STATE OF MICHIGAN

COURT OF APPEALS

JOHN ROY ALLEN,

Plaintiff-Appellant,

v

ROBIN LYNN BELONGA,

Defendant-Appellee.

UNPUBLISHED
July 20, 2010

No. 295753
Mackinac Circuit Court
LC No. 2005-005986-TC

Before: HOEKSTRA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order denying his motion for a change in custody of the parties' two minor children. We affirm.[1]

Plaintiff argues on appeal that the circuit court's finding that he failed to meet his burden of establishing proper cause or a change in circumstances was against the great weight of the evidence. MCL 722.28; see also *Fletcher v Fletcher*, 447 Mich 871, 877-878 (BRICKLEY, J.), 900 (GRIFFIN, J.); 526 NW2d 889 (1994). We disagree.

MCL 722.27(1)(c) provides that in a child custody dispute, a circuit court may "[m]odify or amend its previous judgments or orders for proper cause shown or because of change of circumstances," but "shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child." See also *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001). The moving party has the burden of proving by a preponderance of the evidence that proper cause or a change in circumstances exists

[1] In 2008, this Court affirmed the circuit court's April 2007 order changing the custody status of the parties' two minor children. *Allen v Belonga*, unpublished per curiam opinion of the Court of Appeals, issued January 15, 2008 (Docket No. 277780). In 2001, the circuit court had awarded the parties, who had never married, joint physical and legal custody of the children. In 2007, the circuit court awarded defendant sole physical custody of the children, but the parties' joint legal custody was maintained. This Court affirmed. *Id*.

before the circuit court may revisit the established custody order. MCL 722.27(1)(c); *Powery v Wells*, 278 Mich App 526, 527-528; 752 NW2d 47 (2008).

"'[P]roper cause' means 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 v Grasmeyer*, 259 Mich App 499, 511; 675 NW2d 847 (2003). 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 a *significant* effect on the child's well-being, have materially changed." *Id*. at 513 (emphasis in original). Whether proper cause or a change in circumstances exists is a fact-sensitive inquiry and the court may look to the statutory best-interest factors to assist it in making its determination. See *id*. at 511-513. If the moving party fails to meet its burden, the circuit court is precluded from revisiting the custody order. *Id*. at 508.

Plaintiff argues that the circuit court committed error requiring reversal when it held that he had failed to show by a preponderance of the evidence that proper cause or a change in circumstances existed. Plaintiff first asserts that because this Court and the circuit court had previously expressed a concern regarding defendant's relationship with Thomas Pavia, the fact that defendant married Pavia after entry of the 2007 custody order should have been considered a sufficient ground to warrant revisiting the issue of custody.

In its November 2009 order, wherein the circuit court determined there was neither proper cause nor a material change of circumstances in this matter, the court addressed plaintiff's concerns regarding Pavia:

> There is no doubt that in the beginning Ms. Belonga minimized the circumstances involving Mr. Pavia and said the "right things" when discussing her concerns and relationships with Mr. Pavia. That is not uncommon in domestic disputes involving child custody matters; i.e., don't give the other side any more ammunition than necessary.
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> The Plaintiff's concerns with Mr. Pavia date to his arrest and conviction in 2005 and 2006 on charges of unlawful possession of controlled substances and being in possession of a weapon. Mr. Pavia served 90 days under the charges and was ordered to fulfill a two-year probation. The Court has no information that the probation was not satisfactorily completed.
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> In reviewing those circumstances, it is clear from the record that since the Defendant's marriage to Mr. Pavia and sometime before that, no issues of consequence have been brought to the Court's attention; and, those that have, bore little fruit as it would pertain to this Court's concern with Mr. Pavia. This would include the incident at the ice arena.
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> The Court would further point out that with the consent of prior counsel the Court interviewed the minor child, [T.J.A.], specifically in regards to Mr. Pavia's presence in the home. As a result of this interview, the Court was convinced that the minor child had no fear of or issues concerning Mr. Pavia.

> By way of background, Mr. Pavia is an ironworker and out of state the majority of his seasonal work term. As such, his time with the children is significantly reduced, which, in turn, benefits the Plaintiff as far as an authority figure being present and the Plaintiff's ability to be the "parent" most directly involved with his children.
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> Mr. Pavia's conviction in 2006 speaks for itself and, as stated, to date any issues that have been raised do not rise to any level that suggest Mr. Pavia is a risk factor in the children's lives.

In its December 2009 order denying plaintiff's motion for reconsideration, the court addressed the foundation and merit of plaintiff's claims, stating in part:

> Plaintiff continues to self-report his interpretation of events with embellishments as the circumstances to his perceived advantage would warrant.
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> * * *
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> The Court, having overseen this particular case and principally Plaintiff's motions, for at least two years, have [sic] generally found the Plaintiff's claims either without merit or unfounded. The Court is concerned that Plaintiff will not cease his obsession to discredit the Defendant, by any means, in order to change custody.

Given the circuit court's assessment of the merit of plaintiff's assertions regarding Pavia, and in view of the other record evidence, we cannot conclude that the circuit court erred by determining that defendant's marriage to Pavia did not constitute proper cause or a change in circumstances sufficient to warrant reconsideration of the 2007 custody order. In order for a circuit court to find a change in circumstances sufficient to allow it to reopen the issue of custody, "the evidence must demonstrate something more than the normal life changes (good or 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. A parent's marriage or remarriage is generally a normal life change that occurs in the life of a child, see *id*. at 513, and therefore does not rise to the level of a "change in circumstances" within the meaning of MCL 722.27(1)(c). Although we concede that Pavia's past behavior and criminal convictions might provide a reason to be concerned about his presence in the minor children's lives, the circuit court correctly noted that plaintiff failed to provide any evidence that defendant's marriage to Pavia has had or will have a significant effect on the minor children. The court did not err by determining that defendant's remarriage and Pavia's resulting presence in the children's lives was tantamount to a normal life change. See *id*. at 513.

Plaintiff questions why Pavia's involvement in the life of the minor children is no longer a concern for the circuit court if it was a concern in 2007. But plaintiff's question in this regard misses the mark. Pavia's involvement in the children's lives may well remain a concern to this

day. However, Pavia's questionable behavior and his presence in the children's lives was *already* a concern in 2007. Therefore, it cannot be said that this circumstance has in any way "change[d]" as required by MCL 722.27(1)(c) merely because Pavia is now married to defendant.[2] Albeit in a different context, this Court has previously noted that "[b]y definition, changed circumstances cannot involve facts and circumstances that existed at the time the court originally entered a judgment." *Laffin v Laffin*, 280 Mich App 513, 519; 760 NW2d 738 (2008).

Nor do plaintiff's concerns about Pavia and his questionable behavior constitute "proper cause" within the meaning of MCL 722.27(1)(c). In the child custody context, "proper cause means 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*, 259 Mich App at 511. We realize that plaintiff has concerns—possible legitimate ones—about Pavia's past behavior and involvement in the lives of the minor children. However, the circuit court's finding that these concerns did not rise to the level of "proper cause" was not contrary to the great weight of the evidence.

Plaintiff also argues that his oldest son's academic and behavioral issues constituted proper cause or a change in circumstances sufficient to warrant a reconsideration of the April 2007 custody order. More specifically, plaintiff argues that because his son's grades declined after being returned to defendant's custody, and because his son began having behavioral problems at school and home following his return to defendant, sufficient grounds existed for the court to revisit the custody arrangement. However, as this Court noted in *Vodvarka*, "over time there will always be some changes in a child's environment, behavior, and well-being." *Id.* at 513. Plaintiff has failed to demonstrate that his son's academic and behavioral changes were anything other than normal life changes that occur in a child's life. See *id.*

Lastly, defendant contends that the circuit court relied on the recommendations of a certain therapist when determining the issue of custody in 2007, and argues that a subsequent disciplinary measure taken against that therapist by the Department of Community Heath constituted proper cause or a change in circumstances sufficient to reopen the matter of custody in this case. However, the circuit court specifically stated that it did not rely on the therapist's recommendations when it made its decision regarding custody in 2007. In any event, the disciplinary action against the therapist was not a condition surrounding the custody of the parties' children. Nor was there any possibility that the disciplinary measure would have a significant effect on the children's lives to any extent, let alone "to the extent that a reevaluation of the [children's] custodial situation should be undertaken." *Id.* at 511. The circuit court properly determined that the disciplinary action taken against the therapist in question constituted neither proper cause nor a change in circumstances.

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[2] Pavia is now married to defendant. But as noted above, a parent's marriage or remarriage is generally considered to be a normal occurrence in the life of a child, see *Vodvarka*, 259 Mich App at 513, and therefore does not rise to the level of a "change in circumstances" within the meaning of MCL 722.27(1)(c). We simply do not see how Pavia's marriage to defendant could have transformed plaintiff's concern about Pavia—a concern that already existed in 2007—into a changed circumstance.

In light of the circuit court's reasoned remarks addressing plaintiff's concerns about Pavia, and given the other record evidence presented in this case, we conclude that the circuit court properly determined that plaintiff failed to meet his burden of demonstrating proper cause or a change in circumstances in this case. The circuit court's findings on this issue were not against the great weight of the evidence, MCL 722.28, and the court therefore properly declined to reopen the issue of custody, *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Jane M. Beckering