STATE OF MICHIGAN

COURT OF APPEALS

JOHN ROY ALLEN,

Plaintiff-Appellant,

v

ROBIN LYNN BELONGA,

Defendant-Appellee.

UNPUBLISHED
January 15, 2008

No. 277780
Mackinac Circuit Court
LC No. 05-005986-TC

Before: Davis, P.J., and Murphy and White, JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the trial court granting defendant's motion for sole physical custody of the parties' two minor children and retaining the parties' joint legal custody. The court's order modified the parties' 2001 custody order, which had provided for joint legal and physical custody. There is no dispute that there was in existence a joint established custodial environment when defendant's motion was filed. We affirm.

Plaintiff asserts two arguments on appeal. First, plaintiff claims that defendant failed to establish proper cause or a change of circumstances, a prerequisite to conducting an evidentiary hearing regarding, and to making a ruling on, the children's best interests. Plaintiff then proceeds to argue that, assuming the threshold of proper cause or a change of circumstances was met, there was not clear and convincing evidence presented at the hearing to support a change in the established custodial environment. We disagree with plaintiff on both arguments.

Findings of fact in custody cases are reviewed under the great weight of the evidence standard, discretionary decisions such as custody dispositions are reviewed for an abuse of discretion, and questions of law are reviewed for clear legal error. MCL 722.28; *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004), quoting *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000).

MCL 722.27 provides in pertinent part as follows:

> (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:

* * *

> (c) *Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances* . . . . The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. [Emphasis added.]

A change of circumstances is established by proving that "since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed." *Vodvarka v Grasmeyer*, 259 Mich App 499, 513; 675 NW2d 847 (2003) (emphasis in original). Something more than normal life changes that occur during a child's life must be shown. *Id.* Proper cause is shown by proving by a preponderance of the evidence that an appropriate ground for legal action to be taken by the trial court exists. *Id.* at 512. "The appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well being." *Id.* If proper cause or a change of circumstances is not established, the court is precluded from holding a child custody hearing to determine the child's best interests. *Id.* at 508.

Here, the trial court cited *Vodvarka* and recognized the threshold requirement of proper cause or a change of circumstances that must be shown before a motion to change custody can proceed to the best-interests stage. The trial court further stated that it was "satisfied that the record is replete with instances of communication breakdowns and extreme recalcitrance demonstrated by the plaintiff in attempting to cooperatively address issues of the children as it would relate to facilitating a relationship with the other parent." The court noted plaintiff's decision to discontinue working with a particular therapist and generally cited testimony by a social worker with the Department of Human Services (DHS), who addressed baseless referrals made to the DHS by plaintiff regarding defendant's parenting. The court found that plaintiff had been acting in a vindictive manner and that his behavior exceeded any rational reaction to various situations, thereby showing a lack of interest in maintaining an open and positive line of communication with defendant relative to the children.

Although the trial court spoke of "probable" cause that justified further review of the motion to change custody, it is clear that the court was aware of the proper standard having cited *Vodvarka* and having addressed pertinent matters related to the threshold requirement. Reversal is unwarranted, where the record contains evidence regarding behavioral problems on the part of the children related to joint custody, a change in daycare providers by plaintiff, an abrupt change in therapists initiated by plaintiff, defendant's relationship with a boyfriend of questionable character, numerous referrals to the DHS by plaintiff regarding defendant's parenting that were characterized as suspect, excessive, and baseless, plaintiff's anger management issues, and evidence that plaintiff had physically abused defendant. While some of these facts may not in and of themselves lend support to a finding of proper cause or a change of circumstances, in combination they are sufficient. It is clear that turmoil had entered the lives of the parties and the children under the existing joint physical custody order. Accordingly, there was no error by the trial court on the matter of proper cause and change of circumstances, and it was permissible for the court to proceed to a determination of the children's best interests.

With respect to the best-interests hearing and ruling, the factors that a court must consider are set forth in MCL 722.23, and where modification of a custody order would change the established custodial environment, there must be a showing that the change is in the best interests of the children by clear and convincing evidence. MCL 722.27(1)(c); *Sinicropi v Mazurek*, 273 Mich App 149, 178; 729 NW2d 256 (2006). While the trial court must state its factual findings and conclusions on each best-interests factor, the court need not include consideration of every piece of evidence entered and argument raised at trial. *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 451-452; 705 NW2d 144 (2005). MCR 3.210(D), which governs factual findings in child custody hearings and trials, incorporates by reference MCR 2.517. MCR 2.517(A)(2) provides that "[b]rief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." See *Foskett v Foskett*, 247 Mich App 1, 12-13; 634 NW2d 363 (2001).

Contrary to plaintiff's arguments, and on careful review of the record, we find that the court's findings on the best-interests factors, although generally brief, were sufficient and ultimately embraced the principles and considerations encompassed by all of the factors. Further, the court's factual findings on the best-interests factors were not against the great weight of the evidence, there was no error in the court's conclusion that clear and convincing evidence existed to support a change in custody, and the court did not abuse its discretion in changing custody.

As found by the trial court, there was evidence supporting a conclusion that plaintiff made numerous referrals and complaints to the DHS regarding defendant's parenting of the children that were baseless. These actions most certainly disrupted defendant's and the children's lives, and they can reasonably be characterized as vindictive, calling into question plaintiff's moral fitness, MCL 722.23(f), his ability to facilitate and encourage a close and continuing parent-child relationship between the children and defendant, MCL 722.23(j), and plaintiff's capacity and disposition to give proper guidance to the children, MCL 722.23(b). We find no error in the trial court's conclusion that these factors favored defendant. We also have great concern with regard to evidence showing that plaintiff had physically battered defendant on several occasions during the relationship, including photographs depicting bruising, and there was evidence that plaintiff acknowledged "some abuse" against defendant by his hand. The trial court cited this evidence in support of its conclusion that the factor addressing moral fitness, MCL 722.23(f), favored defendant. This finding was not against the great weight of the evidence, and, although the trial court simply stated that it was acknowledging the abuse when reviewing the factor addressing domestic violence, MCL 722.23(k), without prejudice to the court's final analysis, the evidence would have easily supported an express finding that the factor on domestic violence favored defendant.[1] The trial court's findings in favor of defendant on the

[1] Consideration of the same facts under multiple best-interests factors does not constitute impermissible double weighing, where the factors have some natural overlap. *Sinicropi, supra* at 181.

factors recited above were not against the great weight of the evidence, nor were the court's findings on the other factors with regard to which the parties were deemed equal.[2]

This Court has disapproved of any rigid application of a mathematical formula that equality or near equality on the statutory factors precludes a party from satisfying the clear and convincing evidence standard of proof. *Sinicropi, supra* at 184. We are bound to examine all the criteria in the ultimate light of a child's best interests. *Id.* With these principles in mind, and giving the trial court the required deference under MCL 722.28, we conclude that the trial court's findings and conclusions, along with its ultimate disposition, do not warrant reversal.

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Helene N. White

[2] We have not discounted, nor did the trial court, defendant's involvement with a boyfriend who has a criminal history. While there was testimony from a therapist that indicated a lack of significant concern relative to the relationship, defendant's decision to be in the relationship reflects questionable judgment. The record indicates, however, that the relationship ended. Moreover, the fact of the past relationship, while relevant, does not alter our ultimate conclusion that the trial court's ruling should be affirmed.