STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH HUEMANN CARROLL,

Plaintiff-Appellee,

v

PHILLIP PATRICK CARROLL, III,

Defendant-Appellant.

UNPUBLISHED
December 15, 1998

No. 212412
Oakland Circuit Court
LC No. 94-476844 DM

Before: Doctoroff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(7), (8), and (10), and dismissing his motion for change of custody. We affirm.

On May 10, 1995, the trial court entered a consent judgment of divorce whereby the parties were to share joint legal custody of the child and plaintiff was to have physical custody. The judgment was entered pursuant to a stipulation by the parties that the custody arrangement was in the best interest of the child. The court agreed with the parties and included the stipulated language in the judgment of divorce.

On appeal, defendant first challenges the trial court's finding that plaintiff was the custodial parent of the minor child based on the judgment of divorce and related pleadings. Defendant contends that, despite the language in the judgment of divorce, he should be declared the custodial parent because the circumstances are such that he spends a substantially greater amount of time with the child and he physically cares for the child more often. He suggests that it was error for the court not to conduct an evidentiary hearing on the issue because there was a question of fact as to which party was the custodial parent. We disagree. A trial court's findings of fact with respect to a custody matter are reviewed under the great weight of the evidence standard. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 877-878; 526 NW2d 889 (1994).

We are unable to locate, and defendant has not cited, any factual or legal support for his assertion that the trial court was not permitted to base its finding that plaintiff is the custodial parent on

the judgment of divorce and related pleadings. While we recognize that defendant has extensive physical contact and a strong relationship with the child, the judgment of divorce explicitly declares that plaintiff is the physical custodian of the child. It states as follows:

> CUSTODY OF THE MINOR CHILD
>
> Plaintiff and defendant are awarded joint legal custody of their minor child:
>
> Phillip Patrick Carroll IV Born 4-28-89
>
> until said child attains the age of 18 years or until further order of the court.
>
> As joint legal custodians, the parties shall jointly make decisions concerning the education, religion, non-emergency medical care and the general welfare of the minor child.
>
> *The plaintiff shall serve as physical custodian of the minor child.* Neither party shall interfere, in any form, with the parenting time of the opposite party, however, consent to modification of the parenting schedule shall be expected when reason dictates that a modification should occur. The burden imposed upon the proponent of a motion to change legal custody, physical custody or domicile shall be "a preponderance of the evidence."
>
> VISITATION/PARENTING TIME
>
> Defendant shall exercise his parenting time with the minor child in accordance with the schedule mutually agreed upon by the parties . . . .(Emphasis added.)

Moreover, the terms pertaining to custody in the judgment of divorce were stipulations by the parties incorporated in the judgment by the court. The court's acceptance of the parties' agreement as to custody and visitation implicitly suggests that the arrangement is in the best interest of the child. *Koron v Melendy*, 207 Mich App 188, 191; 523 NW2d 870 (1994). Indeed, when a court accepts such agreements, it need not expressly articulate each of the best interest factors. *Koron, supra,* 207 Mich App 192. This result is consistent with the state's policy to encourage voluntary agreements in domestic relations matters. *Id.* at 193; MCL 552.501; MSA 25.176(1). Therefore, because the judgment of divorce plainly grants physical custody to plaintiff and defines defendant's parenting time with specificity, we hold that the trial court's finding was not against the great weight of the evidence. See *Rossow v Aranda*, 206 Mich App 456; 522 NW2d 874 (1994).

Next, defendant argues that the trial court erred by permitting plaintiff to move to another city and enroll the child in a new school without seeking his consent, in violation of the joint legal custody order. We review a trial court's discretionary ruling with respect to a custody matter under a "palpable abuse of discretion" standard. MCL 722.28; MSA 25.312(8); *Fletcher, supra,* 447 Mich 879. Questions of law are reviewed for "clear legal error." MCL 722.28; MSA 25.312(8); *Fletcher, supra,* 447 Mich 881.

