

STATE OF MICHIGAN
COURT OF APPEALS

BRENT M. JEX,

Plaintiff-Appellant,

v

MICHELLE M. JEX,

Defendant-Appellee.

UNPUBLISHED

March 18, 2008

No. 279964

St. Clair Circuit Court

Family Division

LC No. 02-002153-DM

Before: Murray, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

In this child custody dispute, plaintiff appeals by right the trial court's order granting defendant's request that she be granted sole physical custody of the parties' two minor children. Plaintiff argues that there was no change in circumstances either to allow referral to the Friend of the Court or to grant the ultimate custody change. We affirm.

Our review of the record indicates that at the initial hearing on defendant's motion for change of custody, the trial court stated that it intended to refer the matter to the Friend of the Court and that plaintiff's counsel responded that "there's no opposition here today." Because plaintiff through his counsel agreed to the referral to the Friend of the Court, he may not argue now on appeal that the referral was error. See *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001) ("A party cannot stipulate a matter and then argue on appeal that the resultant action was error."). In any event, we find no error in the trial court's referral because there is no statutory requirement that a court find a change in circumstance or proper cause before referring a matter to the Friend of the Court for an investigation. See MCL 552.505(1)(g). Rather, such a finding is required prior to the Court considering the best interest factors when deciding whether to amend its prior custody judgment or order. MCL 722.27(c); *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003).

As for plaintiff's second claim of error, we need not decide whether the trial court clearly erred in using the December 2, 2004 order, rather than the April 13, 2006 order, to determine a change in circumstances. Although the law is clear that the change in circumstances must have occurred "since the entry of the last custody order," *Vodvarka, supra* at 513, plaintiff has not challenged the trial court's finding of proper cause. *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). The plain language of MCL 722.27(1)(c) provides that the trial court needs to find a change of circumstances *or* proper cause, meaning either is sufficient. See

also *Vodvarka, supra* at 508-509. Because plaintiff does not challenge the trial court's opinion that relied on a finding of proper cause (which is not necessarily related to evidence since the last custody order), there is no need for this Court to consider granting plaintiff the relief he seeks. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004).

Affirmed.

/s/ Christopher M. Murray

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood