

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA GAY CROUCH,
a/k/a/ PATRICIA GAY HIGHLEY,

UNPUBLISHED
May 14, 1999

Plaintiff-Appellee,

v

No. 214899
Ottawa Circuit Court
LC No. 87-016952

THOMAS B. BAYNTON,

Defendant-Appellant.

Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant, Thomas B. Baynton, appeals as of right the trial court's order denying his request to amend an existing order of filiation and thereby grant him joint legal custody of the parties' minor son. Denial of the request resulted in plaintiff, Patricia Crouch, retaining sole legal and physical custody of the child.¹ We affirm.

Plaintiff gave birth out of wedlock to Derek Thomas Baynton on November 5, 1986. Defendant admitted that he is Derek's father, and on March 17, 1988, an order of filiation was entered in the Ottawa Circuit Court, which provided for support and granted plaintiff physical custody of the child. On April 15, 1998, defendant, seeking to amend the prior order, filed motions for access to records related to Derek and for joint legal custody of the child. After a hearing, the trial court granted the motion giving defendant access to the child's records and to any non-confidential friend of the court records, but denied defendant's motion for joint legal custody and his subsequent motion for reconsideration and/or relief from judgment and motion for sanctions. When reviewing child custody cases, this Court reviews findings of fact 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). The trial court's findings will be affirmed unless the evidence clearly preponderates in the opposite direction. *Id.* The trial court's custody decision, which is a discretionary dispositional ruling, is reviewed under a palpable abuse of discretion standard. MCL 722.28; MSA 25.312(8); *Fletcher*, *supra* at 879-880. Finally, questions of law in child custody cases are reviewed for clear legal error. MCL 722.28; MSA 25.312(8); *Fletcher*, *supra* at 881.

Defendant first argues that the trial court erred when it denied his request for joint legal custody without first considering and explicitly stating its findings on each of the statutory best interest factors pursuant the Child Custody Act of 1970, MCL 722.21 *et seq.*; MSA 25.312(1) *et seq.* We disagree.

A trial court may amend or modify its previous custody judgment or order only "for proper cause shown or because of change of circumstances" *Rossow v Aranda*, 206 Mich App 456, 457; 522 NW2d 874 (1994). This initial burden must be satisfied before a trial court is permitted to engage in an analysis of the best interest factors:

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.* [*Id.* at 458 (emphasis added).]

See also, *Dehring v Dehring*, 220 Mich App 163, 165; 449 NW2d 59 (1997).

In this case the trial court found and we agree that defendant failed to establish either proper cause or a change of circumstances which would warrant a modification of legal custody. Defendant's desire for increased involvement in his child's life, while commendable, does not constitute either proper cause or change of circumstances to warrant modification of the custody order. Further defendant's belief that he needs greater legal rights regarding his son in order to keep abreast of Derek's activities is similarly insufficient to satisfy the threshold burden that is a prerequisite to a trial court revisiting an existing custody order.² Because neither a change in circumstances nor proper cause was established, the court was not permitted to modify the existing order and was not required to address the statutory best interest factors. *Rossow, supra* at 458; *Dehring, supra* at 166.³

Defendant also argues that the trial court improperly considered the fact that the parties were never married when deciding that joint legal custody would be denied. Our review of the record compels this Court to reach a different conclusion. The trial court did not rely upon the fact that the parties had never been married when denying joint custody, but rather, simply made this observation when setting forth the procedural background in the case. In any event, in light of our resolution of the first issue, we need not address defendant's argument that the trial court considered improper information when denying his request for joint legal custody. As we have held, under the circumstances in this case, the trial court was not authorized to amend the existing order.

In his motion for reconsideration, defendant argued that because plaintiff and her counsel made fraudulent misrepresentations in her reply to defendant's motion, the trial court should have reconsidered its initial ruling and ordered joint legal custody. In the alternative, defendant requested an evidentiary hearing to explore the extent to which plaintiff and her counsel made misrepresentations to the court.⁴

The trial court denied plaintiff's motion for reconsideration and refused to award sanctions. MCR 2.612(C)(1)(c) permits a court to relieve a party from an order on the grounds of "[f]raud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." Relief under this court rule is discretionary and will not be disturbed on appeal absent an abuse of discretion. *Huber v Frankenmuth Mutual Ins Co*, 160 Mich App 568, 576; 408 NW2d 505 (1987). We find no abuse of discretion.

The trial court accepted, despite everything that plaintiff represented to the contrary, the allegations set forth in defendant's motion. The circumstances that defendant cited did not constitute "proper cause" or a "change in circumstances" sufficient to authorize the trial court to modify or amend an existing custody order. Because the alleged misrepresentations made by plaintiff had no bearing upon the trial court's decision to decline to revisit the custody order, we find no error requiring reversal.

Finally, defendant argues that the trial court erred when it denied his motion for sanctions against plaintiff's attorney for allegedly signing a document without conducting a "reasonable inquiry" into the matter as required by MCR 2.114. A trial court's decision regarding the imposition of sanctions will not be disturbed unless it is clearly erroneous. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997). A trial court's decision is clearly erroneous when, although evidence exists to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed. *Id.* Sufficient objective evidence exists within the record from which the trial court could determine whether sanctions were required with regard to the statements made by plaintiff through her attorney. Based on the particular facts and circumstances in this case, we are not left with a definite and firm conviction that the trial court made a mistake.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra

¹ Defendant represents that because the order of filiation was silent, the issue of legal custody was never determined. Because this issue is not dispositive in our analysis, we briefly address defendant's position in a footnote. Although the order of filiation did not specifically address legal custody, plaintiff clearly enjoyed sole legal custody of the child. MCL 722.2; MSA 25.244(2) provides that "Unless otherwise ordered by a court order, the parents of an unemancipated minor are equally entitled to the custody, control, services and earnings of the minor" If the minor is illegitimate, "parents" refers solely to the mother. MCL 722.1; MSA 25.244(1). Because the order of filiation did not address legal custody, by virtue of MCL 722.1; MSA 25.244(1) and MCL 722.2; MSA 25.244(2), plaintiff, as the mother of a child born out of wedlock, possessed legal custody of the child.

² Defendant alleged that through a recent review of Derek's school records he discovered that plaintiff was attempting to conceal his existence from the school and others involved in Derek's care and education. This, in part, prompted defendant's motion. In this regard, we would note that while the trial court refused to amend the existing custody order, it did grant defendant access to any records, other

than confidential friend of the court documents, regarding the child. Thus, defendant's concern that he had been denied information concerning his son was remedied.

³ Defendant also argues on appeal that because the Legislature, in 1993, added statutory provisions permitting a third person to seek custody of a child when (1) the child was placed for adoption with the third person, has resided with the third person for at least six months, the child's biological parents never married and the child's parent who has custody of the child dies or is missing *and the other parent has not been granted legal custody under court order*, MCL 722.26c; MSA 25.312(6c), the Legislature statutorily created "proper cause" or "change in circumstances." If this were true, the language in MCL 722.27; MSA 25.312(7) would be rendered a nullity and all custody orders providing for sole legal custody in one parent would be subject to modification. In any event, because this argument was not raised below, we decline to address it on appeal. *Vander Bossche v Valley Pub*, 203 Mich App 632, 641; 513 NW2d 225 (1994).

⁴ Plaintiff represented in her brief in the lower court that she and defendant could not agree and did not cooperate with regard to important decisions in their child's life, that defendant made misrepresentations about missing parenting time, that defendant made little or no effort to participate in his child's schooling and that defendant was harassing plaintiff through litigation.