

STATE OF MICHIGAN
COURT OF APPEALS

BASEL ALMUTAWA,

Plaintiff-Appellant,

v

PAOLA MEYERS,

Defendant-Appellee.

UNPUBLISHED
October 16, 2012

No. 306853
Wayne Circuit Court
Family Division
LC No. 03-307363-DM

Before: OWENS, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying his motion for change of custody concerning the minor child. We affirm.

The parties, who divorced in 2003, had one child together. The judgment of divorce granted the parties joint legal custody of the minor child but gave defendant physical custody. The judgment also stated that plaintiff would have parenting time as agreed upon by the parties.

After the entry of the default judgment, the minor child lived with defendant in Virginia. Generally, plaintiff had parenting time during the summer months where the minor child would live with plaintiff in Michigan. Sometime during the summer of 2010, according to defendant, defendant agreed to permit the minor child to reside in Michigan with plaintiff during the 2010-2011 academic year, but only for that specific time period. Plaintiff, however, alleged that there was never an agreement to limit plaintiff's parenting time to the academic year.¹ Both parties do agree, however, that the purpose of the arrangement was to allow the minor child to learn about plaintiff's culture and faith.

On June 21, 2011, plaintiff filed a motion to hold an emergency hearing to modify the judgment of divorce regarding custody. Plaintiff, in addition to highlighting the child's academic success the past year in Michigan, alleged that the minor child (1) "is subject to

¹ The trial court ultimately agreed with defendant and concluded that the agreement was only for the 2010-2011 school year.

physical punishment in Defendant's home"; (2) has been "subject to arguing by the Defendant and her present husband"; and (3) her "stepfather has been physically abusive of the Defendant and at least one police report has been made." Plaintiff argued that the information above demonstrated there has been "a change in circumstances and/or good cause why [the trial court] should not [sic] entertain Plaintiff's Petition for change in custody." Accordingly, plaintiff requested an ex-parte order stating that "the temporary physical residence of the minor child remain" in the custody of plaintiff in Michigan and an order granting plaintiff physical custody of the minor child.

On June 21, 2011, the trial court entered an order declaring "that the temporary physical residence of the minor child . . . shall remain with Plaintiff . . . pending determination by this court on Plaintiff's Motion for change of custody." On July 12, 2011, a hearing was held concerning plaintiff's motion for change of custody. At the hearing, plaintiff again raised the issue concerning domestic violence in defendant's home but did not have evidence to support his allegations.

On July 14, 2011, the referee recommended that plaintiff's motion for change of custody be denied. The referee concluded that plaintiff failed to establish that there was a change of circumstances to warrant a change of custody. Furthermore, the referee opined that the child still had an established custodial environment with defendant. The referee highlighted the fact that before defendant "voluntarily relinquished custody" of the minor child by allowing the child to stay with plaintiff during the 2010-2011 academic year, the child had previously lived with defendant for nine years. Thus, the referee believed that it was plaintiff's burden to show by clear and convincing evidence that the custodial agreement should be modified. The referee also reviewed the best-interest factors under MCL 722.23 and believed that, after reviewing such factors, custody should remain with defendant.

On August 4, 2011, plaintiff filed a motion setting forth various objections to the referee's recommendation, and on September 13, 2011, a hearing was held concerning the motion. On October 12, 2011, the trial court delivered its opinion regarding plaintiff's motion. The trial court concluded that the nine-month period in which the minor child lived with plaintiff did not interrupt the minor child's established custodial environment with defendant. Moreover, even though the trial court concluded that plaintiff became more involved with the minor child during that nine-month period, plaintiff nonetheless failed to establish a proper cause or change of circumstances that would warrant a reevaluation of custody. The trial court noted that it agreed with the referee regarding her review of the best-interest factors and found that "it still would not be in the best interest to change the child's current custodial environment to the father." Accordingly, the trial court denied plaintiff's motion to change custody.

Plaintiff argues that the trial court erred in denying his motion to change custody of the minor child. We disagree.

This Court will affirm all custody orders and judgments entered by the trial court "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. Specifically, "[w]hether an established custodial environment exists is a question of fact that we must affirm unless the trial court's finding is against the great weight of the evidence." *Berger v Berger*, 277

Mich App 700, 706; 747 NW2d 336 (2008). “A finding is against the great weight of the evidence if the evidence clearly preponderates in the opposite direction.” *Id.* Further, this Court defers to the trial court’s decisions regarding credibility. *Id.*

Plaintiff on appeal takes issue with the trial court’s evaluation of the best-interest factors and its determination that an established custodial environment existed with defendant. However, plaintiff fails to address the trial court’s finding, that plaintiff failed to establish a proper cause or change in circumstance to properly initiate a change in custody proceeding.

“A trial court may only consider a change of custody if the movant establishes proper cause or a change in circumstances.” *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). “Accordingly, a party seeking a change in child custody is required, as a threshold matter, to first demonstrate to the trial court either proper cause or a change in circumstances.” *Brausch v Brausch*, 283 Mich App 339, 355; 770 NW2d 77 (2009). As stated by this Court, to establish “proper cause,”

a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court. The appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors,^[2] and must be of such magnitude to have a significant effect on the child’s well-being. When a movant has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors. [*Vodvarka v Grasmeyer*, 259 Mich App 499, 512; 675 NW2d 847 (2003).]

And, as this Court further explained,

To establish a “change of 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. Again, not just any change will suffice, for over time there will always be some changes in a child’s environment, behavior, and well-being. Instead, the evidence must demonstrate something more than the normal life changes (both good and 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.]

The trial court did not err in finding that there was no “proper cause” or “change of circumstances” to warrant a modification of the custody agreement, i.e., the judgment of divorce. On appeal, plaintiff thoroughly reviews the findings concerning the best-interest factors but fails to state specifically how any of the best interest factors established a “proper cause” or “change of circumstances” to change the custody order. The only issue raised by plaintiff that could have supported a finding of a “proper cause” or “change of circumstances” concerned the allegations of domestic violence in defendant’s home. The trial court, in adopting the referee’s

² The twelve best interest factors are located in MCL 722.23.

recommendations, however, concluded that such allegations were just that, allegations. Given the lack of evidence presented by plaintiff and the evidence presented by defendant to refute such allegations, the finding that the domestic abuse allegations lacked merit was not against the great weight of the evidence. Accordingly, because plaintiff failed to establish there was a “proper cause” or “change of circumstances” to warrant a change of the custody order, the trial court did not err in denying plaintiff’s motion for change of custody. And because plaintiff failed to establish this threshold requirement, we need not address his other arguments. See *Shann*, 293 Mich App at 305.

Affirmed. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder