

STATE OF MICHIGAN  
COURT OF APPEALS

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KAREN LYNN SULLIVAN,

Plaintiff-Appellee,

v

JAMES HOWARD SULLIVAN,

Defendant-Appellant.

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UNPUBLISHED

January 11, 2000

No. 220925

Kent Circuit Court

Family Division

LC No. 95-002665 DM

Before: Saad, P.J., and McDonald and Gage

PER CURIAM.

Defendant appeals as of right from the trial court's order denying his motion for change of custody. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The judgment of divorce gave the parties joint custody of their sons (born on September 30, 1986 and September 16, 1988), and awarded physical custody to plaintiff. The judgment required the parties to consult on various issues, including the education of the children.

Defendant moved for a change of custody. The motion, prompted by plaintiff's plan to remarry and to move with the children from Grandville to Rockford, asserted that transferring to a different school district would not be in the children's best interests. All proofs were attached to the motion. The trial court denied the motion and declined to hold an evidentiary hearing, stating that even if all of defendant's allegations were accepted as true, defendant had not shown the existence of a change of circumstances that would warrant a reexamination of the custody issue.

A custody award can be modified on a showing of proper cause or a change of circumstances which establishes that the modification is in the child's best interests. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Dehring v Dehring*, 220 Mich App 163, 166; 559 NW2d 59 (1996). The party seeking a change of custody has the burden of showing proper cause or a change of circumstances before the existence of an established custodial environment and the best interest factors, listed in MCL 722.23; MSA 25.312(3), can be considered. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994). An evidentiary hearing is required before custody can be changed. *Schlender v*

*Schlender*, 235 Mich App 230, 233; 596 NW2d 643 (1999). In a custody case, questions of law are reviewed for clear legal error. *Wiechmann v Wiechmann*, 212 Mich App 436, 439; 538 NW2d 57 (1995). We review a claim of legal error de novo. *Westchester Fire Ins Co v Safeco Ins Co*, 203 Mich App 663, 667; 513 NW2d 212 (1994).

Defendant argues that the trial court erred by refusing to hold an evidentiary hearing on his motion to change custody. We disagree and affirm. In *Schlender, supra*, another panel of this Court held invalid an administrative policy of the Kent Circuit Court which allowed the court to examine proofs accompanying a motion for change of custody and to summarily deny the motion if it concluded that the movant could not make the required showing to sustain his burden of proof. The *Schlender* Court held the administrative policy invalid because it conflicted with MCR 3.213, governing postjudgment motions in domestic relations cases, and because it had not been approved by our Supreme Court as required by MCR 8.112(A)(2). *Schlender, supra*, 232-233. We hold that *Schlender, supra*, does not mandate that an evidentiary hearing be held in every instance in which a motion to change custody is filed. If a party seeking a change of custody fails to carry the burden of establishing proper cause or a change of circumstances, the court cannot revisit an otherwise valid prior custody decision or reconsider the best interest factors. *Rossow, supra*. An intrastate move by the custodial parent does not establish a change of circumstances sufficient to warrant reconsideration of a prior custody decision. *Dehring, supra*, 165-166. Here, defendant's motion was accompanied by an offer of proof which established that plaintiff's impending remarriage and relocation would require the children to transfer to a new school district. Unlike the motion filed in *Schlender, supra*, defendant's motion did not indicate that further evidence was to be presented to the court. The trial court correctly found that because plaintiff's proposed intrastate move did not constitute a change of circumstances sufficient to warrant a reexamination of the prior custody decision, *Dehring, supra*, an evidentiary hearing on defendant's motion to change custody was not required, the decision in *Schlender, supra*, notwithstanding. *Rossow, supra*.

Defendant argues that the trial court erred by failing to hold an evidentiary hearing to determine if a transfer to a new school district was in the children's best interests. *Lombardo v Lombardo*, 202 Mich App 151, 157; 507 NW2d 788 (1993). The trial court did not decide this issue. Our review is limited to issues actually decided by the trial court. *Michigan Mutual Ins Co v American Community Mut Ins Co*, 165 Mich App 269, 277; 418 NW2d 455 (1987). Plaintiff's proposed relocation involved a transfer of the children to another school district, rather than to a different type of learning environment, as in *Lombardo, supra*. An intrastate move by a custodial parent is insufficient to trigger a review of an valid prior custody decision. *Dehring, supra*.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage