STATE OF MICHIGAN

COURT OF APPEALS

VANESSA R. HALL, a/k/a VANESSA R. ANGEL,

Plaintiff-Appellant,

v

BRIAN L. HALL,

Defendant-Appellee.

UNPUBLISHED
October 15, 2009

No. 289221
Wayne Circuit Court
LC No. 01-131371-DM

Before: Saad, C.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's opinion and order regarding custody and domicile, which operated to deny plaintiff's motion that sought a change in the physical custody of the parties' minor child from defendant to plaintiff, and further sought leave of the trial court to change the minor's legal residence to Florida. We affirm.

Plaintiff first argues that the trial court's conclusion that there was insufficient evidence of proper cause or a change in circumstances warranting a change in its previously entered custody order was against the great weight of the evidence. We disagree.

In *Phillips v Jordan*, 241 Mich App 17, 20; 614 NW2d 183 (2000), this Court set forth the applicable standards of review in child custody cases as follows:

> We apply three standards of review in custody cases. The great weight of the evidence standard applies to all findings of fact. A trial court's findings regarding the existence of an established custodial environment and regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. An abuse of discretion standard applies to the trial court's discretionary rulings such as custody decisions. Questions of law are reviewed for clear legal error. A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law. [Citations omitted.]

A party seeking a change in the custody of a child is required, as a threshold matter, to demonstrate either proper cause or a change in circumstances. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003). "Specifically, MCL 722.27(1)(c) provides that if a child custody dispute has arisen from another action in the circuit court, the court may '[m]odify or

amend its previous judgments or orders for proper cause shown or because of change in circumstances . . . .'" *Id.* Where the party fails to first demonstrate proper cause or a change of circumstances, the trial court may not hold a child custody hearing. *Id.* This Court has explained the meaning of "change of circumstances" as follows:

> [I]n order to establish a "change of circumstances," a movant must prove 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. Again, not just any change will suffice, for over time there will always be some changes in a child's environment, behavior, and well-being. Instead, the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child. This too will be a determination made on the basis of the facts of each case, with the relevance of the facts presented being gauged by the statutory best interest factors. [*Id.* at 513-514 (emphasis in original).]

Further, this Court has explained:

> [T]o establish "proper cause" necessary to revisit a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court. 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. When a movant had demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors. [*Id.* at 512.]

Only after the party has made the initial showing of proper cause or a change of circumstances may the trial court proceed to determine whether an established custodial environment exists and then ascertain whether clear and convincing evidence supports a change in custody under the statutory "best interest of the child" factors set forth under MCL 722.23. *Id.* at 516.

Here, although plaintiff argues that the trial court should grant her custody because she has overcome her drug addiction, this does not represent a change in the conditions surrounding the custody of the child, but is instead a change in her own circumstances, as commendable as such a change may be. *Vodvarka*, *supra* at 513-514. In other words, the entire focus of plaintiff's arguments is not on the child but on the change in her own condition, and plaintiff's recovery from her drug addiction has no impact on the circumstances surrounding the well-being of the child under the trial court's previously entered order regarding custody. Further, although plaintiff's recovery from her crack cocaine addiction has a significant impact on her well-being, plaintiff fails to show that her recovery is of "such magnitude to have a significant effect on the child's well-being," and as such, she fails to demonstrate that there was proper cause for the trial court to revisit the previous custody order. *Id.* at 512. Moreover, although plaintiff cites *Straub v Straub*, 209 Mich App 77; 530 NW2d 125 (1995), for the proposition that public policy favors returning a child to the custody of a parent who voluntarily relinquishes custody, further analysis of the *Straub* Court's holding indicates that the case is inapplicable here. In *Straub*, this Court concluded that where the best interest of the child factors were otherwise evenly balanced, when

the defendant-mother voluntarily and temporarily transferred custody to grandparents, the trial court abused its discretion when it denied the defendant-mother's petition for a change of custody when her problem was resolved. *Id*. at 80-81.

In this case, having determined that plaintiff failed to demonstrate proper cause or a change in circumstances warranting a modification of the August 1, 2003, custody order, the trial court did not analyze, and was precluded from analyzing, the best interest of the child factors, which, in *Straub*, were evenly balanced. *Vodvarka*, *supra* at 516; *Straub*, *supra* at 80-81. Further, even if plaintiff's recovery from her drug addiction was relevant to the determination whether proper cause or a change of circumstances occurred here, we observe that the *Straub* Court was persuaded to rely on "good public policy" because the defendant-mother in *Straub* relinquished custody voluntarily and temporarily. *Straub*, *supra* at 80-81. Conversely, in this case, even if plaintiff voluntarily relinquished custody of the minor to defendant, the stipulated order was entered on August 1, 2003, and plaintiff's motion to modify the custody order was filed on July 25, 2008, almost five years later. Only under an inordinately elastic construction may the word "temporarily" apply to a duration of nearly five years. Furthermore, the stipulated order does not contain any language indicating that the order was temporary in duration. Accordingly, although plaintiff correctly argues that public policy favors returning a child to the custody of a parent who voluntarily and temporarily relinquishes custody under certain circumstances, these circumstances do not apply here, and plaintiff's reliance on *Straub* is misplaced. *Id*.

Plaintiff's argument that the minor did not reside with defendant, but instead resided with defendant's parents, and that this represents a change in circumstances warranting a change in the August 1, 2003, custody order lacks merit. Plaintiff failed to come forward with any evidence that defendant's parents were exercising custodial rights over the minor. Moreover, although defendant admitted that he, along with the minor, lived with defendant's parents, and further admitted that defendant's parents assisted him in caring for the minor, he had lived with the minor and was the minor's primary caregiver at all times since the August 1, 2003, order was entered. Similarly, plaintiff has come forward with no evidence to refute defendant's testimony in this regard.

Finally, we observe that at the evidentiary hearing, plaintiff argued that if the trial court granted her motion to change the custody order and to change domicile, she "will make arrangements soon as she conveniently can, she works at Wal[-]mart, to have her own apartment but for the time being until in the near future she can stay with her parents as long as she wishes and they're more than happy to take care of [the minor] any time [she is] working." Plaintiff's argument that the trial court should modify the August 1, 2003, custody order because the minor and defendant live with defendant's parents in order for plaintiff and the minor to move to Florida and live with plaintiff and her parents fails to persuade us that plaintiff is entitled to relief. Accordingly, we conclude that the trial court properly denied plaintiff's motion to change the August 1, 2003, custody order, and further, it properly declined to determine whether there was an established custodial environment and analyze the "best interest of the child" factors under MCL 722.23. The trial court's decision was not against the great weight of the evidence.

Plaintiff next argues that the trial court abused its discretion when it denied plaintiff's motion to change the minor's domicile. We disagree. We review a trial court's decision regarding a motion to change domicile for an abuse of discretion. *Grew v Knox*, 265 Mich App

333, 339; 694 NW2d 772 (2005). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). We review the factual findings used by the trial court in applying the factors under MCL 722.31(4) under the great weight of the evidence standard. *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). We will affirm the trial court's factual findings under this standard "unless the evidence clearly preponderates in the opposite direction." *Mogle v Scriver*, 241 Mich App 192, 196; 614 NW2d 696 (2000).

MCL 722.31 provides, in pertinent part:

> (1) A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.
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> * * *
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> (4) Before permitting a legal residence change otherwise restricted by subsection (1), the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:
>
> > (a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.
> >
> > (b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.
> >
> > (c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.
> >
> > (d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.
> >
> > (e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

The August 1, 2003, stipulated custody order provided that plaintiff and defendant shared joint legal custody of the minor. Having determined that there was insufficient evidence of a change in circumstances or proper cause, and observing that plaintiff's motion for a change in

domicile was predicated on the trial court's decision regarding whether there was a change in circumstances, the trial court denied plaintiff's motion for a change in domicile, but nevertheless analyzed the factors under MCL 722.31(4) and modified the August 1, 2003, custody order to the extent that it allowed plaintiff additional parenting time with the minor at plaintiff's residence in Florida.

Although the trial court denied plaintiff's motion to change the minor's domicile, under the language of MCL 722.31(1), the trial court actually granted plaintiff's motion to the extent that it did not preclude plaintiff from establishing the minor's legal residence with her in Florida. In other words, if the trial court had in fact denied plaintiff's motion pursuant to MCL 722.31(1), it would not have modified the August 1, 2003, order to provide plaintiff with parenting time in Florida, but may have instead modified the order to reflect that defendant was granted sole legal custody of the minor, or provided that although plaintiff was entitled to parenting time, she was required to exercise it in Michigan, or articulated where the minor's legal residence with plaintiff would be, if not at plaintiff's Florida residence. Thus, we conclude that the trial court erred when it denied plaintiff's motion to change the legal residence of the minor to plaintiff's residence in Florida, while concurrently allowing plaintiff to exercise parenting time with the minor at her Florida residence. MCL 722.31(1).

Nevertheless, although we observe that the trial court's decision to deny plaintiff's motion to modify the August 1, 2003, custody order and plaintiff's motion to change domicile under MCL 722.31 were not inextricably linked, we conclude that the trial court reached the right result, albeit for a different reason. *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005) (holding that this Court will not reverse a ruling of a trial court that reaches the right result for the wrong reason).

On appeal, plaintiff premises her argument regarding the trial court's denial of her motion to change domicile not upon an alleged misapplication of MCL 722.31(1), but instead, argues that the trial court erred when it failed to modify the August 1, 2003, custody order to grant plaintiff sole physical custody of the minor, and, in addition and as a related matter, to allow plaintiff to establish the minor's residence in Florida. As explained herein, plaintiff failed to establish that a change of circumstances or proper cause existed to warrant a modification of the previously entered custody order, which provided that defendant had primary physical custody of the minor. Plaintiff was unable to come forward with any evidence demonstrating that the child's life would improve if the trial court permitted plaintiff to relocate the minor's primary residence to Florida. Plaintiff's primary argument, that plaintiff "got her life together and obtained gainful employment," does nothing to show that the minor's life would improve if he moved to Florida. Even if plaintiff's claim that she has overcome her drug addiction and is employed is true, at best, it shows that her position has improved to the point where the minor's life may not worsen if he moved to Florida. Thus, had the trial court denied plaintiff's motion based on plaintiff's failure to show that "the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent," the trial court's decision, based on MCL 722.31(4)(a), would not have been outside the range of principled outcomes. MCL 722.31(1). The trial court concluded "that changing the child's domicile from Michigan to Florida would not have the capacity to improve the minor's quality of life," pursuant to MCL 722.31(4)(a), and we are persuaded by plaintiff's failure to demonstrate that the minor's, as

opposed to plaintiff's, life would improve that the trial court's application of MCL 722.31(4)(a) was correct.

However, the trial court, in its opinion and order, indicated that it was convinced that plaintiff had improved her circumstances, and on that basis, it modified the August 1, 2003, order to the extent that while defendant "shall have the child throughout the school year," plaintiff was granted additional parenting time with plaintiff at her residence in Florida during alternating holidays and summer vacations. We observe that defendant has not filed a brief on appeal and presumably does not contest the provisions of the trial court's order. Accordingly, we cannot conclude that allowing plaintiff additional parenting time with the minor in Florida is outside the range of principled outcomes, although the trial court erred, as explained herein, when it purportedly denied plaintiff's motion to change domicile under MCL 722.31(1).

Affirmed.

/s/ Henry William Saad
/s/ Peter D. O'Connell
/s/ Brian K. Zahra