

STATE OF MICHIGAN  
COURT OF APPEALS

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AVIS ZOMA,

Plaintiff-Appellee,

v

JOULYAN ZOMA,

Defendant-Appellant.

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UNPUBLISHED  
September 16, 2014

No. 321039  
Oakland Circuit Court  
Family Division  
LC No. 2011-789881-DM

Before: METER, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Joulyan Zoma, appeals by right the trial court’s order modifying the parenting-time schedule applicable to plaintiff, Avis Zoma, and denying her motion for change of custody. Because we conclude there were no errors warranting relief, we affirm.

Joulyan Zoma argues that the trial court’s finding that she failed to establish proper cause or a change of circumstances to warrant reconsideration of the previous custody order was against the great weight of the evidence. Custody orders “shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.” MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). “This Court reviews a trial court’s determination regarding whether a party has demonstrated proper cause or a change of circumstances under the great weight of the evidence standard.” *Dailey v Kloenhamer*, 291 Mich App 660, 665 n 1; 811 NW2d 501 (2011). Under the “great weight of the evidence” standard, the “trial court’s determination will be affirmed unless the evidence clearly preponderates in the other direction.” *Pierron*, 486 Mich at 85.

A party seeking a change in custody must first establish proper cause or a change of circumstances, by a preponderance of the evidence, as a precondition to the trial court’s reconsideration of the established custodial environment and best-interests factors. MCL 722.27(1)(c). To establish proper cause, the movant must prove “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.” *Vodvarka v Grasmeyer*, 259 Mich App 499, 512, 514; 675 NW2d 847 (2003). “[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.” *Id.* at 513. A sufficient demonstration of a change in circumstances requires the moving party to “demonstrate something more than the normal life changes (both good or 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.” *Id.* at 513-514.

Although Joulyan Zoma argues that the trial court “erred when it determined that proper cause or a change of circumstances did not exist to review the custody order from the judgment divorce,” the trial court did not explicitly make such a determination, but simply provided that there would be “[n]o change of legal custody.” Rather than requesting that this Court remand for more specific findings, however, both parties accept that the trial court implicitly found that Joulyan Zoma had not established grounds for revisiting the custody order. Accordingly, we shall consider the issue on its merits.

On appeal, Joulyan Zoma argues that the allegations in her motion—including that the children were returned to her with health problems, including fevers, throat and ear infections, diarrhea, and vomiting, that Avis Zoma harassed her, that Avis Zoma “may” have neglected or abused the children while they were in his care, and that he exercised poor judgment during his parenting time by using vulgar language and watching age-inappropriate movies with the children—constituted either proper cause or a change of circumstances. These allegations, standing alone, did not establish proper cause or a change of circumstances sufficient to warrant revisiting the previous custody order. Joulyan Zoma offered no evidence to support them apart from her unnotarized declaration that “the above statements [were] true to the best of [her] knowledge, information, and belief.” Moreover, although the allegations—if true—would be relevant to the best interests of the minor children, that would not be sufficient to establish grounds for revisiting custody; the grounds constituting proper cause must also be of such magnitude to have a significant effect on the child’s well-being. *Vodvarka*, 259 Mich App at 512.

As was evident from the record of the hearing, the impetus for the parties’ continued resort to the court had less to do with concern for the well-being of the minor children than the parties’ animosity toward each other. To this end, the guardian ad litem informed the court that Joulyan Zoma told her that “although she realizes the Court says there shouldn’t be any disparaging remarks made to the children about the parties . . . [Avis] Zoma is a monster. And she doesn’t have a problem letting her kids know what a horrible person he is because he is.” The trial court encouraged the parties to improve their cooperation regarding the minor children and admonished them not to disparage each other in front of the children, threatening to “switch custody” if they continued to do so. Joulyan Zoma did not redirect the trial court’s attention, during the hearing, to any of the allegations she now asserts were so serious that they warranted revisiting custody.

Nor did she establish, by a preponderance of the evidence, that the allegations in her motion constituted a change of circumstances. Joulyan Zoma did not explain, either before the trial court or on appeal, which, if any, of the allegations arose after the judgment of divorce was entered, and did not provide dates for the alleged abuse and neglect. See *Vodvarka*, 259 Mich

App at 514-515 (explaining that a change in circumstances must have occurred after the entry of the prior custody order). Joulyan Zoma presented no evidence at the hearing in support of any changed circumstances, and her argument on appeal merely lists each allegation and attempts to associate each with a best-interests factor. By contrast, there was evidence that the allegations either were not true or were not significant. The guardian ad litem contradicted Joulyan Zoma's unsupported charge that Avis Zoma's parenting time was not supervised; instead, she stated that she found Avis Zoma's mother present during both announced and unannounced visits. The guardian ad litem also testified that the children were not afraid of their father and there does not appear to be any abuse. While the guardian ad litem agreed that it appeared Avis Zoma did allow the children to watch an inappropriate movie (possibly Batman), she also noted that Joulyan Zoma engaged in behaviors that inhibited the children's interaction with their father. Thus, on the record, there was insufficient evidence that there had been a change in circumstances or changes that have had or will almost certainly have an effect on the children. *Id.* at 513-514.

Joulyan Zoma also argues that the trial court improperly disregarded MCR 3.210(C)(8), which provides that, “[i]n deciding whether an evidentiary hearing is necessary with regard to a postjudgment motion to change custody, the court must determine, by requiring an offer of proof or otherwise, whether there are contested factual issues that must be resolved in order for the court to make an informed decision on the motion.” This rule does not, however, preclude a trial court from denying an unsupported motion without first requiring the movant to make an offer of proof. Rather, it requires the trial court to determine whether there are contested factual issues that require an evidentiary hearing and it may do so by “requiring an offer of proof *or otherwise.*” *Id.* (emphasis added). Because Joulyan Zoma had the burden of establishing either proper cause or a change of circumstances in order to obtain the relief she sought, MCL 722.27(1)(c), she also had the burden to request an evidentiary hearing—which she did not do—and present evidence to justify one. She produced no evidence to support her claim at the hearing; rather, she conclusorily stated that there were “allegations warranting the change in legal custody” and then spent the remainder of her time arguing against Avis Zoma's request for unsupervised parenting time. Because she did not establish proper cause or a change of circumstances sufficient to justify revisiting the custody arrangement provided in the judgment of divorce, the trial court did not abuse its discretion when it declined to alter custody. MCL 722.28; *Pierron*, 486 Mich at 85.

There were no errors warranting relief.

Affirmed.

/s/ Patrick M. Meter  
/s/ Kirsten Frank Kelly  
/s/ Michael J. Kelly