trial court did not consider Factor (i), found Factors (a) and (j) to favor both parties equally, and found the remaining factors to favor defendant. Plaintiff contends that the trial court's findings were against the great weight of the evidence, and that Factors (a), (i), and (j) favored her strongly, and that the remaining factors also favored her, although to a lesser

extent. We first examine Factors (i) and (j), which are the subjects of separate issues raised by plaintiff, and then examine the remaining factors in turn, before moving on to consideration of the court's ultimate custody decision.

1. BEST-INTEREST FACTORS (I) AND (J)

Factor (i) requires the trial court to consider "the reasonable preference of the child if the child is old enough to express a preference." MCL 722.23(i). If the trial court deems the child old enough to express a reasonable preference, the court is obligated to inform itself of and to consider that preference. See, e.g., *Kubicki v Sharpe*, 306 Mich App 525, 545; 858 NW2d 57 (2014).

In the present case, the trial court stated regarding Factor (i) that it was "not going to consider that." The court further stated: "The referee did not get that information. The Court does not have that information, and as I understand case law, the Court can make this decision today without consideration of the same." It is unclear to what caselaw the court was referring. It is the court's responsibility to consider each of the statutory best-interest factors when making a custody decision. *Maier*, 311 Mich App at 225-226. A trial court does not err by failing to consider the child's preference for purpose of the best-interest analysis when it determines that circumstances prevent a child from forming a reasonable preference. *Id*. Nor does a trial court err by failing to interview a child to determine its preferences when it knows and considers the child's preference when making its custody decision, *Duperon v Duperon*, 175 Mich App 77, 81-82; 437 NW2d 318 (1989), or when it analyzes the best-interest factors as if the child had expressed a preference contrary to the court's eventual custody ruling, *Treutle v Treutle*, 197 Mich App 690, 696; 495 NW2d 836 (1992). However, we have found no authority relieving the court of its statutory obligation to consider the preferences of a child of sufficient age simply because neither the referee nor the court obtained the information. In light of the court's decision not to consider Factor (i) on remand,[2] and its failure to provide any acceptable explanation for that decision, we conclude that the trial court's decision constitute clear legal error. See *Bowers v Bowers*, 190 Mich App 51, 56; 475 NW2d 394 (1991).

Errors in a trial court's best-interest analysis are subject to harmless-error review. See *Fletcher*, 447 Mich at 889 (stating that "upon a finding of error an appellate court should remand

[2] In plaintiff's initial appeal, we observed that the trial court declined to consider the child's preference because defendant presented evidence that plaintiff "had coached AM to make false allegations against him in the CPS case and might be improperly swayed to state a preference for [plaintiff]." *Medina*, unpub op at 5. We concluded that, even if the trial court erred by not considering AM's preference, the error was harmless because the court said that AM's preference would not impact the court's custody determination. *Id*. Given that, with the exception of one phone call, plaintiff had not had contact with AM for a year before the hearing on remand, it seems implausible that whatever reason the court had for not considering AM's preference in February 2019, provided justification for the court's failure to consider AM's preference on remand, during the de novo hearing held in July and August 2020. Further, the court did not expressly indicate on remand that consideration of the child's preference would not impact the court's custody decision. It merely indicated, without further explanation, that it did not have the child's preference and did not have to consider it.

the case for reevaluation, unless the error was harmless"); *Brown v Brown*, 332 Mich App 1; 955 NW2d 515 (2020) (deeming an error in a trial court's best-interest analysis harmless when "in all other respects the remaining best-interest factors overwhelmingly supported" the court's ultimate decision). Under harmless-error analysis,

> [a]n error in the admission or the exclusion of evidence, 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. [MCR 2.613(A).]

As we explain in Section (C) of this decision, Factors (b), (c), (d), and (h) strongly favored defendant, while Factor (e) favored him to a lesser extent. None of the factors considered by the court favored plaintiff. In order to show that the trial court abused its discretion by awarding sole legal and physical custody to defendant, "it is not only necessary for her to show that the trial court erred in its consideration of some of the factors that favored defendant, but also that some of the factors favored her." *Maier*, 311 Mich App at 227. Even if the court presumed that AM favored plaintiff, it seems unlikely that this factor would override all the others in determining that the sum total of the best-interest factors showed that it was in AM's best interests that the court award defendant sole physical and legal custody. See *Treutle*, 197 Mich App at 696 (indicating that a court's decision not to interview a child will not warrant reversal when the child's preference cannot overcome the weight of the other factors).

Although the trial court erred by not considering AM's preference, we deem the error harmless. Given the factors that overwhelmingly favored defendant, and the fact that none of the factors considered by the court favored plaintiff, the trial court's failure to interview AM does not warrant reversal because, assuming that AM would prefer plaintiff, his preference cannot overcome the weight of the other factors.

Turning to Factor (j), this factor addresses "[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 found that "each party makes coparenting a disaster . . . ." The court explained that both parents said that they wanted to foster a meaningful relationship with the other parent, but their actions belied their words: "[t]here's almost zero cooperation between these parents." Consequently, the trial court found that this factor favored neither party. This finding is not against the great weight of the evidence.

Plaintiff contends that the trial court erred by concluding that this factor favored neither party because there was no evidence that she had continued to disrupt AM's relationship with defendant, while the record clearly showed that defendant had deprived plaintiff of parenting time and AM of a relationship with his mother. Although plaintiff's argument has some merit, the trial court's determination that this factor favored both parties equally was not so contrary to the weight of the evidence that it was unwarranted or is so plainly a miscarriage of justice that it would warrant a new trial. See *Fletcher*, 447 Mich at 877-878.

The referee concluded after the November 2018 hearing that Factor (j) favored defendant because "[l]ittle evidence as to plaintiff was offered" and that defendant's request that plaintiff's parenting time be supervised was not made out of spite, but out of reasonable concerns about AM's safety. No additional testimony about plaintiff's willingness and ability to foster a parent-child relationship was offered at the de novo hearing. As to defendant, however, evidence offered suggested that, although his concerns about AM during plaintiff's exercise of parenting time may have had some validity, as evinced by the terms of the trial court's parenting-time order,[3] he had withheld parenting time from plaintiff unreasonably by, in the words of the court, trying to "control every aspect of what would happen or when it will happen as it relates to parenting time with the plaintiff."

Considering that plaintiff had not exercised parenting time with AM in nearly a year before the de novo hearing, that she was not disrupting defendant's relationship with AM did not reflect a choice on her part that might count in favor. The trial court's parenting-time order suggests that the court saw some validity in defendant's concerns about AM's safety, while its warning to defendant that he did not have the privilege of controlling every aspect of parenting time had been an unreasonable response to these concerns. Under these circumstances, the trial court's finding that Factor (j) favored neither party was not so contrary to the weight of the evidence that it was unwarranted or is so plainly a miscarriage of justice that it would warrant a new trial. See *Fletcher*, 447 Mich at 877-878.

2. REMAINING BEST-INTEREST FACTORS

Factor (a) pertains to "[t]he love, affection, and other emotional ties existing between the parties involved and the child." MCL 722.23(a). The focus of this factor is on the emotional bond that already exists between the parent and the child. See *Glover v McRipley*, 159 Mich App 130; 406 NW2d 246 (1987), abrogated on other grounds by *Hunter*, 484 Mich at 253. The trial court found that both parties had "ample love, affection, emotional ties with the minor child" and concluded that the factor favored both parties. The trial court's finding was not against the great weight of the evidence.

Michael Bunker, AM's therapist, testified at the 2018 referee hearing that AM had a warm, loving relationship with plaintiff. Similar testimony regarding AM's bond with plaintiff was given by plaintiff's mother, Karen Pulido, and, at the de novo hearing, by one of plaintiff's cousins. Matthew Morales, the juvenile court officer assigned to plaintiff's neglect case, testified at the 2018 hearing that AM had a fair amount of anger toward both parents, and had said at one point that he wanted to kill defendant, but he had also reported that AM respects and loves defendant. Plaintiff contends that this factor should favor her because AM's bond with her, Pulido, and AM's half siblings was stronger than his bond with defendant. Although there is record evidence to support plaintiff's argument, the trial court's finding that both parties have love, affection, and emotional ties to AM it is not so contrary to the weight of the evidence that it is unwarranted. See *Fletcher*, 447 Mich at 877-878.

[3] The order allowed plaintiff's mother, Karen Pulido, to supervise parenting time, but also required defendant to be present.

Factor (b) addresses "[t]he 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." MCL 722.23(b). The trial court's determination that Factor (b) favored defendant rested heavily on its finding that plaintiff continued to have a drug problem, and the court's opinion that plaintiff's drug problem "would negatively impact her ability to parent, set a good example, if you will, provide love, affection, and guidance, school, education, etcetera . . . ." The court found that defendant had a history of drug use, but he had put it behind him and there was no evidence that defendant currently used drugs. Therefore, the court concluded that Factor (b) favored defendant.

The evidence of plaintiff's drug use comes from testimony at the 2018 referee hearing. The trial court noted Morales's testimony that plaintiff's " 'lack of ability to engage in drug testing' " had been an ongoing concern during the Ingham County neglect case, and that plaintiff " 'never truly engaged in being able to consistently show that she was not using any type of illicit substance.' " However, this testimony does not account for plaintiff's progress after Morales changed jobs in September 2018, and plaintiff continued participation in the program. There is no dispute that plaintiff's Ingham County case was closed sometime after September 2018. It seems reasonable to infer that if the Ingham Circuit Court closed plaintiff's case, plaintiff had met her treatment goals. The court opined, however, that the Ingham County case was closed "in spite of all of the problems that I have already identified about drug use, domestic violence . . . ." There is no record evidence to support this assumption, and the court gave no reason for believing that the Ingham Circuit Court would approach its obligations with less diligence and more willingness to risk the welfare of a child under its jurisdiction than would the Ionia Circuit Court. Therefore, although it is true that, during the time about which Morales testified, plaintiff had not presented evidence to the court that she was not using drugs or not engaged in a relationship characterized by domestic violence, it seems reasonable to infer from the Ingham Circuit Court's closing of the case that, at least at that point, these issues had been resolved.

Nevertheless, the trial court's determination that this factor favored defendant was not against the great weight of the evidence. Defendant admitted into evidence at the de novo hearing photographs of plaintiff that appeared on a local television station in a "Crime Stoppers" segment, the purpose of which was to solicit information from the public about the theft of a television from a Target store in November 2019. Meridian Township Police Office Andrew McConaughy testified that his investigation of the theft revealed the woman in the photograph to be plaintiff, and the man to be Desmond Wylie, plaintiff's boyfriend at the time. Plaintiff acknowledged that she was the woman in the Crime Stoppers photograph and that she contacted police after seeing the Crime Stoppers segment; however, she denied that she was involved in the theft of the television and insisted that she had ended her relationship with Wylie in part because of this incident. Nevertheless, the trial court found as a matter of fact that the Crime Stoppers photograph suggested that plaintiff was associating with people who would not be good influences on AM. In light of evidence suggesting that plaintiff continued to exercise poor judgment in her choice of partners and activities, and considering the record evidence supporting the court's findings regarding the stability of defendant's home environment and the progress that AM had made in school since living with defendant, the trial court's conclusion that Factor (b) favored defendant was not so contrary to the weight of the evidence that it was unwarranted. See *Fletcher*, 447 Mich at 877-878. Although the evidence may not raise questions about plaintiff's capacity to give AM

love and affection, it does raise questions about her ability to provide the child with proper guidance.

Plaintiff contends that the trial court's finding that this factor favored defendant did not consider that she was more involved in AM's counseling than was defendant, nor address the issue of religion. As to the parties' relative involvement in AM's counseling, defendant agreed that plaintiff had taken AM to counseling more frequently than he had, explaining that he could not take time off from work without risk of losing his job. The trial court found that, although defendant was involved in AM's counseling, plaintiff made most of the appointments, whereas defendant could not because of his job; therefore, indicating that the court found credible defendant's explanation that his lesser involvement in AM's counseling was not because of unwillingness or lack of interest, but an attempt to balance involvement with the need to keep a job necessary to support his family. In reviewing the trial court's findings, this Court defers to the trial court's determination of credibility. *Shann*, 293 Mich App at 305.

Regarding the parties' capacity and disposition to continue educating and raising AM in his religious creed, although Pulido testified that she took her grandchildren to church and that she had raised the issue unsuccessfully with defendant, there is no record evidence that either parent had concerns about educating and raising AM in any particular religion or creed. The trial court need not comment on every matter in evidence or declare whether it accepted or rejected every proposition argued. See *Baker v Baker*, 411 Mich 567, 583; 309 NW2d 532 (1981).

Factor (c) involves "[t]he 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." MCL 722.23(c). The trial court's finding that this factor favored defendant was not against the great weight of the evidence. Testimony indicated that defendant's housing, employment, and marriage were comparatively stable, while plaintiff had been unable or unwilling to provide AM with proper clothing and daily items during her parenting time,[4] that she was $2,000 behind in child support, and that she had periods of housing and employment instability.

Plaintiff contends that this factor should have favored her because the record showed that she provided medical care for AM and that defendant discontinued AM's mental health counseling and psychiatric medication. Although there is evidence that plaintiff and Pulido took AM to an urgent care facility for treatment of purported elbow pain, the evidence also showed that defendant followed up once he became aware of the issue. As to AM's mental health care, the trial court found nothing in the record indicating that defendant's decision to discontinue AM's counseling and psychiatric medication adversely affected AM; on the contrary, as will be further discussed later, the evidence showed that AM's behavior and academic performance at school had improved. On this record, we conclude that the trial court's finding that Factor (c) favored defendant was not

[4] Before the trial court's 2019 order granting defendant sole legal and physical custody of AM, the parents had participated in a split-parenting schedule, which gave the parents three to four days with AM each week.

so contrary to the weight of the evidence that it was unwarranted. See *Fletcher*, 447 Mich at 877-878.

Factor (d) relates to "[t]he length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity." MCL 722.23(d). The trial court found that this factor also favored defendant, indicating the instability of AM's environment with plaintiff, the ongoing commitment of defendant to create a suitable environment for the child, and the resulting progress that AM had made in that environment. The great weight of the evidence supported the trial court's finding.

The record supports the trial court's finding that AM was removed from an unstable home environment. AM and his half siblings were removed from plaintiff's care in August 2016, when plaintiff was the victim of domestic violence witnessed by the children. Although evidence of AM's home life with plaintiff before this removal is scant, Pulido testified at the referee hearing that AM was removed from plaintiff after a car accident, when he was about four years old, and that starting in 2014, he spent about a year with her in a guardianship. Regarding defendant, the court considered testimony from the 2018 referee hearing, including that defendant demonstrated "a willingness to step up to meet the needs of his child in whatever area there may have been a concern." In addition, as the court repeatedly observed, defendant's housing and marriage are stable, and AM has shown improvement in school since coming to live in this environment.

Plaintiff contends that the trial court's conclusion that this factor favored defendant gives little recognition to the fact that, after AM's removal, plaintiff completed counseling and parenting classes, that Ingham County concluded that her children were not at risk in her care, and that no further incidents of domestic violence occurred. Plaintiff's argument has some merit, as discussed under Factor (b). But assuming for the sake of argument that plaintiff completed counseling and parenting classes and was not at risk of suffering domestic violence, given evidence of defendant's commitment to AM, the stability of the environment he has created for AM, and the child's improvement while he has lived in this environment, the evidence still does not preponderate against the trial court's finding that this factor favored defendant.

Plaintiff also argues that the trial court prevented her from presenting evidence of domestic violence between defendant and his wife and evidence that AM was scared when he stayed with his father. On the contrary, plaintiff testified at length about an incident purportedly to have occurred in July 2019, when defendant's wife yelled at and hit him. The domestic violence was denied by defendant and his wife. The trial court made findings of fact about the incident, but appears ultimately to have determined their testimony more credible than plaintiff's unsupported testimony.[5] As already indicated, we defer to the trial court's credibility assessment. *Shann*, 293 Mich App at 305. As to plaintiff's argument that the court prevented her from admitting evidence that domestic violence between defendant and his wife scared AM, the trial court determined that the evidence was inadmissible hearsay. Plaintiff does not identify any error in the court's ruling

[5] While recounting the same incident, plaintiff implied that defendant made romantic overtures to her. Although plaintiff supported this accusation with evidence of a related text message and Facebook message, she offered no evidence in support of claim that defendant's wife hit and yelled at him. The trial court more than once expressed its serious concerns about plaintiff's credibility.

excluding the hearsay evidence, nor does she cite any authority indicating that the evidence was wrongly excluded. An appellant may not merely announce her position and leave it to this Court to discover and rationalize the basis for his claims, nor give issues cursory treatment with little or no citation of supporting authority. *Bronson Methodist Hosp v Mich Assigned Claims Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012).

Plaintiff further argues that the trial court failed to consider what effect defendant's proposed move to Texas would have on the stability of his home. Plaintiff also raises this issue under Factor (*l*), which addresses "[a]ny other factor considered by the court to be relevant to a particular child custody dispute." In August 2019, defendant moved the trial court to relocate to Texas. At the time of the de novo hearing, the proposed move was hypothetical, as the motion had not been decided. Therefore, even if the court had found that the hypothetical move would disrupt AM's environment, such finding arguably would have warranted no weight in the court's best-interest analysis. Plaintiff has presented no authority suggesting otherwise.

Factor (e) regards "[t]he permanence, as a family unit, of the existing or proposed custodial home or homes." MCL 722.23(e). This factor requires a trial court to "weigh all the facts" bearing on which parent likely can "best provide" the child "the benefits of a custodial home that is marked by permanence, as a family unit." *Kubicki*, 306 Mich App at 543. "[T]he focus of factor e is the child's prospects for a stable family environment." *Ireland v Smith*, 451 Mich 457, 465; 547 NW2d 686 (1996). The trial court found that this factor also favored defendant, noting that defendant is married, has stepchildren, has housing stability, and is almost always employed. The court further noted that there are no credible allegations of domestic violence in defendant's marriage but that the record was "replete" with evidence of domestic violence in plaintiff's life. The record supports the trial court's conclusion that this factor favored defendant.

Factor (f) addresses "[t]he moral fitness of the parties involved." MCL 722.23(f). This factor evaluates the parties' relative moral fitness only as it relates to how they will function as a parent and not on who is the morally superior adult. *Fletcher*, 447 Mich at 887. Therefore, "courts must look to the parent-child relationship and the effect the conduct at issue will have on that relationship." *Id.*

The trial court gave dispositive weight to what it presumed to be plaintiff's relationship with James Steele, one of the witnesses who testified on plaintiff's behalf. Steele testified that he was a 62-year-old married, yet separated man, who met plaintiff through a woman in her early twenties. Steele said that he had known plaintiff for two to three years, visited her two or three times a week, and sometimes brought meals for her and the children or fixed plaintiff's car. Steele cosigned for plaintiff to purchase a car, and let her drive his vehicles. Steele, plaintiff, and Pulido denied that he and plaintiff had a dating relationship. The court insinuated otherwise, finding as a matter of fact that plaintiff's relationship with Steele was "very odd," and stating that, although it had no articulable evidence, it was suspicious that Steele expected, or was already getting, something out of the relationship. The court found that Steele's relationship with plaintiff went "to the heart of F," and stated that it "weighs heavily on the court as it relates to factor F. I don't understand that relationship. And whatever it is, it's not in the best interest [sic] of the minor child." Accordingly, the trial court concluded that Factor (f) favored defendant.

Plaintiff contends that the trial court's finding that Factor (f) favored defendant was against the great weight of the evidence because the trial court based its conclusion on its presumption of a sexual relationship between Steele and plaintiff, despite there being no record evidence of such a relationship. She further contends that even if such a relationship did exist, the court could not use it to measure her moral fitness unless it interfered with her ability to parent AM, and there was no evidence suggesting that it did. Plaintiff's argument has merit.

The Michigan Supreme Court held in *Fletcher*, 447 Mich at 885-886, that a wife's sexual infidelities did not establish a poor moral example unless the children knew about them. By analogy, whatever improper relationship the trial court presumed that Steele and plaintiff had arguably should not factor into the analysis of Factor (f) unless AM was aware of it, and nothing in the record suggests that he was. At the time of the de novo hearing, AM had been out of plaintiff's care for approximately four years. Steele testified that he had known plaintiff for three years and that he had seen her with AM on a couple of occasions, early in their friendship. On this record, and considering that this factor assesses moral fitness *as a parent*, not the moral superiority of the parties, the trial court's conclusion that Factor (f) favored defendant because of plaintiff's relationship with Steele was against the great weight of the evidence. To the extent that the relationship between Steele and plaintiff presumed by the court was the only reason the court found that Factor (f) favored defendant, the court should have found that the factor favored neither party.

Factor (g) involves assessment of "[t]he mental and physical health of the parties involved." MCL 722.23(g). The trial court stated that it had heard no evidence that either party had significant health issues that would impact their ability to parent. Nevertheless, the court concluded that, because plaintiff failed to prove that she was drug-free, the factor favored defendant. As discussed under Factor (b), the fact that the Ingham Circuit Court closed its case against plaintiff supports the reasonable inference that plaintiff completed her treatment goals. To the extent that the trial court's finding that Factor (g) favored defendant rested on the basis of Morales's testimony that plaintiff never proved to the court that she was drug-free, the finding was against the great weight of the evidence. The trial court should have found this factor to be neutral.

Factor (h) looks at "[t]he home, school, and community record of the child." MCL 722.23(h). In evaluating this factor, the trial court focused on AM's school record. The court noted that when AM was removed from plaintiff's care, he was struggling personally and academically, but it found that since being placed with his father, AM's behavioral and academic performance improved. The court noted that plaintiff criticized defendant for discontinuing AM's medications and counseling, but it stated that nothing in the record suggested that this harmed AM. The court concluded that this factor favored defendant. The great weight of the evidence supports this finding.

Defendant admitted into evidence school records that substantiated measurable improvements in AM's behavioral and academic performance since going to live exclusively with defendant. Plaintiff does not dispute this progress, but contends that this factor should have favored her because the trial court failed to acknowledge the role that she and her mother played in AM's education and counseling. She also contends that she was not notified of a school meeting to discuss AM's individualized education plan (IEP). Assuming for the sake of argument that plaintiff and her mother played a role in the child's education, the court's finding was still supported by the great weight of the evidence because the documentary evidence showed that the

most substantial improvement occurred well after defendant obtained sole legal custody of the child in February 2019. And although, contrary to the court's observations, the relevant documents did show that plaintiff was not included in the school's invitation to attend an IEP meeting, this does not change the fact that the record supported the trial court's finding that AM made considerable progress in school after defendant was awarded full physical custody.

Plaintiff also contends that, although there was ample testimony about AM's relationship with his half siblings, there was no comparable testimony about his relationship with his stepmother or stepsiblings. Beyond speculating that the lack of evidence implies a negative relationship, plaintiff fails to explain how testimony about AM's relationship with his half siblings, and the absence of comparable testimony relative to AM's relationship with his stepmother and stepsiblings, affects the trial court's finding that this factor favors defendant. As previously indicated, an appellant may not give issues cursory treatment with little or no citation of supporting authority. *Bronson Methodist Hosp*, 298 Mich App at 199.

Plaintiff also suggests that, because defendant isolated AM from the Medina family, AM's physicians, and his counselors, "no one had access to [AM] to testify as to his mental health." Bunker diagnosed AM with post-traumatic stress disorder, attention-deficit disorder, and intermittent explosive disorder. Although AM's school records do not address AM's performance from a psychological perspective, to the extent that they showed academic improvement and an improvement in AM's anger-management skills, they suggested improvement in areas pertinent to Bunker's diagnoses. Plaintiff refers to testimony offered by Pulido at the 2018 referee hearing that AM was "depressed," that there was "talk of suicide," and that his school records showed that, as late as June 2019, he was motivated by fear of consequences at home. Having reviewed the testimony referred to, we are unconvinced. Pulido used "depression" to indicate that AM was sad because he had to leave plaintiff's parenting time and return to defendant; AM was never diagnosed with clinical depression. The "talk of suicide" to which plaintiff referred pertained to testimony at the referee hearing that AM took a knife and a box cutter to school and that he had a past history of self-harm. Defendant acknowledged that AM had a history of attempting to hurt himself, insisted that it "happened a long time ago," and stated that AM was not trying to hurt himself when he took the knife and box cutter to school. The trial court made no findings of fact regarding this matter. Lastly, AM's school records do show that, in June 2019, he was motivated by fear of consequences at home; however, the same records show that in November 2019, he was motivated to stay in class because he had a positive connection with his teacher. In short, we find unpersuasive plaintiff's arguments against the trial court's finding that Factor (h) favored defendant. This finding was supported by the great weight of the evidence.

Factor (k) regards "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." MCL 722.23(k). Evidence was presented at the November 2018 referee hearing that plaintiff might still have been involved with the man whose abuse of her resulted in the 2016 removal of her children. The trial court found as a matter of fact that "DV in

the plaintiff's life is a concern. It's found in this transcript.[6] It remains true today." On the basis of this finding, the court concluded that Factor (k) favored defendant. This finding was against the great weight of the evidence. Although evidence at the 2018 hearing suggested that plaintiff still had contact with her abuser, the Ingham Circuit Court's closure after this hearing reasonably implies that she met her treatment goals, including those relative to domestic violence. Evidence at the de novo hearing indicated that plaintiff had relationships with Steele and Wylie, but nothing suggested that domestic violence was a part of either of those relationships. In the absence of any evidence that plaintiff was currently at risk of domestic violence, and considering the court's apparent rejection of plaintiff's testimony regarding domestic violence in defendant's relationship, this factor favors both parties equally.

In light of the foregoing, we conclude that the trial court's determination that best-interest Factors (f), (g), and (k) favored defendant was against the great weight of the evidence, and that each factor should have been neutral. Nevertheless, we deem remand unnecessary because, as explained later, the trial court's errors are harmless, as they do not affect the outcome of this case.

C. CUSTODY DECISION

Plaintiff contends that the trial court abused its discretion by granting defendant sole legal and physical custody of AM because all the best-interest factors favored her, some more heavily than others. She contends that granting defendant sole custody would be equivalent to placing AM with a stranger and would be harmful to the child's mental health. This argument is unavailing.

As already explained, the trial court erred by not considering Factor (i), and its findings as to Factors (f), (g), and (k) were against the great weight of the evidence. The court's findings regarding the remaining factors were not against the great weight of the evidence. Therefore, the dispositive issue is whether the trial court's errors were harmless. We conclude that they were. Consequently, the trial court did not abuse its discretion by granting defendant's motion for sole legal and physical custody.

Factors (b), (c), (d), and (h) strongly favor defendant. Record evidence raised no questions about defendant's capacity and disposition to provide AM with guidance, or food, clothing, and medical care; whether his home has provided AM with stability in a satisfactory environment for as long as AM has lived with defendant; or whether AM showed measurable improvement in his behavior and academic performance at school since going to live exclusively with defendant. In addition, Factor (e) also favored defendant because the records showed no financial or personal issues, or the potential consequences of poor judgment, that endanger the permanence of defendant's family unit.

By contrast, plaintiff appears to continue to exercise poor judgment by associating with people engaged in criminality and appears to be unable or unwilling to provide for AM's material

[6] Presumably, the trial court was referring to the transcript of the November 2018 referee hearing. The trial court's comments before the quoted sentences pertained to evidence found in that transcript.

needs, as illustrated by the fact that she did not provide AM with proper clothing or daily necessities during the split parenting time she had with defendant and by her $2,000 child support arrearage. In addition, although AM has certainly lived with plaintiff longer than he has with defendant, the record shows that he has experienced significant instability and disruptions in her care. Further, although AM's grandmother provides a measure of stability, the record leaves no doubt that AM's best "prospects for a stable family environment," *Ireland*, 451 Mich at 465, are with defendant. In addition, there is little, if any, evidence of plaintiff assisting AM to succeed in school, home, or the community.

There is no doubt about the strength of the parent-child bond between plaintiff and AM. But there is evidence that defendant and AM also share a father-son bond. And in light of the factors that favor defendant, particularly those involving defendant's capacity and disposition to provide for AM's material needs and to provide a stable environment for the child, that Factors (f), (g), and (k), are neutral is insufficient to change the outcome of the court's analysis. See *Maier*, 311 Mich App at 227.

Finally, given the factors that overwhelmingly favor defendant, and the fact that none of the factors considered by the trial court favor plaintiff, it is likely that the court's failure to consider AM's preference did not constitute harmless error. Even if the court presumed that AM favored plaintiff, it is unlikely that this factor would override all the others in determining that the sum total of the best-interest factors shows that it is in AM's best interests that the court award defendant sole physical and legal custody. See *Treutle*, 197 Mich App at 696 (indicating that a court's decision not to interview a child will not warrant reversal when the child's preference cannot overcome the weight of the other factors).

For the reasons stated, we conclude that the trial court did not abuse its discretion by granting sole legal and physical custody of AM to defendant.

Affirmed.

/s/ Mark T. Boonstra
/s/ Jane E. Markey
/s/ Deborah A. Servitto