

STATE OF MICHIGAN
COURT OF APPEALS

KURT MORSE,

Plaintiff-Appellant,

v

JAMIE MORSE, a/k/a JAMIE FIELDING,

Defendant-Appellee.

UNPUBLISHED

May 18, 2010

No. 295175

Jackson Circuit Court

LC No. 05-003997-DM

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion to modify judgment of divorce regarding child custody, parenting time, and child support of the parties' minor child. We affirm.

The sole issue on appeal is whether the trial court erroneously concluded that plaintiff failed to establish proper cause or change in circumstances to warrant review of the existing child custody order.

A trial court may modify or amend child custody orders because of change in circumstances or for proper cause shown. MCL 722.27(1)(c). Plaintiff, as the moving party, carried the burden of proof to establish either a change in circumstances or proper cause by a preponderance of the evidence. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). To establish a change in circumstances, plaintiff must prove 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. *Killingbeck v Killingbeck*, 269 Mich App 132, 145; 711 NW2d 759 (2005). To demonstrate proper cause necessary to revisit a custody order, plaintiff must prove the existence of an appropriate ground for legal action to be taken by the trial court. *Vodvarka*, 259 Mich App at 512.

Plaintiff asserted that the following facts demonstrate change in circumstances: defendant stopped giving the child necessary medications; defendant made decisions regarding counseling for the child without affording plaintiff an opportunity to participate in such decisions; and the parties' poor communication materially affects the child's care. Plaintiff also contended that the following facts demonstrate proper cause: the child developed behavioral problems after the entry of the existing child custody order and plaintiff moved closer to defendant's residence.

We conclude that plaintiff failed to establish by a preponderance of the evidence either a change in circumstances or proper cause to warrant review of the existing child custody order.

The trial court found that defendant decided not to give one particular type of medication to the child based on the advice of a healthcare professional. As for the counseling, the record indicates that defendant took the child for counseling for a little over three months, between September and November of 2008. The counselor had a telephone conversation with plaintiff in December 2008 at which time plaintiff expressed shock that the child needed counseling and indicated he wanted to participate. In January 2009, when the counselor contacted defendant, she reported that the child was doing great and no longer needed counseling. In a subsequent conversation with plaintiff, the counselor reported that he could meet with plaintiff to address his questions and concerns but that defendant felt the child was doing well and did not need to continue. The counselor noted that “[w]hereas in [their] first contact [plaintiff] questioned whether [treatment] was needed to begin with, he now questions whether [the] decision to stop is appropriate.” The trial court concluded that it was understandable that the child was having adjustment difficulties and that it did not think that those difficulties were to be expected and were not enough to create a situation creating “change enough for me to look at this again.” Finally, with respect to the communication issues, the trial court noted that the child has “unlimited access” to plaintiff and found that “[i]t sounds like the parties still communicate okay and that [plaintiff is] still involved in certain extracurricular activities.”

Based on the record before us, we conclude that plaintiff’s allegations regarding failure to give medication, decisions related to counseling, and the parties’ poor communication were not of such magnitude to have a significant effect on the child’s well-being. *Id.* at 513. The record does not reveal any material changes that have or could have a significant effect on the child’s well-being. *Killingbeck*, 269 Mich App at 145. Further, we conclude that plaintiff’s allegations related to the child’s behavioral problems or plaintiff’s recent move were insufficient to establish proper cause. The trial court concluded that the behavioral problems were to be expected and the counselor’s notes indicated that, although the child was having problems adjusting, he observed some improvement. We conclude that, absent some showing of potential injury or harm to a child, a child’s problems stemming from difficulties adjusting to a change in custody, by themselves, are insufficient to establish proper cause to reevaluate a custody determination. Were it otherwise, custody decisions would never be settled. Thus, plaintiff also failed to establish the existence of an appropriate ground for legal action to be taken by the trial court. *Vodvarka*, 259 Mich App at 512.

Because plaintiff failed to carry his burden to demonstrate either a change in circumstances or proper cause to warrant review of the existing custody order, the trial court was not authorized to revisit the existing child custody decision and engage in a reconsideration of the statutory best interest factors. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874

(1994). On the record, the trial court's denial of plaintiff's motion was not an abuse of discretion because it was not so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008).

Affirmed.

/s/ Douglas B. Shapiro

/s/ Kathleen Jansen

/s/ Pat M. Donofrio