STATE OF MICHIGAN

COURT OF APPEALS

SYLVIA ABDEL-RAHMAN

Plaintiff-Appellee,

v

KAMAL ABDEL-RAHMAN,

Defendant-Appellant.

UNPUBLISHED
July 23, 1996

No. 187959
LC No. 94-43315-DM

Before: Saad, P.J. and McDonald and Chrzanowski,* JJ

PER CURIAM.

Defendant father appeals from a final order permitting him ten hours per week of *supervised* visitation time with his daughter (DOB 9/11/92); he is permitted no unsupervised visitation. We affirm.

The parties were married three years before plaintiff filed for divorce, seeking temporary and permanent custody of the parties' daughter. On November 17, 1994, the trial court ordered, on an ex parte basis, that plaintiff mother be granted physical custody, and that defendant be allowed supervised visitation. The order also prohibited defendant from removing the daughter from the United States without permission of the court, and barred defendant from obtaining a passport for his daughter.

Upon defendant's objections to the supervised visitation, an administrative hearing was held. Defendant argued at the hearing that the sole reason for allowing him only supervised visitation was the fact that he was an alien and subject to deportation due to his pending divorce. Defendant argued that, if he took his daughter out of the United States, he would be subject to criminal prosecution, and could be extradited from Jordan, the country whose passport he held, for kidnapping. Defendant also argued that he was appealing the deportation and that he believed that his chances of being allowed to remain in the United States were good.

Plaintiff later testified that, at the next visitation scheduled following this hearing, defendant argued with plaintiff about the custody arrangement, pressing her to make a custody agreement between

* Circuit judge, sitting on the Court of Appeals by assignment.

themselves rather than litigating the issue. Plaintiff testified that, when she refused to discuss such an agreement, defendant responded, "[A]s sure as the sun rises in the east and sets in the west, I will get my daughter from you." It is undisputed that this was the only such comment made.

The trial court subsequently entered a final order, confirming the custody and supervised visitation arrangements made in the court's previous order.

DISCUSSION

Defendant first argues that the trial court erred in restricting defendant to supervised visitation based only upon speculation that defendant might attempt to leave the country with the child. Our review of a visitation order is de novo, but we will not reverse the order unless the trial court made findings of fact against the great weight of the evidence, committed a palpable abuse of discretion, or committed clear legal error. *Deal v Deal,* 197 Mich App 739, 741; 496 NW2d 403 (1993).

It is well-established that, in determining an appropriate visitation schedule, the trial court may consider the "threatened or actual detention of the child with the intent to retain or conceal the child from the other parent," MCL 722.27a(6)(h); MSA 25.312(7a)(6)(h), or "any other relevant factors." MCL 722.17a(6)(i); MSA 25.312(7a)(6)(i). The trial court also has discretion to require supervised visitation. *Booth v Booth,* 194 Mich App 284, 293; 486 NW2d 116 (1992). A trial court's decision may constitute an abuse of discretion only where it 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 reason but rather of passion or bias." *Fletcher v Fletcher,* 447 Mich 871, 879-880; 526 NW2d 889 (1994). We have carefully reviewed the lower court record, and find no error.

Defendant next asserts that the trial court's decision to restrict his parenting time, based on his status as an alien, is violative of the fourteenth amendment guarantee of equal protection. However, the trial court's order allowing defendant only supervised visitation is not a violation of the fourteenth amendment's equal protection clause. While the trial court's decision to limit visitation based on the scheduled deportation of a non-custodial parent could only be applicable to foreign nationals, this order did not discriminate based on alienage per se, nor has defendant presented any evidence that was it mere pretext for discrimination based on alienage.

Defendant finally argues that the trial court erred by focusing solely on defendant's immigration status and in failing to consider *each* of the "best interest" factors in MCL 722.23; MSA 25.312(3).[1] In support of this proposition, defendant relies upon *Snyder v Snyder,* 170 Mich App 801, 806; 429 NW2d 234 (1988), which states that, "[w]hen deciding a visitation matter, the court must consider each of these factors and state a finding on each in order to determine the best interests of the child. Failure to make specific findings is error." *Snyder,* 170 Mich App at 806; 429 NW2d 234 (1988); *Dowd v Dowd,* 97 Mich App 276, 278-279; 293 NW2d 797 (1980).

However, there is another line of cases, cited by plaintiff, holding that a trial court, deciding a case dealing strictly with visitation, is required to consider only those statutory best interest factors

relevant to the dispute. See *Olepa v Olepa*, 151 Mich App 690, 702; 391NW2d 446 (1986) ("In a pure visitation dispute, the trial court need not make specific findings on each factor listed in MCL 722.23; MSA 25.312(3), but may focus solely on the contested issues."); *Bivens v Bivens*, 146 Mich App 223, 234; 379 NW2d 431 (1985) (in visitation dispute, court must, at a minimum, evaluate those best-interests-of-the-child factors which focus on the contested issue); *In re Flynn*, 130 Mich App 740, 763; 344 NW2d 352 (1983) ("The 'best interest' factors are applicable in visitation disputes, but the fact-finding requirement has been relaxed to provide that the trial judge need only focus on contested issues."); *Petrey v Petrey*, 127 Mich App 577, 579; 339 NW2d 226 (1983) ("Although in a child custody dispute the trial court must make a specific finding on each factor listed in MCL 722.23; MSA 25.312(3), it need not separately evaluate all of these in a pure visitation dispute but may focus solely on the contested issues."); *Hoffman v Hoffman*, 119 Mich App 79, 83; 326 NW2d 136 (1982) ("Although we agree with the *Dowd* Court that the trial court must make specific findings with respect to each factor before deciding a custodial dispute, we decline to impose such a requirement in the context of controversies involving only visitation rights. We hold that the trial court in a visitation rights case need not evaluate each of the statutory factors but may focus solely upon the contested issues.").

We find the rule announced in the majority of cases to be persuasive. In a pure visitation dispute, the trial court need not make specific findings on each factor listed in MCL 722.23; MSA 25.312(3), but may focus solely on the contested issues. Significant to our decision is that both *Snyder* and *Dowd* rely predominantly on cases dealing with custody exclusively. See *Snyder*, 170 Mich at 806; 429 NW2d 234; *Dowd*, 97 Mich App at 278-279; 293 NW2d 797. Also, as a practical matter, many of the best interests factors are not relevant to a dispute over visitation.

Under this analysis, the trial court did not err in failing to make explicit findings of fact on each of the statutory best interest factors. In this case, the sole issue in dispute was the possibility that defendant would take his daughter out of the country under the pressure of deportation. The trial court was not required to consider the other best interest factors listed in the Child Custody Act because none of these factors were relevant to the only disputed issue in this case.

Affirmed.

/s/ Henry William Saad
/s/ Gary R. McDonald
/s/ Mary A. Chrzanowski

[1] Visitation, and modifications to it, are governed by MCL 722.27a; MSA 25.312(7a), which includes a list of factors which the court "may consider." This statute explicitly references the "best interests of the child." MCL 722.27a(1); MSA 25.312(7a)(1).