

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES D. COLLARD,

Plaintiff-Appellant,

v

HOLLY E. COLLARD,

Defendant-Appellee.

UNPUBLISHED

July 23, 1996

No. 183898

LC No. 91-002976-DM

Before: Sawyer, P.J., and Neff and R.D. Gotham,* JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit court dismissing his petition for a change in custody. We affirm.

Plaintiff argues that the trial court erred in dismissing his petition for a change in custody without first holding an evidentiary hearing. We disagree. In order to obtain a change in custody, the petitioner must first show proper cause or a change in circumstances. MCL 722.27(1)(c); MSA 25.312(7)(1); see also *Rossow v Aranda*, 206 Mich App 456; 522 NW2d 874 (1994). In the case at bar, the trial court concluded that plaintiff's petition did not present any new facts that the trial court had not dealt with in prior hearings. In short, plaintiff's petition did not present any basis for changing custody beyond issues previously considered by the trial court. Accordingly, there was no need for an evidentiary hearing before dismissing the petition.

Next, defendant requests award of attorney fees and costs because this is a vexatious appeal. While we agree that the appeal is without merit, we cannot deem it vexatious and meriting an award of fees and costs under MCR 7.216(C). Rather, the ordinary costs permitted to be taxed by the prevailing party is sufficient.

Affirmed. Defendant may tax costs.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Roy D. Gotham