

STATE OF MICHIGAN
COURT OF APPEALS

GARY J. McINERNEY,

Plaintiff-Appellee,

v

JULIET R. McINERNEY,

Defendant-Appellant.

UNPUBLISHED

February 26, 1999

No. 208900

Kent Circuit Court

LC No. 89-067187 DM

Before: Whitbeck, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right a trial court order denying her motion for modification of the custody of the parties' minor children. We affirm.

The parties have two sons and one daughter. However, the oldest son turned eighteen-years-old in 1998. Because he is now a legal adult, this child custody dispute is moot as regards him. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; ___ NW2d ___ (1998) (case is moot if event occurs rendering it impossible for reviewing court to grant relief). Thus, in accordance with the general rule of not deciding moot issues, *id.*, we review the order being appealed only with respect to the two younger children who are still minors.

I. Factual Background

The parties were divorced in 1990. The divorce proceedings were at times quite contentious; in 1989, there were six different orders during the course of the proceedings regarding plaintiff's visitation rights at the time. Ultimately, the judgment of divorce awarded both parties joint physical custody of the parties' children but provided plaintiff with legal custody of the children. However, in 1992, the parties stipulated to entry of an order granting plaintiff physical and legal custody of the children. In 1997, defendant brought her motion for modification of custody.

Defendant alleged below that an incident occurred in which the parties' younger son sold fake "magic mushrooms" that he represented to be illicit drugs to a classmate at a school dance, which resulted in the boy being suspended from school for two weeks; that the children's academic

performance declined; and that the oldest son was involved in a car accident and misbehavior while on a skiing outing in Colorado. In the supporting brief to her motion for a change of custody, defendant alleged that the skiing incident resulted in “serious criminal charges” being brought against him. In response to defendant’s allegations, plaintiff produced correspondence and school records reflecting that the children were doing quite well in school and a letter from the oldest son’s skiing coach indicating that he was cited only for skiing out of bounds.¹

II. Standard of Review

We review the trial court’s factual findings in a child custody case under the great weight of the evidence standard, its discretionary rulings for an abuse of discretion, and its decisions on questions of law for clear legal error. *McCain v McCain*, 229 Mich App 123, 125; 580 NW2d 485 (1998).

III. Established Custodial Environment

Defendant argues that the trial court erred by failing to determine whether an established custodial environment existed. However, where an established custodial environment exists regarding a child, a heightened standard applies to a motion to change child custody, allowing a change in judgments and orders regarding custody only on the basis of “clear and convincing evidence that it is in the best interest of the child.” MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Ireland v Smith*, 451 Mich 457, 461, n, 3; 547 NW2d 686 (1996). Thus, any possible error in this regard was harmless because a finding of an established custodial environment would have worked to *defendant’s* detriment because it was defendant who sought a change in the children’s custody.

IV. Trial Court’s Refusal to Reconsider Custody

In general, a circuit court may modify its prior judgments or orders regarding child custody or parenting time “for proper cause shown or because of change of circumstances.” MCL 722.27(1)(c); MSA 25.312(7)(1)(c). This Court has 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. [*Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994).]

Defendant complains of the trial court’s failure to hold a formal evidentiary hearing regarding her motion for a change of custody. However, we conclude that the trial court committed no legal error. Defendant did not present evidence to the trial court warranting such a hearing in light of the

documentary evidence presented by plaintiff to rebut defendant's generalized allegations. The school records produced by plaintiff adequately rebutted defendant's allegation of deficient academic performance. With regard to the specific instances of misconduct by the boys alleged by defendant, she failed to produce substantial evidence of such misconduct to warrant a formal hearing. However, plaintiff did produce evidence showing that some of these incidents were less serious than portrayed by defendant. Also, in so far as these allegations regarded the older son, they are of limited importance to our review of the trial court's decision, which is limited to its effect regarding the two younger children who remain minors.

In this regard, common sense and reasonable judgment must be used by a trial court in evaluating whether a party seeking a change in custody has shown "proper cause" or a "change in circumstances" sufficient to warrant a reexamination of the custody determination. With regard to minor children, there will always be *some* changes in their behavior and background circumstances over time. Certainly, such gradual and typical changes do not suffice to establish a "change in circumstances" warranting reexamination of a custody decision. Otherwise, the Legislature's limitation in MCL 722.27(1)(c); MSA 25.312(7)(1)(c) on the instances in which a child custody decision may be reconsidered would be practically meaningless. Isolated incidents such as the "sale" of fake "magic mushrooms" do not warrant reexamination of a child custody decision. We conclude that the trial court did not err by concluding that defendant failed to present sufficient grounds for reconsideration of the custody of the minor children at issue. *Rossow, supra*. Contrary to defendant's position, the trial court did not err by failing to interview one of the minor children regarding that child's preference as to child custody because defendant did not make the preliminary showing necessary for reconsideration of custody.

V. Conclusion

The trial court did not err by denying defendant's motion for a change in custody.

Affirmed.

/s/ William C. Whitbeck

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

¹ We note that defendant's counsel in defendant's brief on appeal sets forth multiple scandalous allegations regarding plaintiff without citation to or support in the record. We regard this as highly inappropriate and do not consider these matters in our decision.