STATE OF MICHIGAN

COURT OF APPEALS

REZA BAYATI,

Plaintiff-Appellant,

v

BAHAREH BAYATI, a/k/a BAHAREH BAHR-HOSSEINI,

Defendant-Appellee.

UNPUBLISHED
March 22, 2007

No. 274016
Oakland Circuit Court
Family Division
LC No. 2003-678242-DM

Before: Jansen, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion to change custody. We affirm.

Plaintiff argues that the trial court abused its discretion in denying his motion to change custody without conducting an evidentiary hearing because the children's regression and need for a communicatively handicapped program constitute a proper cause or change in circumstances. We disagree.

MCL 722.28 provides that child custody orders and judgments shall be affirmed on appeal unless the trial court made "findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." *Fletcher v Fletcher*, 447 Mich 871, 877-881; 526 NW2d 889 (1994). A finding of fact is against the great weight of the evidence if the evidence "clearly preponderates in the opposite direction." *Id.* at 879, quoting *Murchie v Std Oil Co*, 355 Mich 550, 558; 94 NW2d 799 (1959). We review the trial court's discretionary rulings, including custody decisions, for an abuse of discretion. *Fletcher*, *supra* at 879-881. We review questions of law for clear legal error, which occurs when a court incorrectly chooses, interprets, or applies the law. *Id.* at 881.

MCL 722.27(1)(c) provides that a trial court may conduct a child custody hearing to modify or amend a previous order or judgment only on a showing of a proper cause or change in circumstances. *Killingbeck v Killingbeck*, 269 Mich App 132, 145; 711 NW2d 759 (2005); *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). The movant, i.e., plaintiff herein, has the burden of proving by a preponderance of the evidence that either a proper cause or change in circumstances exists before the trial court may even consider whether

an established custodial environment exists and conduct a hearing to review the best interest factors. Similarly, MCR 3.210(C)(8) provides:

> In deciding whether an evidentiary hearing is necessary with regard to a postjudgment motion to change custody, the court must determine, by requiring an offer of proof or otherwise, whether there are contested factual issues that must be resolved in order for the court to make an informed decision on the motion.

"Proper cause" is defined as "one or more appropriate grounds that have or could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken." *Vodvarka*, *supra* at 511. Because of the fact-intensive nature of custody disputes, the best interest factors, MCL 722.23(a)-(*l*), may be used for guidance. *Id.* at 511-512. Not any fact relevant to these factors will constitute sufficient cause; rather, the grounds "must be of a magnitude to have a significant effect on the child's well-being." *Id.* at 512. Because the trial court did not review the best interest factors, we do not have that guidance available. However, plaintiff did not present any evidence that placement of the children in a communicatively handicapped class or the children's alleged regression in development has affected the children's well being. Plaintiff failed to meet his burden, and the trial court did not abuse its discretion in concluding that no proper cause existed sufficient to warrant a hearing on the best interest factors.

To show a change in circumstances, a movant must show that, "since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed." *Id.* at 513 (emphasis in original). The last custody order entered before plaintiff's present motion to change custody was the December 7, 2005, opinion and order regarding an established custodial environment, change of domicile, physical custody, and parenting time. Not just any change will suffice; rather, "the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child." *Id.* at 513-514. Like the determination of proper cause, this determination will be based on the facts of each case, and the best interest factors may be used for guidance.

The trial court did not review the best interest factors and we do not have the benefit of that guidance. Nonetheless, in plaintiff's motion to schedule an evidentiary hearing and to change custody, he only put forward the following pertinent allegations:

> 18. The San Juan schools, Thompson Coleman school, evaluated the children in April 2006 and prepared a report of their findings and sent to Plaintiff on May 8th, 2006 . . . .
>
> 19. The evidence shows the children are now severely impaired and they are registered in [a] communicatively handicapped program (SDC-CH).
>
> * * *
>
> 30. Now defendant finds herself without any family support, they are unable to baby-sit the boys, even a couple of days. There is no financial support.

> Plaintiff believes that the situation is unstable, unsuitable and grave for the children and there is [a] substantial change in circumstances although in a very short time since the recent hearing. Therefore the court should consider and re-evaluate the best interests of [the] children at this time based on the change of circumstances and the proper cause.
>
> 31. The children have had serious injuries and yet defendant declined to inform plaintiff and never provides any records despite the plaintiff's request and the court orders. Defendant did not consider the papers of the children['s] health records important or relevant.

Plaintiff has not presented any evidence that the children's participation in the special day class communicatively handicapped (SDC-CH) program will have a detrimental effect on them. Rather, plaintiff agrees that the children need speech therapy, as is evidenced by Charles Pearlstein's evaluation and the Troy school district's speech and language evaluation. Plaintiff admits that the children have experienced developmental delays, and he involved them in speech therapy during the summer of 2005, when they were in Michigan for an extended stay. The existence of speech delays and the need for speech therapy arose before the December 7, 2005, opinion and order, and plaintiff has failed to show that they amount to more than normal life changes. Accordingly, neither can constitute a change in circumstances. *Vodvarka*, *supra* at 513.

Plaintiff also asserts that the children's regression in development constitutes a change in circumstances. However, plaintiff alleged that this regression occurred in September 2005—before the December 7, 2005, opinion and order. Further, plaintiff has presented no evidence to suggest that this regression is something more than a normal life change. *Id*.

Plaintiff is apparently concerned with the potential stigma associated with the participation in the SDC-CH program instead of placement in a standard general education program. However, plaintiff presents nothing to support or explain how this will have a significant effect on the children's well being, or how it constitutes anything more than a normal life change. *Id*. Further, the IEP assessment from the California school district indicates that integration with the general education program for the children's strong areas was recommended, and defendant explained that the children were attending the SDC-CH program at the public school in the morning and a standard general kindergarten program at a private school in the afternoon. Therefore, defendant's argument regarding a potential stigma appears largely misplaced, and he has failed to show that enrollment or participation in the SDC-CH program constitutes an actual, rather than merely a perceived, change in circumstances. Plaintiff's motion to change custody appears to have been motivated by defendant's request for an increase in child support, the issuance of spousal support, and income tax deductions, rather than by any belief that the circumstances surrounding the children's lives had in fact changed. The trial court did not abuse its discretion in denying plaintiff's motion to change custody without conducting an evidentiary hearing.

Plaintiff argues at length that the Friend of the Court failed to investigate certain allegations raised in his motion to change custody, and the allegation that the parties were not providing one another with the children's records as directed by the trial court. However, plaintiff fails to articulate how the Friend of the Court's alleged failure constitutes a sufficient

proper cause or change in circumstances to warrant an evidentiary hearing, and we fail to see the connection. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Failure to properly address the merits of this assertion constitutes abandonment of the issue. *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004).

Plaintiff contends that the trial court abused its discretion in denying his motion for reconsideration. We disagree. This Court reviews a trial court's decision on a motion for reconsideration for an abuse of discretion. *Tinman v Blue Cross & Blue Shield of Michigan*, 264 Mich App 546, 556-557; 692 NW2d 58 (2004).

"Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." MCR 2.119(F)(3). "The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3).

As discussed, *supra*, the trial court did not abuse its discretion in denying plaintiff's motion to change custody without conducting an evidentiary hearing because plaintiff failed to present a proper cause or change in circumstances. See *Vodvarka*, *supra* at 513. In support of his motion for reconsideration, plaintiff argued that the Friend of the Court had failed to investigate the allegations contained in paragraphs 19, 30, and 31 of his motion to change custody, and that the Friend of the Court had failed to investigate the parties' alleged noncompliance with the trial court's orders. With respect to paragraph 19, the Friend of the Court investigated the SDC-CH program, as is evidenced by its interviews with two of the children's teachers, a psychologist, a speech therapist, a program specialist, and a school placement specialist in California. Regarding paragraph 30, the Friend of the Court learned that the children were punctual, clean, and well fed, and none of the professionals expressed any concerns about defendant's care of the children. Further, the Friend of the Court found that defendant's request for child support was not an indication that the children's tangible needs were not being met. In regard to paragraph 31, the Friend of the Court found that plaintiff had access to the children's medical professionals and that there were no reports of injuries. Finally, the Friend of the Court found that plaintiff had access to the children's medical records and that plaintiff had not shown that defendant failed to provide those records. Therefore, plaintiff failed to demonstrate any "palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3). The trial court did not abuse its discretion in denying plaintiff's motion for reconsideration of the order denying plaintiff's motion to change custody.

Affirmed.

/s/ Kathleen Jansen
/s/ Janet T. Neff
/s/ Joel P. Hoekstra