

STATE OF MICHIGAN
COURT OF APPEALS

MARGO M. MASICH,

Plaintiff-Appellant,

v

KEVIN M. MASICH,

Defendant-Appellee.

UNPUBLISHED

July 21, 2000

No. 221768

Marquette Circuit Court

LC No. 97-033033-DM

Before: Hood, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order changing custody of the parties’ two minor children from plaintiff to defendant. We affirm.

The parties’ judgment of divorce granted primary physical custody of the parties’ children to plaintiff. Plaintiff was not allowed to move the children outside Michigan without prior court approval. Plaintiff nonetheless moved the children to Wisconsin during a break between the children’s school semesters without prior court approval. The trial court later awarded primary physical custody of the children to defendant.

All custody orders must be affirmed on appeal unless the trial court’s findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). The great weight of the evidence standard applies to all findings of fact. A trial court’s findings concerning the existence of an established custodial environment, as well as the court’s findings on each custody factor, should be affirmed unless the evidence clearly preponderates in the opposite direction. *Id.* at 879. A trial court commits legal error when it incorrectly chooses, interprets, or applies the law. *Id.* at 881.

Plaintiff first argues that no proper cause or change of circumstances existed to authorize the trial court’s decision to revisit the existing custody order. We disagree. A trial court’s order modifying or amending its previous judgment in a child custody matter must be supported by a “proper cause shown” or a “change of circumstances” establishing that the modification is in the children’s best interests. MCL

722.27(1)(c); MSA 25.312(7)(1)(c). Although a custodial parent's petition for a change of domicile, alone, does not warrant revisiting the best interests factors, *Dehring v Dehring*, 220 Mich App 163, 165-166; 559 NW2d 59 (1996), in this case the court relied on additional circumstances. The trial court considered not only the unauthorized move of the children to Wisconsin, but also plaintiff's denial of defendant's visitation rights.

Plaintiff next argues that the trial court's definition of "clear and convincing evidence," when considering the best interests of the children, was too lax because it was a simplified definition for use in jury trials. Our review of the record reveals no indication that the trial court misunderstood or misapplied the standard of proof. Accordingly, we find no error.

Plaintiff further urges us to conclude that the trial court committed clear legal error in assigning equal weight to each of the twelve statutory best interests factors. We decline to do so. Although a court need not give the statutory factors equal weight, *McCain v McCain*, 229 Mich App 123, 130-131; 580 NW2d 485 (1998); *Heid v AAASulewski (After Remand)*, 209 Mich App 587, 596; 532 NW2d 205 (1995), we find no reason to conclude that a trial court may not weigh the factors equally when doing so would serve the children's best interests. See *Heid, supra* at 595 (noting that the child's welfare is the primary concern in a custody dispute).

Finally, plaintiff challenges the trial court's findings with regard to several of the best interests factors set forth at MCL 722.23; MSA 25.312(3). We agree with plaintiff that the trial court's finding that factor (c) ("[t]he 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") favored defendant was against the great weight of the evidence; the parties were equal in this regard. Although defendant may have had a greater income than plaintiff, both parties had substantial assets and were equally able to provide for their children.

After a review of the record, we conclude that the trial court's findings on the remaining statutory factors were not against the great weight of the evidence. Therefore, despite any error with respect to factor (c), on the whole the factors clearly favored defendant. Six of the factors weighed equally with the parties, four weighed in favor of defendant, and only one weighed in plaintiff's favor. We therefore decline to disturb the award of primary physical custody to defendant.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Peter D. O'Connell