

STATE OF MICHIGAN
COURT OF APPEALS

SHARON L. WORTHY,

Plaintiff-Appellee,

v

RICHARD W. WORTHY,

Defendant-Appellant.

UNPUBLISHED

July 9, 2002

No. 237321

Wayne Circuit Court

Family Division

LC No. 97-720425-DM

Before: Kelly, P.J., and Murphy and Murray, JJ.

PER CURIAM.

In this child custody case, defendant appeals as of right from the trial court's order dismissing defendant's motion for change of custody on the basis that defendant failed to establish proper cause or a change of circumstances warranting analysis of the statutory best interest factors. We affirm.

Defendant asserts that the trial court erred in determining that he failed to establish either proper cause or a change in circumstances. We disagree.

MCL 722.27(1)(c) provides that a trial court may modify or amend a previous custody order only for proper cause shown or because of a change in circumstances. See *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001); *Terry v Affum (On Remand)*, 237 Mich App 522, 534-535; 603 NW2d 788 (1999); *Dehring v Dehring*, 220 Mich App 163, 164-165; 559 NW2d 59 (1996). The plain and ordinary language of § 27(1)(c) evinces the Legislature's intent that the statutory best interest factors, MCL 722.23(a) – (l), should be considered only when a party seeking modification of a custody order has demonstrated either proper cause or a change in circumstances. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994). Consequently, if the moving party fails to make such a preliminary showing, 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." *Id.*

Here, we find no error in the trial court's determination that defendant failed to establish proper cause or a change in circumstances, thereby precluding consideration of the statutory best interest factors. The undisputed evidence indicated that the parties' daughter, T.W., was molested by her maternal grandfather, Richard Larimore, but that she immediately told plaintiff of the incident, and that plaintiff immediately confronted Larimore with T.W.'s accusations against him. Larimore left the state the next day and had not been heard from since. It is clear

that any threat to the children no longer existed; therefore, no evidentiary hearing was required. Under these circumstances, there is no support for defendant's claim that the children were in any continuing danger in plaintiff's care. Consequently, defendant failed to establish proper cause or a change in circumstances warranting an analysis of the statutory best interests factors. *Terry, supra* at 534-535; *Dehring, supra* at 164-165; *Rossow, supra* at 458.¹

We also find that the trial court did not err in awarding plaintiff sanctions under MCR 2.114. The trial court's finding that defendant's claim was frivolous is not clearly erroneous. *In re Attorney Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ Christopher M. Murray

¹ Defendant's reliance on *Hayes v Hayes*, 209 Mich App 385; 532 NW2d 190 (1995), is misplaced. At issue in *Hayes* was whether the trial court erred in concluding that neither party had an established custodial environment with the children and whether the trial court erred in awarding custody to the defendant, not whether the defendant had demonstrated proper cause or a change in circumstances sufficient to support modification of the custody award. *Id.* at 387.