

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

AMY E. MICHEL,

Plaintiff-Appellee,

v

RICHARD C. MICHEL,

Defendant-Appellant.

---

UNPUBLISHED  
November 9, 2004

No. 256395  
Kent Circuit Court  
LC No. 99-003544-DM

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's orders denying his motion to change custody and his motion for reconsideration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant and plaintiff are the parents of four daughters. The judgment of divorce, entered in 2001, awarded physical custody of the children to plaintiff. In January 2004 defendant filed a motion for, inter alia, change of custody of one child only. He alleged that a significant change in circumstances, i.e., that the child desired to reside with him because they had many interests in common, had occurred and would support granting him physical custody of the child. The trial court declined to hold an evidentiary hearing and denied the motion to change custody of the child, finding that defendant had not demonstrated that a change in circumstances had occurred.

Defendant moved for reconsideration, alleging that several factors, taken alone or in combination, supported his motion for change of custody of the child. The allegations in the motion for reconsideration were not supported by documentation. The trial court denied the motion, finding that the allegations could have been raised in the original motion.

A custody award may be modified on a showing of proper cause or change of circumstances that establishes that the modification is in the child's best interests. MCL 722.27(1)(c). The party seeking a change of custody must establish by a preponderance of the evidence proper cause or a change in circumstances before the existence of an established custodial environment and the best interest factors may be considered. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994). Proper cause to change custody exists when an appropriate ground which has or could have a significant impact on the child's life merits a reevaluation of the child's custodial situation. A change of circumstances meriting a change of

custody exists when conditions pertaining to the child's custody, which have or could have a significant impact on the child's well being, have materially changed. In determining whether a proper ground or a change in circumstances exists, a trial court should consider the best interest factors. *Vodvarka v Grasmeyer*, 259 Mich App 499, 509-514; 675 NW2d 847 (2003).

Three standards of review apply in custody cases. MCL 722.28. We review a trial court's findings of fact under the great weight of the evidence standard, discretionary rulings, including custody decisions, for an abuse of discretion, and questions of law for clear legal error. A trial court commits legal error when it incorrectly chooses, interprets, or applies the law. *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000).

We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

We affirm. In his original motion for change of custody defendant alleged only that the child desired to live with him on a permanent basis because she had more interests in common with him than she did with plaintiff. When resolving a custody dispute, a trial court must take into account the preference of a child who is able to assert a preference. MCL 722.23(i). However, defendant cites no authority to support his assertion that a child's desire to live with the other parent is sufficient, in and of itself, to constitute proper cause or a change in circumstances that would support a change in custody. Defendant did not establish by a preponderance of the evidence proper cause or a change in circumstances that would support a change of custody. *Rossow, supra*; *Vodvarka, supra*. The trial court did not commit clear legal error by denying defendant's motion for change of custody. *Phillips, supra*.

The allegations in defendant's motion for reconsideration were not, but could have been, presented in the original motion for change of custody.<sup>1</sup> The trial court did not abuse its discretion by denying the motion for reconsideration. *Churchman, supra*.

Affirmed.

/s/ Christopher M. Murray  
/s/ David H. Sawyer  
/s/ Michael R. Smolenski

---

<sup>1</sup> Certain of the allegations were mentioned during oral argument on the original motion for change of custody, but were not contained in that motion.