STATE OF MICHIGAN

COURT OF APPEALS

AMRITA SINHA,

Plaintiff-Appellee,

v

CHRISTIAN L. NEWBERRY,

Defendant-Appellant.

UNPUBLISHED
December 28, 2004

No. 257776
Oakland Circuit Court
LC No. 98-615781-DM

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendant appeals by right the trial court's denial of his motion for change of custody. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that he presented sufficient evidence of a change in circumstances to warrant a statutory best interest hearing. We disagree. Three standards of review apply in custody cases. The great weight of the evidence standard applies to all findings of fact. An abuse of discretion standard applies to review of the trial court's discretionary rulings such custody decisions. And a clear legal error standard applies to question of law. A trial court commits a clear legal error when it incorrectly chooses, applies, or interprets the law. *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000).

Pursuant to MCL 722.27(1)(c), the party moving for a change in custody must establish a substantial change in circumstances or show proper cause before the trial court may modify or amend its previous custody order. In fact, the trial court may not conduct a custody hearing unless the moving party establishes by a preponderance of the evidence a proper cause or change in circumstance. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003).

Defendant offers in support several alleged changes in circumstances that are actually nothing more than normal life changes. First, he points to the fact that the child is several years older now. Aging is an obvious normal life change; therefore, it does not amount to a change in circumstance. *Vodvarka, supra* at 513. Defendant's second contention that he has more time to spend with the child than he did at the time of the custody agreement also does not rise to the level of a change in circumstance that would have a significant effect on the child. The fluctuation in schedules and free time is merely a normal life change. Such normal life changes, whether good or bad, do not amount to a change in circumstance. *Id.* Next, defendant argues that his remarriage is a change in circumstance. This too is just a normal life change; and it does

not, it and of itself, amount to a fact that would have a significant impact on the child's well being. As such, it is insufficient to warrant a best interest hearing. *Id*.

Defendant next raises several issues for which he offers no evidentiary support. He argues that plaintiff continues to have a problem with alcohol and depression. He argues that plaintiff smokes in front of the child, exacerbating her asthma. He argues that plaintiff did not communicate with him regarding medical and education decisions. And he argues that plaintiff has financial difficulties. Defendant makes no offer of proof to support any of his allegations. In fact, his attorney admitted that defendant had no evidence to present besides defendant's statement that he saw plaintiff in her bathrobe when he picked up the child. It is defendant's burden to prove a change in circumstance by a preponderance of the evidence. *Vodvarka* at 509. Given that he offered no evidentiary support of any kind for these allegations and did not even argue that he could find support outside of a court ordered psychological evaluation, defendant did not meet this burden. Therefore, the trial court did not err in denying defendant's motion. *Id*. 512-513.

Defendant's final alleged change in circumstance revolves around his own alcohol problems. He alleges that although at the time of the custody agreement he had a drinking problem, he has now corrected it. Again, defendant offered no evidence to support his allegation. He merely states that he changed. Further, the trial court's factual determination on change of circumstance is subject to the great weight of the evidence standard. *Phillips*, *supra* at 20. To reverse based on the great weight of the evidence, the facts must clearly preponderate in the opposite direction. *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994). The finding must amount to a miscarriage of justice to meet this standard. *Id.* Nothing presented by defendant clearly preponderates against the trial court's findings in this case. Although arguably this is a close question, the trial court's finding does not amount to a miscarriage of justice. Therefore, we must affirm. *Phillips*, *supra* at 20.

Defendant also argues that the trial court erred in failing to find proper cause to conduct a best interest hearing. The statutory best interest factors, MCL 722.23(a)-(l), provide guidance to the trial court on what constitutes proper cause. *Vodvarka*, *supra* at 511-512. Again, the moving party has the burden of establishing proper cause by a preponderance of the evidence. *Id*. at 512.

To make his argument regarding proper cause, defendant again relies on the allegations for which he offered no evidentiary support. Defendant repeats his allegations that plaintiff has issues with alcohol and depression and that plaintiff smokes in front of the child. As noted, *supra*, defendant offers no support for his allegations. The only thing even mentioned was the fact that plaintiff wore a bathrobe. Given the lack of factual support, plaintiff failed to meet his burden. *Vodvarka*, *supra* at 511-512. The trial court did not err in denying the motion.

The only other alleged proper cause defendant raised is his allegations that plaintiff does not consult him regarding the child's medical and educational decisions. The trial court's determination that this fact did not constitute a proper cause is not against the great weight of the evidence. To be proper cause, the alleged fact must have a significant impact on the child's well being. *Vodvarka, supra* at 512. Defendant fails to allege that plaintiff's decision making has had a negative effect on the child's well being. Therefore, he failed to meet the standard. Further, defendant fails to allege or demonstrate that the parties would be more likely to communicate if he had custody.

The Legislature established the statutory custody framework and threshold tests necessary to change custody to minimize disruption in the child's life. *Heid v AAASulewski*, 209 Mich App 587, 593-594; 532 NW2d 205 (1995). The trial court did not err in determining that defendant did not offer the preponderance of the evidence necessary to warrant a best interest hearing and the accompanying disruptions in the child's life. As the trial court ruled, defendant's issues are truly best raised in discussions on modification of parenting time.

Defendant requested that the trial court order plaintiff attend psychological evaluation if he did not meet the requirements for a best interest hearing. He continues this request in this Court. Defendant presents no authority to support such an order. This Court will not search for authority to make a party's argument. *Mudge v Macomb County*, 458 Mich 87, 105; 580 NW2d 845 (1998). Further, the fact that defendant saw plaintiff in her bathrobe does not warrant such an invasion into plaintiff's privacy rights.

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens