STATE OF MICHIGAN

COURT OF APPEALS

SHIRLEY A. MARTIN and JAMES R. MARTIN, III, Plaintiffs-Appellees, v JANELLE L. CLEVELAND-MARTIN, Defendant-Appellant.	UNPUBLISHED February 18, 2020 No. 350353 Hillsdale Circuit Court Family Division LC No. 17-000590-DZ

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

In this grandparenting-time action, defendant-mother appeals by right the court's order awarding plaintiffs, Shirley A. Martin and James R. Martin, III (the Martins), grandparenting time with defendant's two minor children. On appeal, defendant argues that the court violated her constitutional rights, as well as the statutory requirements for awarding grandparenting time set forth in MCL 722.27b, by depriving her of the benefit of the fit-parent presumption and by not addressing the best interests of the children. She further contends that, with respect to attorney fees, the court erred by refusing to hold a hearing on the matter and by failing to provide any basis or rationale for denying her request for attorney fees under MCR 3.206(D). We hold that the record fails to show that the court engaged in the required legal analysis or made the necessary factual findings in regard to grandparenting time and attorney fees. Accordingly, we reverse and remand for further proceedings.

Defendant was married to the Martins' son, and they had two children. Defendant's husband, who was in the military, passed away. The Martins, who reside in Illinois, filed a complaint seeking grandparenting time for their two grandchildren. As alleged in the complaint, the children recognized the Martins as their grandparents, but after their son's death, defendant prevented the Martins from visiting their grandchildren and moved with the children to Hillsdale, Michigan. At an evidentiary hearing, the Martins testified with respect to their relationship with their grandchildren, and defendant explained her reluctance to allow visits of the type and duration the Martins sought. The parties described the tension between them. After the evidentiary hearing, the court ruled:

> The issue is that this is all [the Martins] have left. This is all that [defendant] has left and I appreciate that. I mean, essentially a nine/ten-year-old child and I fully appreciate being protective, ma'am. I mean I have six kids of my own. I have ten grandchildren of my own so I'm not new to the ins and outs of parenting and grandparenting, but there has to be a relationship.
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> There was a relationship. I mean, the testimony clearly established that typically on an average, once a year the grandparents would go down and visit [the children's family] at their duty stations and vice versa. Whenever that was possible depending on economics[, the children's family] would come and visit the grandparents at their respective homes, so it meets all the requirements of the Grandparent Visitation Act.

Without any further analysis, the court proceeded to award grandparenting time.

In *Zawilanski v Marshall*, 317 Mich App 43, 48; 894 NW2d 141 (2016), this Court set forth the governing standards of review for grandparenting-time orders, stating:

> Orders concerning grandparenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. The Court should affirm a trial court's findings of fact unless the evidence clearly preponderates in the opposite direction. A trial court abuses its discretion on a custody matter 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. [Quotation marks, citations, and alterations omitted.]

A court commits a legal error when it incorrectly chooses, interprets, or applies the law. *Id.*

"Parents have a constitutionally protected right to make decisions about the care, custody, and management of their children." *Id.* at 49. Of course, the constitutional right is not absolute, e.g., it does not protect abuse and neglect. *Id.* But the United States Constitution does recognize a presumption that a fit parent acts in the best interest of his or her children and that normally there will be no reason for the government to inject itself and question the parent's decision-making. *Id.* Consistent with these principles, Michigan's grandparenting-time statute, MCL 722.27b, provides, in relevant part, as follows:

> In order to give deference to the decisions of fit parents, it is presumed in a proceeding under this subsection that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut the presumption created in this subdivision, a grandparent filing a complaint or motion under this section must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. If the grandparent does not overcome the presumption, the court shall dismiss the complaint or deny the motion. [See *Zawilanski*, 317 Mich App at 189.]

In the instant case, the court never questioned—and there is no reason to question—defendant's fitness as a parent. Therefore, the Martins had the burden to rebut by a preponderance of the evidence the fit-parent presumption that defendant's decision to limit or deny them grandparenting time did not create a substantial risk of harm to the children's mental, physical, or emotional health. Unfortunately, the court's oral decision was entirely devoid of any reference to the governing presumption. And, perhaps more importantly, the court's ruling did not include an evaluation of whether the Martins overcame the fit-parent presumption. The court simply did not analyze and apply the governing law.[1] MCL 722.27b(12) specifically provides that "[a] court shall make a record of its analysis and findings under subsection[] (4) . . . ."

