STATE OF MICHIGAN

COURT OF APPEALS

DENISE A. McNULTY,

Plaintiff-Appellant,

v

OWEN K. McNULTY,

Defendant-Appellee.

UNPUBLISHED
May 23, 1997

No. 197117
Washtenaw Circuit Court
LC No. 93-00089-DM

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order changing custody of the parties' minor children, Colleen Angelina McNulty and Casidhe Alexandra McNulty, to defendant.

Plaintiff argues on appeal that the trial court should have dismissed defendant's change of custody petition where plaintiff's proposed change in domicile of the children did not present a sufficient change in circumstances to warrant re-analysis of the statutory best interest factors pursuant to MCL 722.27(1)(c); MSA 25.312(7)(1)(c). We agree.

A trial court may amend or modify its previous custody judgment or order only "for proper cause shown or because of change of circumstances." MCL 722.27(1)(c); MSA 25.312(7)(1)(c). In *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994), this Court explained:

> The plain and ordinary language used in MCL 722.27(1)(c); MSA 25.312(7)(1)(c) evinces the Legislature's intent to condition a trial court's reconsideration of the statutory best interest factors on a determination by the court that the party seeking the change has demonstrated either a proper cause shown or a change of circumstances. It therefore follows as a corollary that where the party seeking to change custody has not carried the initial burden of establishing either proper cause or a change of circumstances, the trial court is not authorized by statute to revisit an

otherwise valid prior custody decision and engage in a reconsideration of the statutory best interest factors.

Recently, in *Dehring v Dehring*, 220 Mich App 163, 164-165; __ NW2d __ (1996), this Court held that an intrastate change of domicile did not, standing alone, constitute "proper cause" or a "change of circumstances" sufficient to reopen a custody matter. This Court explained:

> In reaching this conclusion, we recognize that noncustodial parents may be hindered in visiting their children as a result of an intrastate move. However, a decision to award custody cannot necessarily tie a custodial parent to a particular community until the minor children reach the age of majority, nor should the custodial parent be fearful of losing custody if a decision is made to make an intrastate move. Although community ties are important to a child, we conclude that the tie with the custodial parent is paramount and overrides ties to the community, meaning that a custodial parent's decision to make an intrastate move must be honored. [*Id.*, 167.]

Our holding in *Dehring* is consistent with previous decisions of this Court, holding that the trial court may not revisit the best interest factors solely because of an interstate change of domicile. See, e.g., *Overall v Overall*, 203 Mich App 450, 457-460; 512 NW2d 851 (1994); *Anderson v Anderson*, 170 Mich App 305, 309; 427 NW2d 627 (1988); *Mills v Mills*, 152 Mich App 388, 393-395; 393 NW2d 903 (1986).

Here, although defendant purports that his petition was not based solely on plaintiff's move, we find that it is clear from his arguments and admissions during the evidentiary hearing that he simply preferred that the parties' minor children live in Ann Arbor rather than Grosse Pointe Farms, voicing a strong preference for the Ann Arbor school system. Defendant also argued that the children were closely connected to their friends, family, and social acquaintances in Ann Arbor, and wished to return for those reasons. However, as this Court reasoned in *Dehring, supra*, ties with the custodial parent are paramount and override the children's ties to the community, and certainly a school system. Consequently, we conclude that defendant failed to establish either "proper cause" or a sufficient "change of circumstances" to warrant the trial court's re-analysis of the statutory best interest factors. Defendant's petition is dismissed.

In light of the above, we need not address plaintiff's remaining argument on appeal.

Defendant's petition for change of custody is dismissed.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ William B. Murphy