

STATE OF MICHIGAN
COURT OF APPEALS

KIM McGHAN,

Plaintiff-Appellee,

v

JEFFREY WILSON

Defendant-Appellant.

UNPUBLISHED

February 20, 2001

No. 229286

Oceana Circuit Court

Family Division

LC No. 92-003011-DM

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying his petition for physical custody of the parties' minor child. We affirm.

Plaintiff and defendant divorced in 1992. Pursuant to the consent judgment of divorce, the parties shared legal custody of the minor child, with physical custody being granted to plaintiff. In November 1999, plaintiff decided to move from the Hart area to the Lansing area because her husband had been offered a higher paying job. Because plaintiff did not want the minor child to have to change schools in the middle of the school year, she and defendant agreed that the child would remain in the Hart area and live with defendant until June 2000.

The parties subsequently met with a friend of the court enforcement officer and drew up a written agreement. The stipulated agreement provided that the minor child would remain with defendant for "temporary parenting time." The agreement further provided that in June 2000 the parties would meet with the FOC to "decide what is in the best interest of the minor child." During the custody hearing, plaintiff indicated that her understanding was that the child would be returned to her custody in June 2000. Her testimony was reiterated by the FOC enforcement officer, who indicated that the parties agreed to meet in June regarding parenting time and transportation issues. Defendant, on the other hand, maintained that he understood that the parties would reevaluate physical custody in June. Defendant petitioned for a change in custody in June 2000.

After a custody hearing, the trial court declined to grant defendant's petition because it found there was no evidence of a change in circumstances or proper cause to warrant

modification of the prior custody order. Defendant now argues that the trial court's finding was erroneous. We disagree.

Whether a change in circumstances exists to warrant modification of a prior custody order is essentially a factual determination. We review a trial court's findings of fact in a child custody proceeding to determine if they are contrary to the great weight of the evidence. *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994); *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000).

Defendant contends that the trial court erred because it did not consider whether an established custodial environment existed when considering defendant's petition for custody. Defendant's argument overlooks the key fact that the trial court properly determined that defendant, as the party seeking a change in custody, had not met his burden of establishing a change in circumstances.

MCL 722.27(1)(c); MSA 25.321(7)(1)(c) authorizes a trial court to "[m]odify or amend its previous judgments or orders *for proper cause shown or because of change of circumstances* until the child reaches 18 years of age and, subject to [MCL 722.24a; MSA 25.312(4a)], until the child reaches 19 years and 6 months of age." In *Rossow v Aranda*, 206 Mich App 456, 457-458; 522 NW2d 874 (1994), this Court observed:

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. [See also *Terry v Affum (On Remand)*, 237 Mich App 522, 534-535; 603 NW2d 788 (1999); *Ireland v Smith*, 451 Mich 457, 461 n 3; 547 NW2d 686 (1996).]

In a custody case, the party seeking the change in custody always bears the burden of proof. *Mann v Mann*, 190 Mich App 526, 535; 476 NW2d 439 (1991). Defendant argues that plaintiff's move from the Hart area to Lansing, and the minor child's expressed preference to live with defendant, amount to a change of circumstances warranting a revisiting of the statutory best interests factors. We find defendant's argument to be without merit.

It is well-settled that a custodial parent's intrastate change of domicile does not constitute "proper cause" or "change of circumstances" sufficient to require a reevaluation of custody. *Dehring v Dehring*, 220 Mich App 163, 165-166; 559 NW2d 59 (1996). Furthermore, we also decline to hold that a child's changed preference regarding custody amounts to a change in circumstances or proper cause. In *Curlyo v Curlyo*, 104 Mich App 340, 349; 304 NW2d 575 (1981), a panel of this Court concluded that a child's stated preference to live with the defendant did not amount to a change in circumstances sufficient to warrant a new trial to revisit the trial court's custody decision. In a slightly different context, the *Curlyo* Court opined:

A change in the children's preferences as to the custodial parent will almost never justify the grant of a new [custody] trial. The preferences of the children may be too easily influenced by the break-up of the marriage and competition for their love between the parents. If the children's changed preferences required the grant of a motion for a new trial, the courts would be encouraging the parents to use their children as pawns in the marital break-up. This situation would place undue emotional pressure on the children and parents alike. We will do nothing which might encourage immature parents to use their immature offspring in a high stakes game of psychological roulette. [*Id.*]

Moreover, despite defendant's intimations to the contrary in the lower court, there is no evidence in the record to substantiate defendant's allegations that plaintiff was financially unable to care for the minor child. Although plaintiff conceded that she and her husband were behind in their mortgage payments at one point, she also testified that the arrears were paid and that her mortgage was up to date, and the record indicates that both she and her husband were gainfully employed at the time of the custody hearing. Therefore, the trial court's finding was not contrary to the great weight of the evidence.

Finally, we are satisfied that the public policy encouraging parties to reach amicable agreements regarding custody supports our affirmation of the trial court's order. See generally *Straub v Straub*, 209 Mich App 77, 81; 530 NW2d 125 (1995). Affirming the trial court's order furthers the underlying purpose of MCL 722.27(1)(c); MSA 25.312(7)(1)(c), which is to "erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders." *Heid v Aasulewski (After Remand)*, 209 Mich App 587, 593; 532 NW2d 205 (1995).

Affirmed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Jane E. Markey