STATE OF MICHIGAN

COURT OF APPEALS

NATALIE BROOK BOWERS, Plaintiff-Appellant,	UNPUBLISHED June 18, 2009
v	No. 289717 Lapeer Circuit Court Family Division
SCOTT MICHAEL SCHLAUD, Defendant-Appellee.	LC No. 02-032217-DS

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

PER CURIAM.

Plaintiff appeals by right the trial court's denial of her motion to modify child custody. The trial court denied the motion pursuant to MCL 722.27(1)(c), upon finding that plaintiff had failed to establish proper cause or a material change in circumstances to justify a custody modification. We affirm.

The current custody order has been in place since the child, aged eight, was two years old. The custody order granted the parties joint physical and legal custody of the child, with parenting time alternating daily and on weekends and holidays. In 2008, plaintiff filed a motion for a change in custody and a change in domicile, seeking sole physical custody of the child and seeking permission to change the child's legal residence to Missouri. At the hearing on the motion, plaintiff testified that she had exercised significantly more parenting time than defendant, and expressed concern that the alternating daily schedule was unstable for a school age child. After plaintiff's testimony, the trial court found that plaintiff had failed to establish sufficient grounds to reevaluate the custody order and refused plaintiff's request to go forward with evidence on the statutory best interest factors. Plaintiff does not appeal the request for a change in residency.

Plaintiff first argues that the trial court erred by finding she had failed to present sufficient grounds to reevaluate the custody order. We review the trial court's factual findings to determine whether they are against the great weight of the evidence, and we review the court's ultimate determination on the custody issue for abuse of discretion. *Pierron v Pierron*, 282 Mich App 222, 242; ___ NW2d ___ (2009); MCL 722.28. Our review is guided by the "paramount purpose" of the Child Custody Act, MCL 722.21 *et seq.*, which is to provide "a stable

environment for children that is free of unwarranted custody changes." *Vodvarka v Grasmeyer*, 259 Mich App 499, 511; 675 NW2d 847 (2003).

To demonstrate that a change in a custody order is warranted, the moving party must make an initial showing by a preponderance of the evidence either that proper cause exists for a change, or that circumstances have changed since the entry of the most recent custody order. *Id*. at 501; MCL 722.27(1)(c); *Corporan v Henton*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 285778, issued March 5, 2009) (preponderance standard). The trial court need not hold an evidentiary hearing on this threshold determination. *Corporan, supra,* slip op at 7.

In the context of the Child Custody Act, "proper cause" to revisit a custody order means "an appropriate ground for legal action to be taken." *Vodvarka*, *supra* at 510. The party seeking the change in custody must demonstrate circumstances that "have or could have a significant effect on the child's life." *Id.* at 511. The inquiry into proper cause is fact sensitive, and the trial court may use for guidance the 12 best interest factors designated in the Child Custody Act. *Id*. at 511-512. Plaintiff maintains that she demonstrated a significant imbalance in the parties' parenting time and argues that defendant's failure to exercise equal parenting time affected at least two of the best interest factors: the love, affection, and other emotional ties existing between the parties and the child, and the capacity and disposition of the parties to give the child love, affection, and guidance. MCL 722.23(b), (c). The trial court found, and we agree, that the imbalance in parenting time did not affect the child's life significantly enough to warrant reevaluation of the custody order. Moreover, to the extent there was an effect on the child, the effect was the result of normal life changes arising from fluctuations in the parties' job situations. Similarly, plaintiff's concern that the alternating daily parenting schedule was unstable for a school age child arose from the normal development and progression of a child through school. Normal life changes are insufficient to warrant reevaluation of a custody order. *Vodvarka, supra* at 513.

Plaintiff next argues that the trial court erred by finding that there was an established custodial environment with both parents. We conclude that, in context, the trial court did not render a formal finding on the custodial environment and that it's passing reference to an established custodial environment indicated how it would have found on the issue had the court found proper cause of a change in circumstances. The court's formal finding was limited to its determination that plaintiff had failed to establish proper cause or a change in circumstances, and that as such there was no ground to proceed with the hearing. See *id.* at 509.

Lastly, plaintiff argues that the trial court erred by refusing to hold a full evidentiary hearing on the statutory best interest factors. We review this alleged error of law for clear error. *Pierron, supra* at 242. We find no error. As this Court stated in *Vodvarka,* the moving party has the burden of proving proper cause or a change of circumstances "*before* the trial court can consider whether an established custodial environment exists (thus establishing the burden of proof) and conduct a review of the best interest factors." *Vodvarka, supra* at 509 (emphasis in original). Here, the facts plaintiff offered to support her motion were not in dispute. After hearing those facts, the trial court correctly determined that plaintiff had failed to meet her burden of establishing proper cause or a change of circumstances. The trial court was not required to hear testimony concerning the best interest factors unless and until plaintiff had met

her initial burden of establishing proper cause or a change of circumstances. Accordingly, the trial court did not err by refusing to conduct a full evidentiary hearing.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray