

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM C. EAGAN,

Plaintiff/Counter Defendant -
Appellant,

v

JANNELL S. EAGAN,

Defendant/Counter Plaintiff -
Appellee.

UNPUBLISHED
February 19, 2009

No. 287982
Oakland Circuit Court
Family Division
LC No. 2000-641851-DM

Before: Wilder, P.J., and Cavanagh and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion to modify the custody order for his three minor children, Anna, Caroline, and Liam,¹ without conducting an evidentiary hearing. We reverse.

On appeal, plaintiff argues that an evidentiary hearing regarding this motion was warranted because there was a change in the established custodial environment. In light of the existing record, we conclude that remand for further consideration is necessary.

The first step in determining whether to revisit a custody order is to determine whether the moving party has established by a preponderance of the evidence that either proper cause or a change of circumstances exist. MCL 722.27(1)(c); *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). "[P]roper cause means one or more appropriate grounds that have or could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken." *Id.* at 511. "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.* at 512. A "change of circumstances" means 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." *Id.* at 513. If either proper cause or a change of circumstances has not been sufficiently proved, the trial court may not hold an evidentiary hearing. *Id.* at 508.

¹ The parties' eldest child, Emily, was not a minor at the time of the motion to modify custody.

Here, the trial court did not make any factual findings as to whether proper cause or a change in circumstances occurred. Instead, and certainly not without some foundation, the trial court based its decision on its frequent dealings with the parties over the seven years since entry of the divorce judgment, which included addressing numerous motions to either change custody, parenting time, or child support. Although the trial court's unique familiarity with the parties and their circumstances is a valuable part in its determination as to whether proper cause or a change of circumstances has been shown, *id.* at 516-517, the rationale for the decision is not clear. We also note that the trial court refused to consider the only evidence submitted by plaintiff with his motion, i.e., a report by Stacy Block which included a recommendation regarding custody—an issue discussed below.

Accordingly, we remand this matter to the trial court for determination, based upon the evidence presented, whether plaintiff established proper cause or a change in circumstances. If the court concludes that proper cause or a change of circumstances has been established, then it should proceed to an evidentiary hearing after which the court can conclude whether the children have an established custodial environment with plaintiff and whether a change of custody should occur after consideration of the best interests factors as set forth in MCL 722.23.

Next, plaintiff argues that the trial court erred when it refused to consider the report and recommendation of Stacy Block, a psychotherapist, with regard to his motion to modify custody. Again, the trial court failed to articulate its reason for refusing to consider this report. On remand, the trial court is directed to consider this issue, including whether the report should be considered under MCL 722.27(1)(d) and/or whether it constituted privileged communication under MCL 330.1750.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Christopher M. Murray