STATE OF MICHIGAN

COURT OF APPEALS

MITCHELL RAY JAROSZ, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED December 12, 2000
v	No. 225367 Sanilac Circuit Court Family Division
JENNIFER SUE JAROSZ, Defendant/Counter-Plaintiff-Appellant.	LC No. 97-025214-DM

Before: Fitzgerald, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Defendant appeals as of right from an order awarding physical custody of the parties' minor son to plaintiff. We affirm.

Plaintiff and defendant were married on September 16, 1995, and divorced on March 17, 1998. The judgment of divorce awarded the parties joint legal and physical custody of the minor child. On October 9, 1998, plaintiff moved for change of physical custody alleging that defendant interfered with his parental relationship. The parties stipulated to submit the matter to the friend of the court referee who recommended that plaintiff receive physical custody. Defendant objected to the recommendation and requested a de novo hearing. Plaintiff moved to limit the de novo hearing to review of the transcripts of the referee hearing, arguing that defendant failed to comply with certain procedures for requesting additional testimony to which the parties had stipulated. The court agreed with plaintiff and precluded defendant from presenting additional witnesses or testimony at the de novo hearing.

After hearing the parties' oral arguments and reviewing the evidence, the court found that plaintiff had shown the proper cause or change of circumstances. The court also found that an established custodial environment existed and that plaintiff proved by clear and convincing evidence that awarding him physical custody would be in the child's best interests. The court entered an order awarding the parties joint legal custody and physical custody to plaintiff, and referring the matter to the friend of the court for a recommendation on child support.

I

Defendant argues that the trial court erred by limiting the de novo hearing to a review of the friend of the court hearing transcripts and the parties' oral arguments. We disagree. The stipulated order submitting the custody dispute to the friend of the court referee states in pertinent part:

> The parties may request a de novo hearing before the Judge assigned to this cause by filing written objections to the recommendation . . . . The de novo hearing will be conducted by a review of a transcript of the Referee hearing by the Court and any additional testimony that is presented by either party. If either party wishes to present additional testimony to that presented at the Referee Hearing, (s)he shall make such request within the request for a de novo hearing specifying the witnesses requested to be presented and the approximate amount of time they believe such testimony will take. [Emphasis in original.]

Defendant does not dispute that the order is signed by her attorney, nor does she claim that counsel did so without her knowledge and approval. Defense counsel's signature on the order is sufficient evidence of defendant's consent to the terms of the order. MCR 2.507(H).

A party may obtain a de novo judicial hearing on child custody matters submitted to the referee by filing objections within twenty-one days after service of the referee's recommendation. MCL 552.507(5); MSA 25.176(7)(5); MCR 3.215(E)(3)(b). In the case at hand, the relevant order recognizes the right of the parties to present evidence at the de novo hearing beyond that included in the record of the referee hearing. However, the order also shows that the parities agreed that the presentation of such additional testimony was contingent on the parties following certain procedural rules. Specifically, the order indicates that either party could present additional testimony if the party specified the witnesses the party intended to present and the amount of time needed for the additional testimony in their request for a de novo hearing. Although defendant stated in her request for a de novo hearing her intention to present witnesses and estimated the time required for the testimony, she failed to specify which witnesses she intended to present. We conclude that because defendant failed to comply with the terms of the order, the trial court did not err in limiting the de novo hearing to the proofs presented at the referee hearing.

II

Defendant next argues that the trial court erred when it determined that plaintiff had established the requisite proper cause or change of circumstances, thereby authorizing reconsideration of the custody order by the trial court. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994). Reconsideration of the best interests factors of MCL 722.23; MSA 25.312(3), is conditioned on a determination by the trial court that the party seeking the change has demonstrated either a proper cause or a change of circumstances. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Rossow, supra* at 458. Whether proper cause or a change of circumstances exists is a finding of fact which is to be affirmed unless it is against the great weight of evidence. *McCain v McCain*, 229 Mich App 123, 125; 580 NW2d 485 (1998).

Defendant argues that the court failed to state on the record its basis for finding that proper cause or a change of circumstances existed. We disagree. The record shows that the trial

court concluded that defendant had pervasively interfered with plaintiff's parental relationship with the child, and that such interference constituted either proper cause or a change in circumstances. Defendant also argues that the court erred by failing to state the evidence that supported its finding that proper cause or a change of circumstances existed. Again, we disagree. Although brief, the trial court's definite and pertinent findings are sufficient. *Fletcher*, *supra* at 883. Further, the court's finding that defendant's interference with plaintiff's parental relationship constituted proper cause or a change of circumstances was not against the great weight of the evidence.

III

Finally, defendant argues that the trial court erred when it concluded that plaintiff had established by clear and convincing evidence that awarding him physical custody was in the child's best interests. Accordingly, defendant asserts that the court abused its discretion in awarding plaintiff physical custody of the minor child. We disagree. Because an established custodial environment existed, the trial court could not modify the custody order to change that custodial environment absent clear and convincing evidence that the modification was in the best interests of the child. MCL 722.27(1)(c); MSA 25.312(7)(1)(c); *Mann v Mann*, 190 Mich App 526, 530-531; 476 NW2d 439 (1991).

The best interests of the child are determined by applying the statutory factors listed in MCL 722.23; MSA 25.312(3). Defendant argues that the trial court erred when it found that factors (d) ("length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity") and (j) ("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") favored plaintiff. After reviewing the record, we conclude that the trial court's finding on each factor was not against the great weight of the evidence. *McCain*, *supra* at 125.

Based on its findings regarding the best interests factors, the court concluded that plaintiff had shown by clear and convincing evidence that awarding him physical custody would be in the child's best interests. We find no abuse of discretion in this decision. *Fletcher*, *supra* at 880. The court found that one factor favored defendant and three factors favored plaintiff, one of which, factor (j), strongly favored plaintiff. The trial court's decision is not grossly violative of fact and logic, nor does it show perversity of will, passion or bias. *Id.* at 879-880.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald