

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL LEE WRIGHT,

Plaintiff-Appellee,

v

LORA LEA MACHIELE,

Defendant-Appellant.

UNPUBLISHED

November 13, 1998

No. 206994

Newaygo Circuit Court

LC No. 88-010562 DM

Before: Whitbeck, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

In this post-divorce action, defendant appeals as of right from an order denying her motion for a change in custody of the parties' minor children. We reverse and remand for further proceedings on defendant's motion.

Our review of the trial court's decision is governed by the following standards:

When reviewing a child custody matter, this Court must affirm the decision of the trial court unless its factual findings are against the "great weight of the evidence," its discretionary rulings demonstrate a "palpable abuse of discretion," or it has made a "clear legal error" with regard to a major issue. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). [*York v Morofsky*, 225 Mich App 333, 335; 571 NW2d 524 (1997).]

Here, defendant challenges the trial court's ruling concerning the requirement in MCL 722.27(1)(c); MSA 25.312(7)(1)(c), that a trial court, in the best interests of the child, may "[m]odify or amend its previous judgments or orders for proper cause shown or because of change of circumstances" In *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994), this Court stated:

The plain and ordinary language used in MCL 722.27(1)(c); MSA 25.312(7)(1)(c) evinces the Legislature's intent to condition a trial court's reconsideration of the statutory best interest factors on a determination by the court that

the party seeking the change has demonstrated either a proper cause shown or a change of circumstances. It therefore follows as a corollary that where the party seeking to change custody has not carried the initial burden of establishing either proper cause or a change of circumstances, the trial court is not authorized by statute to revisit an otherwise valid prior custody decision and engage in a reconsideration of the statutory best interest factors.

On the basis of the facts presented to the trial court, which were not in dispute, we hold that the trial court committed a clear legal error by misapplying the law or, alternatively, made findings that were against the great weight of the evidence in determining that the requisite change of circumstances had not been shown.

Had this been a case involving a mere dispute regarding visitation, we agree that there would not have been a proper basis for changing the parties' joint physical custody arrangement set forth in the divorce judgment *Cf. Adams v Adams*, 100 Mich App 1, 13; 298 NW2d 871 (1980). However, in the case at bar, defendant demonstrated a breakdown in plaintiff's relationship with the children and inaction on the part of the plaintiff in trying to compel parenting time with the children. As a practical matter, with or without intent, the parties' shared physical custody arrangement changed, although plaintiff proposed that he would try to force visitation at the hearing on defendant's motion and his own cross-motion for custody.¹ Because the divorce judgment provided for child support by the parent having physical custody, plaintiff also, as a practical matter, stopped supporting the children's needs, financially as well as emotionally.

Whether or not these circumstances will ultimately warrant a change in custody, we find that the undisputed facts regarding the breakdown of plaintiff's relationship with the children, combined with the other circumstances of this case, constitute a sufficient change in circumstances to warrant a reanalysis of the statutory best interest factors. *Rossow, supra* at 458. Accordingly, we reverse the trial court's denial of defendant's motion for a change of custody and remand for further proceedings. We further instruct the trial court to first determine whether an established custodial environment exists, as this will govern the burden of proof to be applied. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Hayes v Hayes*, 209 Mich App 385, 387; 532 NW2d 190 (1995). The trial court must then consider each of the "best interest" factors set forth in MCL 722.23; MSA 25.312(3), and explicitly state its findings and conclusions regarding each. *Bowers v Bowers*, 198 Mich App 320, 324; 497 NW2d 602 (1993).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Janet T. Neff

¹ We note that plaintiff's son did not visit him for approximately ten months prior to the hearing before the trial court, and that plaintiff took no steps to force visitation. Indeed, it was not until plaintiff's

relationship with his daughter also deteriorated and defendant filed a motion for change of custody in May of 1997 that plaintiff responded with his own motion for change of custody.