

STATE OF MICHIGAN
COURT OF APPEALS

STACY WHITE, a/k/a STACY CHARLTON,

Plaintiff-Appellee,

v

BILLY RAY WHITE,

Defendant-Appellant.

UNPUBLISHED

November 18, 2004

No. 255440

Genesee Circuit Court

LC No. 96-181618-DM

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right an order dismissing his petition to modify the existing custody order contained in defendant and plaintiff's divorce judgment. We affirm.

Defendant argues that proper cause existed warranting review of the custody order regarding the parties' eleven-year-old child, Cody, and that the trial court failed to consider the best interests factors set forth in MCL 722.23 when making its decision.¹

Findings of fact in custody cases are reviewed under the great weight of the evidence standard, and we will uphold the trial court's findings "unless the evidence clearly preponderates in the opposite direction." *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000). But we review questions of law for clear error and a trial court "commits clear legal error when it incorrectly chooses, interprets, or applies the law." *Id.*

A party seeking to modify an existing custody order has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstances exists

¹ In his statement of issues presented, defendant also contends that the trial court erred in finding that no change of circumstances existed. But defendant fails to cite to any facts on the record or legal authority supporting this position. "An appellant may not merely announce a position and leave it to this Court to discern and rationalize a basis for his claims." *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). And he may not treat issues in a cursory manner with little or no citation to supporting authority. *Id.* Consequently, we deem the issue abandoned.

before the trial court can conduct a child custody hearing. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003). Under MCL 722.27(1)(c), if the moving party fails to meet this burden, then the trial court is precluded from holding a hearing to reexamine an otherwise valid custody order or reconsider the best interest factors. *Id.*, 508-509, citing *Dehring v Dehring*, 220 Mich App 163, 165; 559 NW2d 59 (1996). To have proper cause, there must exist one or more appropriate grounds that are relevant to at least one of the statutory best interest factors and are “of such magnitude to have a significant effect on the child’s well-being.” *Id.*, 512. In determining whether proper cause exists, the court should keep in mind that “[p]roviding a stable environment for children that is free of unwarranted custody changes (and hearings) is a paramount purpose of the Child Custody Act.” *Id.*, 511, citing *Baker v Baker*, 411 Mich 567, 577; 309 NW2d 532 (1981).

On appeal, defendant first asserts that the trial court erred in failing to consider the statutory best interest factors when it determined that proper cause to reevaluate the custody arrangement did not exist. Defendant’s argument is without merit. *Vodvarka* requires only that appropriate grounds potentially having a significant effect on the child’s well-being be “relevant” to one of the best interest factors. A full examination and analysis of the factors is reserved for cases which meet the threshold requirement of establishing proper cause or changed circumstances.

Next, defendant argues that proper cause to revisit the custody arrangement existed for numerous reasons. First, defendant asserts that plaintiff has provided an unstable home environment due to an acrimonious divorce with her current husband and that he could give Cody a traditional nuclear family and with a more stable environment. As an example of this, defendant points out that his wife works as a teacher and could be home with Cody during the summer, whereas plaintiff would put Cody in a latchkey program. But plaintiff has moved out of the home she shared with her current husband and established a separate residence, thus removing Cody from any contentious situation. Furthermore, the current custody arrangement, which has the child spending a majority of the summer with his father in Georgia, already gives Cody the benefit of defendant’s situation. Thus, the trial court did not err in finding that defendant failed to meet his burden of establishing that Cody’s home environment constituted proper cause for revisiting the custody order.

Defendant further contends that Cody is performing poorly in school due to the unstable environment provided by plaintiff. However, the record demonstrates that, overall, Cody has performed at an average level. Although he experienced trouble in some areas, including reading comprehension, plaintiff has taken multiple steps to address this, including arranging for tutoring and having him tested for learning disabilities. Defendant has not shown that the child’s performance in school has had such a significant impact on his well-being that it requires a revaluation of the custody order.

Next, defendant argues that plaintiff is unwilling to facilitate his relationship with Cody, and refers to one particular instance when plaintiff refused to allow him to see Cody when he was in town from Georgia. Defendant cites *Hopkins v Whittemore*, unpublished opinion per curiam of the Court of Appeals, issued March 18, 2004 (Docket No. 250176), in support of this argument that proper cause existed. Not only is this decision not binding on this Court, MCR 7.215(C)(1), but the opinion is based on a finding of changed circumstances, not proper cause, and only highlights further the high threshold standard, and the significant factual allegations and

evidentiary support required to meet it. In *Hopkins* the Court found that a change of circumstances existed relevant to best interest of the child factor MCL 722.23(j),² due in part to evidence presented that showed the plaintiff's "repeated" refusal to allow the child to see the defendant in violation of court order, "continuing" discouragement of the child's relationship with the defendant, and verbal disparagement of the defendant. *Id.*, slip op, p 2. The facts as pled by defendant do not rise to this level and the trial court did not err in finding them insufficient to establish proper cause.

Defendant also alleges that plaintiff is in poor mental health because she is on medication for severe depression. Even if this allegation is true, defendant makes no argument as to how plaintiff's depression, if properly treated with medication, could significantly impact Cody's well-being.

Finally, defendant asserts that Cody has expressed a preference for living with him. While courts have held that a child of six is old enough to have his preference given some weight, *Bowers v Bowers*, 190 Mich App 51, 55-56; 475 NW2d 394 (1991), defendant has not pled any additional facts establishing that Cody's preference is significant enough to his well-being to warrant revisiting the custody order.

The trial court found that defendant failed to meet his burden of establishing that any of the grounds he asserted constituted proper cause for reexamining the custody order. Because the evidence does not clearly preponderate against the trial court's findings, we must affirm its decision.

Affirmed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra

I concur in result only.

/s/ E. Thomas Fitzgerald

² "The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents."