

STATE OF MICHIGAN  
COURT OF APPEALS

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DONALD JASTER,

Plaintiff-Appellee,

v

MELISSA LAPRATT,

Defendant-Appellant.

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UNPUBLISHED

March 15, 2012

No. 306450

Tuscola Circuit Court

LC No. 99-017986-DP

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order dismissing her motion to change the custody of the parties' minor child. Because we conclude that the trial court's finding that defendant failed to demonstrate proper cause or a change of circumstances was not against the great weight of the evidence, we affirm.

Plaintiff and defendant are the parents of the minor child and have engaged in extensive litigation regarding custody, child support, and other domestic-relations issues. In 2003, an order was entered that granted defendant sole physical custody of the minor child. A new custody order was entered in 2008 that granted plaintiff sole physical custody of the minor child. Defendant filed several motions to change custody, all of which were denied. At issue in this case is defendant's motion to modify custody filed on July 18, 2011.<sup>1</sup> On September 16, 2011, the trial court issued an order dismissing defendant's motion to modify custody for failure to demonstrate proper cause or change of circumstances.

In child custody disputes, all orders and judgments must be affirmed on appeal "unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). We review a trial court's determination regarding whether a party has demonstrated proper cause or a change of circumstances under the

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<sup>1</sup> Plaintiff filed a motion to dismiss defendant's motion on July 28, 2011, and a motion for change of custody identical to the motion filed on July 18, 2011, was filed by defendant on August 8, 2011. On August 30, 2011, the trial court held a hearing on the motions.

great weight of the evidence standard. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). A factual finding is against the great weight of evidence when the evidence clearly preponderates in the opposite direction. *Fletcher*, 447 Mich at 878. We review the trial court's discretionary rulings for an abuse of discretion. *Corporan*, 282 Mich App at 605. "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Id.* at 605-606 (quotation and citation omitted).

Custody disputes are governed by the Child Custody Act, MCL 722.21 *et seq.* MCL 722.27(1)(c) provides that a child custody order may be modified for (1) "proper cause" or (2) "change of circumstances." The purpose of MCL 722.27 is "to minimize unwarranted and disruptive changes of custody orders, except under the most compelling circumstances." *Corporan*, 282 Mich App at 603. When a party moves to modify a custody order, the movant must first show proper cause or change of circumstances by a preponderance of the evidence. *Id.* at 603-604; *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). A party is not entitled to an evidentiary hearing on a motion to change custody if the party does not carry his or her threshold burden of proof. *Vodvarka*, 259 Mich App at 508.

This Court explained that "proper cause" means "one or more appropriate grounds [for legal action] 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." *Id.* at 511. Further, the appropriate ground for legal action must be relevant to at least one of the twelve statutory best interests factors.<sup>2</sup> *Id.* at 512. A "change of circumstances" is established when the movant

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<sup>2</sup> The best interests factors are codified at MCL 722.23, which provides:

As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.

proves 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). The evidence must indicate a change that is more than a normal life change that occurs during the life of the child, and there must be some evidence that the material change had or will have an effect on the child. *Id.* at 513-514. The determination whether the change will have an effect on the child is made in light of the statutory best interests factors. *Id.* at 514.

On appeal, defendant argues that the trial court erred when it concluded that defendant failed to demonstrate proper cause or a change of circumstances and declined to hold an evidentiary hearing regarding her change of custody motion. Specifically, defendant argues that she could prove all the allegations in her motion to change custody if an evidentiary hearing was held, and that the trial court should have found that she demonstrated proper cause or change of circumstances.

Defendant primarily supported her motion to change custody with allegations regarding the minor child’s living preference. The motion lists several specific instances where the minor child expressed a desire to live with defendant rather than with plaintiff. Even if these allegations are accurate, the trial court’s finding that they are not sufficient to entitle defendant to a modification of the custody order was not against the great weight of the evidence because mere living preferences are generally insufficient to grant a change of custody. See *Curylo v Curylo*, 104 Mich App 340, 349; 304 NW2d 575 (1981) (a child’s living preference is generally insufficient to grant a change of custody).

Defendant’s motion also alleged that plaintiff excessively disciplined the minor child on several occasions; however, defendant’s allegations do not establish a pattern of abuse or neglect. While it is true that Child Protective Services (CPS) investigated plaintiff for excessive physical discipline, CPS concluded that the incident in question was discipline and not an

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- (g) The mental and physical health of the parties involved.
  - (h) The home, school, and community record of the child.
  - (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
  - (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
  - (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
  - (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

assault. Accordingly, the trial court's conclusion that defendant's allegations did not constitute proper cause or a change of circumstances was not against the great weight of the evidence.

Defendant's motion further alleged that plaintiff interfered with her parenting rights and relationship with the minor child. "Disputes regarding visitation and contempt are not a proper basis for changing custody." *Adams v Adams*, 100 Mich App 1, 13; 298 NW2d 871 (1980). Accordingly, the trial court's determination that these allegations did not demonstrate proper cause or a change of circumstances was not against the great weight of the evidence. Defendant has other legal remedies to enforce her parenting and visitation rights, such as seeking an order declaring plaintiff in contempt. *Id.* at 12-13.

Accordingly, we conclude that the trial court's determination that defendant failed to establish by a preponderance of the evidence either proper cause or a change of circumstances sufficient to warrant reconsideration of the previous custody order was not against the great weight of the evidence. After making this threshold determination, the trial court did not abuse its discretion by denying defendant's motion for change of custody and declining to conduct an evidentiary hearing.

Affirmed.

/s/ William B. Murphy  
/s/ Joel P. Hoekstra  
/s/ Christopher M. Murray