

STATE OF MICHIGAN  
COURT OF APPEALS

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MARY ROSE JEFFREY,

Plaintiff-Appellant,

v

SCOTT RAY JEFFREY,

Defendant-Appellee.

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UNPUBLISHED

January 15, 2008

No. 278714

Livingston Circuit Court

LC No. 03-034677-DM

Before: Kelly, P.J., and Cavanagh and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s May 24, 2007, order denying her petition for modification of custody order. We affirm.

On appeal, plaintiff argues that the trial court erred in concluding there was no change in circumstances warranting a modification of the custody order. According to plaintiff, the trial court erred by refusing to accept the opinion of Dr. Beth Berman that joint legal custody was necessary to restore balance in the parties’ relationships with their two minor children. We disagree.

In August 2005, when the parties were divorced, the trial court granted plaintiff and defendant joint physical custody of their two minor children, but it granted sole legal custody of the children to defendant. According to the trial court, joint legal custody would not work because the parties were unable to have civil discussions or make joint decisions. The trial court chose to award legal custody of the children to defendant because, on the basis of plaintiff’s history of making unilateral decisions, it believed that defendant, more than plaintiff, would take into account the other party’s opinion when making decisions concerning the children.

A trial court may modify or amend a previous custody order “for proper cause shown or because of change in circumstances.” MCL 722.27(1)(c). “[I]n order to establish a ‘change in circumstances,’ a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have *significant* effect on the child’s well-being, have materially changed.” *Vodvarka v Grasmeyer*, 259 Mich App 499, 513; 675 NW2d 847 (2003). While the change must have occurred since the entry of the last custody order, the circumstances existing at the time of or before the entry of the order may be relevant for comparison purposes. *Id.* at 514. If the party seeking modification of the custody fails to

establish proper cause or a change in circumstances, the trial court is prohibited from revisiting the former custody order. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994).

Although Dr. Berman opined that joint legal custody would be in the best interests of the parties' children, plaintiff failed to establish that a change in circumstances had occurred, so the trial court maintained sole legal custody with defendant. At the time of the hearing, plaintiff admitted to the trial court, and defendant agreed, that the parties were still unable to have civil discussions and reach joint decisions. Accordingly, there was no indication that, at the time of the hearing, joint legal custody would work or that a change in circumstances warranted a reexamination of the earlier custody determination. See *Lombardo v Lombardo*, 202 Mich App 151, 159; 507 NW2d 788 (1993).

Plaintiff also claims that the trial court erred in failing to interview the parties' two children regarding their custody preference. Although children over the age of six years are generally old enough to express a preference, *Bowers v Bowers*, 190 Mich App 51, 55-56; 475 NW2d 394 (1991), the trial court committed no error in failing to interview the two children, who, at the time of the hearing, were eight and ten years old. Because plaintiff failed to establish a change in circumstances, the trial court was precluded from addressing the best interests factors, including the preference of the two children. *Rossow, supra*. Accordingly, the trial court did not err in failing to interview the parties' two children.

Finally, we reject plaintiff's claim that the trial court's conduct—its refusal to accept Dr. Berman's recommendation, its refusal to interview the two children, and its questioning of plaintiff at the hearing—demonstrates that the trial court had a settled predisposition or bias against her. As discussed above, the trial court correctly held that, because the parties were still unable to have civil discussions or reach joint decisions, there was no change in circumstances that would warrant reconsideration of the legal custody decision. And, because there was no change in circumstances, the trial court did not commit any legal error in failing to interview the parties' children. The trial court applied and followed the law when it denied plaintiff's petition for modification of the custody order. Repeated rulings against a party are generally insufficient to demonstrate bias requiring disqualification, and plaintiff has not alleged any facts that any bias by the trial court was personal and extrajudicial. *Cain v Dep't of Corrections*, 451 Mich 470, 495-496; 548 NW2d 210 (1996). Moreover, the trial court's questioning of plaintiff at the hearing was appropriate. Plaintiff had the burden of establishing a change in circumstances, *Vodvarka, supra* at 508, and the questioning was aimed at ascertaining why plaintiff believed there was a change of circumstances.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Mark J. Cavanagh

/s/ Peter D. O'Connell