

STATE OF MICHIGAN
COURT OF APPEALS

DAWN MARIE WHITE,

Plaintiff-Appellant,

v

ADAM MARANO,

Defendant-Appellee.

UNPUBLISHED

November 16, 2004

No. 253830

Wayne Circuit Court

LC No. 02-211930-dc

Before: Zahra, P.J., and White and Talbot, JJ.

TALBOT, J. (*dissenting*).

I agree that the trial court's findings that the parties were substantially equal on the best interest factors were not against the great weight of evidence. MCL 722.28; *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000). I respectfully dissent, however, from the majority conclusion that defendant met his burden of providing clear and convincing evidence that a change in the established custodial environment was in the child's best interest in this case. *Phillips v Jordan*, 241 Mich App 17, 24-25; 614 NW2d 183 (2000).

As the majority notes, equality on the best interests factors will not "*necessarily*" prevent a party from satisfying its burden of proof by clear and convincing evidence on a motion to modify custody. *Heid v AAASulewski (After Remand)*, 209 Mich App 587, 594; 532 NW2d 205 (1995). The high statutory burden is intended, however, "to erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders." *Id.* In *Heid*, this Court found that a change in custody was warranted because the child had a "strong emotional bond" to the non-custodial parent, and because both parents worked well together to provide "a stable, secure and happy environment" for the child. *Id.*, 595.

By contrast, in this case, the trial court made reference to the best interests of the child, but made no "qualitative review of the evidence adduced." *Id.* Instead, the court based its decision primarily on the hope that the child could develop a strong bond to both parents and on the belief that "with proper direction" the child's immature and alienated parents would "be able to communicate with each other regarding their daughter." *Id.*, 595.

I believe that the unwarranted change from an established custodial environment, along with the strained parenting schedule in this case - described by the trial court itself as "somewhat

complicated” - will be extremely disruptive to this three-year old child with special needs. I would reverse.

/s/ Michael J. Talbot