About a year after entry of the judgment of divorce, plaintiff informed defendant that she intended to relocate with the child from Bloomfield Hills to Ann Arbor in order to be closer to her place of employment. While defendant acknowledged that the judgment of divorce explicitly permits the parties to move anywhere within the metropolitan Detroit area without seeking consent of the other party or the court, he objected to plaintiff taking the child with her and enrolling him in a new school. He suggests that the judgment of divorce should be interpreted to mean that even if a party moves away from Bloomfield Hills, the child should remain enrolled in the same school and reside with the parent who still lives in the district. Moreover, he contends that the decision to enroll the child in a new school was one affecting the child's general welfare and could not be decided solely by plaintiff because the parties share joint legal custody.

After a hearing on the issue, the trial court concluded that Ann Arbor fell within the metropolitan Detroit area, and permitted plaintiff to move with the child. The court remarked that the parenting schedule as detailed in the judgment of divorce would not change as a result of the move, and defendant would still be entitled to as much time with the child as before the move. Thus, because the move did not change any aspect of the parties' prior custody agreement, the court declined to conduct a full evidentiary hearing on the matter.

Where parties are awarded joint legal custody of the minor child, they are typically required to share the decision-making authority regarding important decisions that affect the child's welfare, such as education. *Wellman v Wellman*, 203 Mich App 277, 279; 512 NW2d 68 (1994); *Lombardo v Lombardo*, 202 Mich App 151, 159; 507 NW2d 788 (1993). On the other hand, the party with physical custody of the child will generally make decisions on all routine matters. *Lombardo, supra*, 202 Mich App 157. However, when the parties disagree on an important issue, the court must decide the matter based on the child's best interest. *Id.* at 159.

We find the instant case distinguishable from those cases defendant cites in support of his position. Here, the judgment of divorce expressly permits plaintiff to move and, contrary to defendant's contention, does not restrict the child to the Bloomfield Hills school district. Furthermore, plaintiff's decision to move to Ann Arbor was made for a proper purpose and the child's change from one public school to another was an incidental effect of the move. Therefore, we find that, as the custodial parent, plaintiff was entitled to move with the child and enroll him in a new school without seeking defendant's consent. The decision was one involving a routine matter which plaintiff was entitled to make. *Wellman, supra*, 203 Mich App 279.

Finally, defendant argues that the trial court erred in granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), and dismissing his motion for change of custody. He contends that the circumstances had changed since entry of the judgment of divorce and, at a minimum, he was entitled to an evidentiary hearing to determine the child's best interest.

Initially, we note that the trial court erred in addressing defendant's motion to change custody in the context of plaintiff's motion for summary disposition. A motion for summary disposition may be brought only to dismiss a claim or defense and, therefore, is not a proper response to a motion for change of custody. MCR 2.116(B)(1). Nevertheless, the trial court reached the correct result in

dismissing defendant's motion to change custody. With respect to custody disputes, we review a trial court's discretionary rulings for a "palpable abuse of discretion." MCL 722.28; MSA 25.312(8); *Fletcher, supra,* 447 Mich 879. Questions of law are reviewed for "clear legal error." MCL 722.28; MSA 25.312(8); *Fletcher, supra,* 447 Mich 881.

A custody award may be modified on a showing of proper cause or change in circumstances which demonstrates that the modification is in the best interest of the child. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Dehring v Dehring,* 220 Mich App 163, 164-165; 559 NW2d 59 (1996). The party seeking the modification must first establish a change in circumstances or a proper cause before the court is obliged to consider the existence of an established custodial environment and the best interest factors. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Rossow, supra,* 206 Mich App 458. Defendant essentially contends that plaintiff's move to Ann Arbor constituted a change in circumstances justifying review of his motion to change custody. However, an intrastate change of domicile does not constitute a proper cause or change in circumstances sufficient to conduct an evidentiary hearing to reconsider the best interest factors. *Dehring, supra*, 220 Mich App 165-166. Accordingly, because defendant's motion to change custody was based primarily on plaintiff's decision to move to Ann Arbor, a reason which we have found insufficient to establish proper cause or a change in circumstances, we affirm the trial court's ruling dismissing defendant's motion. Absent a showing of proper cause or a change in circumstances, there was no basis for the trial court to proceed with an evidentiary hearing.[1]

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

[1] Nothing in this opinion is to be construed to permit a trial court to deny an evidentiary hearing in response to a motion for change of custody where the party seeking the change of custody has alleged a proper cause or change of circumstances.