STATE OF MICHIGAN

COURT OF APPEALS

JOHN P. STELMAN, Plaintiff-Appellant,	UNPUBLISHED August 3, 2010
v	No. 294105 Oakland Circuit Court
TRACY ANNE STELMAN, Defendant-Appellee.	LC No. 2006-719628-DM

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

PER CURIAM.

Plaintiff appeals by right the trial court's order denying his motion to modify a parenting-time schedule. We affirm.

Plaintiff first argues that the trial court applied the incorrect standard when it denied his request to modify the parenting-time schedule. He asserts that because he sought only a modification of parenting time, rather than a full change of custody, he was not obligated to demonstrate proper cause or a change in circumstances. We disagree.

"Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005).

The Child Custody Act, MCL 722.21 *et seq.*, applies to "all actions involving dispute[s] of a minor child's custody . . . ." MCL 722.24(1). This Court has held that the Child Custody Act governs parenting-time determinations as well as true custody decisions. *Terry v Affum (On Remand)*, 237 Mich App 522, 533-534; 603 NW2d 788 (1999). In *Terry*, this Court observed that "[g]enerally, within the Child Custody Act the term 'child custody dispute' is broadly interpreted 'to mean any action or situation involving the placement of a child.'" *Id.*, quoting *Frame v Nehls*, 452 Mich 171, 179; 550 NW2d 739 (1996). Because parenting-time decisions necessarily "involv[e] the placement of a child" at least to some degree, such decisions fall within the scope of the Child Custody Act. See *Terry*, 237 Mich App at 533-534.

MCL 722.27a requires that parenting time be granted in accordance with the best interests of the child. *Berger v Berger*, 277 Mich App 700, 716; 747 NW2d 336 (2008). However, MCL 722.27(1)(c) provides that the circuit court may modify or amend its previous

orders only for "proper cause shown or because of change of circumstances . . . ." Even though this particular threshold requirement is enumerated in the "child custody dispute" section of the Child Custody Act, it applies equally to matters involving parenting time. *Terry*, 237 Mich App at 534-535. As this Court's decision in *Terry* makes clear, even when a party seeks only to change the parenting-time schedule, he or she must still make a threshold showing of proper cause or a change in circumstances. *Id*. The purpose of this requirement is to "erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders." *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). As the *Vodvarka* Court observed:

> [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 a significant effect on the child's well-being, have materially changed. [*Id.* at 513 (emphasis omitted).]

At the motion hearing in the present case, plaintiff did not offer any proof of any change of circumstances that would warrant modifying the parenting-time schedule. Plaintiff's position at the hearing was that his current, scheduled parenting time during the school year (four nights in the first week of the month, two nights in the second week of the month, four nights in the third week of the month, and two nights in the fourth week of the month) was disruptive to the children. Plaintiff asserted that if the parties' parenting times were simply modified to an every-other-week schedule, it would reduce the number of "transitions" by approximately 50 percent. Plaintiff referenced other benefits with this schedule, which essentially relied on continuity, structure, and predictability.

After listening to plaintiff present the above facts and argument, the trial court stated:

> [T]here isn't anything that indicates that there's been a change in any circumstances that would rise to the level of this Court revisiting the—the parenting time schedule. And I'd like to note that, in essence, although you're saying the parenting time schedule, if the Court were to even grant that, that really is a change of—of custody, which . . . increases . . . the evidentiary basis the Court has to look at in order to grant a change of custody.
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> And I'm sorry, but the things that you've noted on the record are insufficient for this Court to grant your relief. So I'm denying your request.

At the outset, we note that the trial court incorrectly remarked that the requested change would have amounted to a change of custody. Both parents were granted joint physical and legal custody in the divorce judgment. Changing plaintiff's overnight parenting time from 12 to 14 nights in a four-week period can hardly be considered a truly significant change that would result in a change of the parties' joint custody. It is true that if a parenting-time alteration would affect the established custodial environment, then it can only be implemented if clear and convincing evidence shows that such a modification is in the child's best interests. *Powery v Wells*, 278 Mich App 526, 528; 752 NW2d 47 (2008). However, because there would have been no significant change in the number of overnights, the proposed change in this case would not have affected the established custodial environment. Additionally, the fact that the parents were abiding by an every-other-week schedule during the summer demonstrates that such a schedule

during the school year would not have amounted to a change of custody. Accordingly, there was no higher or increased evidentiary burden that plaintiff was required to meet.

But regardless of the court's mischaracterization of plaintiff's request, the trial court used the proper standard in its evaluation. See *Terry*, 237 Mich App at 534-535. There was no question that the court denied plaintiff's motion solely because of the fact that he did not meet the threshold requirement of showing a proper cause or a change in circumstances. After denying the motion, the court explained, "You have to first show that there is either proper cause or change in circumstance that would allow this Court to revisit what has already been in existence. And I'm telling you that you have not met that threshold." At the hearing, and in his motion, plaintiff never presented any evidence of a change in circumstances that would permit the court to entertain his request for a modification of the parenting-time schedule. Plaintiff's evidence consisted of reasons why he thought his proposal was superior to the schedule that was already in place, but he did not state any facts to support *what had changed* between the date the initial order was entered and the date of the hearing. Thus, on the basis of the evidence presented, the trial court's findings were not against the great weight of evidence, and the court did not abuse its discretion by denying plaintiff's motion. And, although the court mischaracterized plaintiff's request as a request for a change of custody, this did not constitute a clear legal error on a major issue since the court used the correct legal standard in its analysis. We perceive no error requiring reversal in this regard.

Plaintiff next argues that the trial court erroneously refused to allow him to present evidence at the motion hearing. We disagree.

Trial courts have an inherent power to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006). "An exercise of the court's 'inherent power' may be disturbed only upon a finding that there has been a clear abuse of discretion." *Id.* at 388.

After the trial court initially denied plaintiff's motion, the court stated, "You have to first show that there is either proper cause or change in circumstance that would allow this Court to revisit what has already been in existence. And I'm telling you that you have not met that threshold." Plaintiff responded that he had "two more things" that he wanted to present that would establish this threshold. However, the court refused to take any further evidence and ended the proceedings.

The issue is therefore whether the trial court abused its discretion by refusing to allow plaintiff to present these "two more things." After reviewing the record in this case, we conclude that the court gave plaintiff ample time to present evidence to satisfy the requisite threshold. We note that plaintiff's argument at the hearing takes up four transcribed pages in the record. It is important to note that although plaintiff mentioned near the beginning of his presentation that "some things have changed," he never actually mentioned any specific change in circumstances. Indeed, plaintiff merely asserted that his proposed schedule would be an improvement over the schedule that was already in place.

Our Supreme Court has noted that "an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome . . . ." *Id.* This is one of those situations. In light of the trial court's inherent power to manage its affairs to

dispose of matters in an orderly and expeditious manner, *id.* at 376, we cannot say that the trial court abused its discretion by preventing plaintiff from presenting further evidence in this case. Moreover, we note that the trial court is specifically empowered to exercise its discretion by limiting oral argument on contested matters. See MCR 2.119(E)(3). The trial court's actions did not rise to the level of an abuse of discretion, and plaintiff's claim to the contrary must fail.

Affirmed.

/s/ Kathleen Jansen
/s/ Pat M. Donofrio