Even were this Court to assume the Martins had rebutted the presumption, we must note that the Legislature still required more before grandparenting time could be awarded: MCL 722.27b(6) provides that "[i]f the court finds that a grandparent has met the standard for rebutting the presumption described in subsection (4), the court shall consider whether it is in the best interests of the child to enter an order for grandparenting time." MCL 722.27b(6) sets forth the various best-interest factors. Here, once again, we have no analysis or application of the law by the court. MCL 722.27b(12) expressly provides that "[a] court shall make a record of its analysis and findings under subsection[] . . . (6) . . . ." On remand, if the court determines that the Martins established by a preponderance of the evidence that a substantial risk of harm to the children's physical, mental, or emotional health would result from defendant's decision to disallow grandparenting time, the court must engage in an analysis of the best-interest factors under MCL 722.27b(6).

Next, we consider defendant's argument that the court erred by refusing to hold a hearing on her request for attorney fees and by failing to provide any basis or rationale for denying her request for attorney fees under MCR 3.206(D).[2] We agree. This Court reviews for an abuse of discretion a court's decision on a request for attorney fees. *Safdar v Aziz*, 327 Mich App 252, 267; 933 NW2d 708 (2019). An abuse of discretion occurs when a court's ruling falls outside the range of reasonable and principled outcomes. *Id*.

MCR 3.206(D) provides, in pertinent part, as follows:

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[1] The transcript also reflects several instances when the court appeared to criticize defendant's parenting decisions without any reference to the risk to the children's well-being, including references to the court's own experiences as a father and grandfather. The court indicated that defendant needed to "cut the umbilical cord" in order to give the children more independence. This is exactly the type of judicial interference that the United States Supreme Court proscribed. See *Troxel v Granville*, 530 US 57, 72-73; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (opinion of O'CONNOR, J.) ("[T]he Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made.").

[2] Subchapter 3.200 applies to grandparenting time matters. MCR 3.201(A).

> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
>
> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that:
>
> (a) the party is unable to bear the expense of the action, including the expense of engaging in discovery appropriate for the matter, and that the other party is able to pay . . . .

For purposes of MCR 3.206(D)(2)(a), "[a]ttorney fees are not awarded as a matter of right but only when necessary to enable a party to carry on or defend the litigation." *Sulaica v Rometty*, 308 Mich App 568, 590; 866 NW2d 838 (2014) (quotation marks and citation omitted). "The party requesting the attorney fees has the burden of showing facts sufficient to justify the award." *Ewald v Ewald*, 292 Mich App 706, 725; 810 NW2d 396 (2011) (quotation marks and citation omitted). "[W]hether a party has an inability to pay is dependent on the particular facts and circumstances of each case." *Loutts v Loutts (After Remand)*, 309 Mich App 203, 217; 871 NW2d 298 (2015). Therefore, it is always incumbent upon a court to consider whether attorney fees are necessary by giving special consideration to the specific financial situations of the parties and the equities involved in the case. *Id.*; see also *Myland v Myland*, 290 Mich App 691, 703; 804 NW2d 124 (2010).

First, we conclude that the court's failure to provide any reasoning for its decision to deny defendant's request for attorney fees hinders appellate review and constitutes an abuse of discretion. With respect to discretionary decisions, it is elementary "that the trial court must provide a reasoned basis for its decision." *Michigan Dep't of Trans v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000). In this case, defendant claimed that as a widowed mother of four minor children, she subsisted on $1,600 per month in disposable income and that she incurred over $10,000 in attorney fees while defending this action (exclusive of costs and expenses, as well as additional costs incurred on appeal). By comparison, defendant claimed that the Martins, having no dependents and two full-time jobs, had sufficient resources to fairly share some or all of defendant's expenses. Given the allegations of defendant's relative inability to afford to defend this action and that the Martins have not objected to her fee request, we must conclude that the court erred by not giving defendant—at the very least—an evidentiary hearing to further explore the alleged financial disparities and potential need for fee-shifting. By failing to even hold a hearing, the court could not have possibly rendered a decision on the basis of the particular facts and circumstances regarding the parties' financial situations and the equities involved.

Defendant also argues that she is entitled to seek fees and costs incurred during this appeal. This Court has held on several occasions that the court rule expressly permits an award of attorney fees and expenses incurred during post-judgment proceedings, including appeals. See *Myland*, 290 Mich App at 703; *Gates v Gates*, 256 Mich App 420, 439; 664 NW2d 231 (2003). Therefore, on remand, we direct the court to also apply the foregoing fee-shifting analysis to defendant's claim for appellate attorney fees and expenses.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Having fully prevailed on appeal, defendant may tax costs under MCR 7.219.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens