

STATE OF MICHIGAN
COURT OF APPEALS

NICOLETTE MULLER,

Plaintiff-Appellee,

v

CHRISTIAN MULLER,

Defendant-Appellant.

UNPUBLISHED

October 27, 2005

No. 259271

Oakland Circuit Court

LC No. 03-675204-DM

Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted an order restricting the presence of unrelated members of the opposite sex during overnight parenting time. We affirm.

Plaintiff and defendant share joint legal custody of their two minor children, while plaintiff has sole physical custody. Defendant's parenting time schedule includes alternating weekends and holidays, with expanded parenting time during summers. After learning that defendant permitted his girlfriend to stay in his home during overnight visitation, plaintiff sought to modify defendant's parenting time. The trial court entered an order prohibiting both parties from having "an unrelated member of the opposite sex overnight while having parenting time with the minor children." Defendant challenges this order because he and his girlfriend desire to cohabit but do not wish to marry.

Defendant argues the trial court erred in restricting the presence of his current girlfriend while his minor children are in his custody for overnight parenting time. We review parenting time orders de novo. We will not reverse an order unless (1) the factual findings on which the order is based are against the great weight of the evidence; (2) the court abused its discretion; or (3) it committed a clear legal error. *Brown v Loveman*, 260 Mich App 576, 591-592; 680 NW2d 432 (2004).

The Child Custody Act, MCL 722.21 *et seq.*, governs disputes about parenting time. *Thames v Thames*, 191 Mich App 299, 305; 477 NW2d 496 (1991). Defendant is correct that "Parenting time shall be granted in accordance with the best interests of the child." MCL 722.27a(1). In accordance with MCL 722.27a(8)(c), an order for parenting time "may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent," including "[r]estrictions on the presence of third persons during parenting time." The social policy of the state of Michigan is established by the Legislature, not

the courts, and we note that MCL 750.335 prohibits lewd and lascivious cohabitation¹. The Legislature has not repealed this statute.

The trial court recognized the best interests of the children standard on the record at the hearing and in its written opinion. Although the trial court did not specifically articulate any findings regarding the best interests of the children, there is no indication that it failed to consider them when making its decision. It appears as if the best interests of the children were not actually the issue before the trial court because their best interests would be served regardless of whether the trial court permitted the parties to have unrelated overnight guests of the opposite sex. Plaintiff did not believe that the children should be exposed to the cohabitation of unmarried couples. The trial court found that defendant did not express a position one way or the other about the cohabitation of unmarried couples. Because only one party expressed an opinion on this issue, the trial court issued an order honoring that opinion. We are not persuaded that this constitutes an abuse of discretion or legal error. *Brown, supra* at 591-592. We are not commenting on the morality of the situation, but we respect the cohabitation statute that remains in existence. Such issues are better directed at the Legislature.

Defendant next asserts that the trial court order violates his First Amendment right to freedom of religion by forcing plaintiff's morals upon him. Defendant correctly notes the "fundamental constitutional right of parents to raise their children and make decisions regarding visitation[.]" *Greer v Alexander*, 248 Mich App 259, 265; 639 NW2d 39 (2001), citing *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000). This right is recognized in both the parties' judgment of divorce and by statute. MCL 722.27a(9). However, neither party identified their participation or adherence to a specific religious belief system. See *Van Koevering v Van Koevering*, 144 Mich App 404, 408; 375 NW2d 759 (1985). Therefore, this argument is without merit.

Defendant claims that the trial court failed to consider evidence, including his expert's testimony, regarding the best interests of the children. Defendant did not express a personal belief contrary to plaintiff's; he merely stated that he wants to accommodate his girlfriend's aversion to the institution of marriage. Because the trial court was not being asked to resolve a dispute between opposing views of morality, it determined that any evidence of morality or sexuality was irrelevant. It therefore resolved the issue in favor of plaintiff, the only party who expressed an affirmative belief on this issue. The testimony of defendant's expert focused on the well being of defendant's relationship with his girlfriend and its impact on the children, not on defendant's beliefs. Although the trial court did not discuss the expert's testimony in its opinion, it is not apparent that it failed or refused to consider it.

Defendant also contends that the trial court erred in denying his request for an evidentiary hearing and ruling against the referee's recommendation. Defendant's argument is misplaced

¹ Black's Law Dictionary (6th ed), defines "lewd and lascivious cohabitation" as follows: "Within criminal statutes, the living together of a man and woman not married to each other as husband and wife."

because the trial court did conduct an evidentiary hearing on August 3, 2004, and the trial court never referenced the referee's recommendation.²

In the relief requested portion of his appellate brief, defendant seeks this Court's intervention to disqualify the trial judge and to suspend his performance on unrelated provisions of the judgment of divorce pertaining to property settlement. Based on defendant's failure to properly present these requests within the statement of issues presented, they are deemed waived and not subject to appellate review. MCR 7.212(C)(5); *Busch v Holmes*, 256 Mich App 4, 12; 662 NW2d 64 (2003).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder

² We also note that neither party requested review of the friend of the court determination, which is not automatic. MCR 3.215(E)(4).