

STATE OF MICHIGAN
COURT OF APPEALS

BRIDGETTE MARIE WOOD,

Plaintiff-Appellee,

UNPUBLISHED
October 29, 2020

v

MARQUIS GILBERT GOODALE,

Defendant-Appellant.

No. 352634
Calhoun Circuit Court
LC No. 2019-000560-DP

Before: STEPHENS, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

In this child custody case, defendant-father appeals as of right the trial court's order denying his motion for a change in custody and modification of parenting time. We affirm.

This case arose from a custody and parenting-time dispute between plaintiff-mother and father over their minor child. After the minor child was born out of wedlock to mother, the Department of Health and Human Services filed a paternity complaint with the assistance of mother requesting that a judgment of filiation be entered to establish the paternity of the minor child. The complaint alleged that father was the biological father of the minor child and that he had sufficient ability to provide support for the minor child. A notice was filed with the paternity complaint, informing father that his child support obligations and the issues of custody and parenting time would be determined in the case. Father acknowledged that he received a copy of the summons, paternity complaint, and notice. After father failed to respond to the paternity complaint within the 21 days of receipt of the complaint, mother filed an affidavit requesting entry of a default judgment, which was served on father with a notice that the issue would be heard.

At the support establishment hearing before a referee, the prosecutor requested entry of the proposed filiation and custody orders and stated that father "failed to reach out to [the prosecutor's] office or ask for any type of genetic testing. He did not call [the prosecutor's office], file any paperwork, and as a result, [the prosecutor's office] defaulted him with the Clerk of the Court." The referee asked mother if father was involved in the case, and mother replied that "[h]e met [the minor child], for the first time, [three days before the hearing]. He really wanted to see [the minor child] for a while. When [she] offered, all of a sudden, [father] got quiet. So, [she was] not sure

[of father's] intentions." The referee then asked mother if father said anything about why he was not involved in the case, and mother responded that he did not.

The referee approved the proposed orders to send to the trial court judge to be signed because he was "satisfied that everything [was] in order from personal service through default being entered through notice of [the] hearing." Following the hearing, the trial court entered a default judgment of filiation taking the allegations in the paternity complaint to be true on the basis of father's default and ordering that mother have sole legal and physical custody of the minor child with reasonable parenting time for father. The default judgment of filiation was served on father, and the default judgment stated that the order would become final if no objections were filed and noticed for a hearing within 21 days of service.

Several months later, father filed a motion to set aside the default judgment on grounds of "fraud, misrepresentation, other misconduct of an adverse party, and any other reason justifying relief from the operation of the judgment." At a hearing on father's motion to set aside the default, father's counsel stated that father was not contesting the paternity or child support determinations and was only seeking to modify custody and parenting time. The trial court denied father's motion to set aside the default judgment because it did not find that there was "good cause sufficient to set aside the default," and the trial court stated that father could "file to seek a modification if that [was] the appropriate remedy in [the] matter, if one exist[ed]."

About a month later, father filed a motion seeking a change in custody to joint legal and physical custody and a modification of parenting time to equal parenting time. Father alleged that mother alienated father from the minor child, and she initially made misrepresentations regarding paternity and continued to commit misconduct regarding custody arrangements. Father also alleged that mother made misrepresentations to him regarding the support establishment hearing and made misrepresentations to the referee at that hearing. Additionally, father alleged that mother waited until after the hearing to seek termination of a personal protection order (PPO) that she had against father. Father submitted that it was in the minor child's best interests to establish a fair custody arrangement and requested the opportunity for discovery and to be heard.

Father also stated that parenting time was not an issue until mother informed father "that he would have to go through a third party to see his son" for only one hour each week. Father argued that mother's actions constituted a denial of the reasonable parenting time ordered by the trial court and "a deliberate attempt to deny [father] the ability to bond with his son," which was one of many grounds that could have a significant impact on the minor child's life enough to warrant a reevaluation of his custodial situation. Father also argued that the removal of the PPO that impeded his ability to exercise parenting time was another ground that could have a significant impact on the minor child to warrant a reevaluation.

In his brief in support of his motion for a modification of custody and parenting time, father argued that there was proper cause or a change in circumstance sufficient to warrant reevaluation of custody and parenting time because sole legal and physical custody of the minor child was granted to mother without addressing the best-interest factors. Father argued that the trial court should consider mother's continuous obstruction of father's parenting time, her dysfunctional relationship with another man, and her history of anxiety and panic attacks, as well as the removal

of the PPO that inhibited father's ability to exercise his right to parenting time, as grounds that sufficiently supported a determination that proper cause existed.

At the hearing on father's motion to modify custody and parenting time, father requested that the trial court hold an evidentiary hearing. Mother argued that the trial court should deny father's motion because he failed to allege proper cause or a material change in circumstance to warrant a modification of custody or parenting time. The trial court determined that it would not rehear the custody issue because it already denied father's previous attempt to set aside the default. The trial court denied defendant's motion because it did not find a factual basis upon which to revisit the issue of custody. Father now appeals the trial court's order denying his motion for a change in custody and modification of parenting time.

Father argues on appeal that the trial court erred by denying his motion to modify custody and parenting time without an evidentiary hearing and without making any factual findings regarding the existence of proper cause or a change in circumstance, despite the allegations contained in father's motion in support of such findings. We disagree.

"All custody orders must be affirmed on appeal unless the circuit court's findings were against the great weight of the evidence, the circuit court committed a palpable abuse of discretion, or the circuit court made a clear legal error on a major issue." *Lieberman v Orr*, 319 Mich App 68, 76-77; 900 NW2d 130 (2017). This Court reviews the trial court's custody determinations for an abuse of discretion and any questions of law for clear error. *Johnson v Johnson*, 329 Mich App 110, 128; 940 NW2d 807 (2019). A trial court commits clear error by incorrectly choosing, interpreting, or applying the law. *Id.*

Under Michigan's Child Custody Act, when a custody dispute arises, a party may seek to "modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances." MCL 722.27(1)(c). As a threshold matter, the party seeking a change in custody must first establish a change in circumstance or a proper cause by a preponderance of the evidence before the trial court may reevaluate a previous child custody decision or hold a child custody hearing. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). This Court has determined that "proper 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. A change in circumstances means that there has been a material change in the conditions of custody since the entry of the last custody order that "have or could have a significant effect on the child's well-being," more than normal life changes. *Id.* at 513. To determine whether proper cause or a material change in circumstances exists, the trial court should consider whether the grounds and facts are relevant to at least one of the best-interest factors. *Id.* at 512-513.

"Although the threshold consideration of whether there was proper cause or a change of circumstances might be fact-intensive, the court need not necessarily conduct an evidentiary hearing on the topic." *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). An evidentiary hearing is not required when the alleged facts are undisputed or the trial court "can accept as true the facts allegedly comprising proper cause or a change of circumstances, and then decide if they are legally sufficient to satisfy the standard." *Vodvarka*, 259 Mich App at 512. Additionally, a trial court should generally "limit its consideration to events occurring after entry

of the most recent custody order” when determining the existence of proper cause and change in circumstances. *Id.* at 501, 514-515.

However, in unusual cases and only with regard to a proper cause determination, a trial court may consider facts that occurred before the entry of the most recent custody order if a party is able to show that an event for which the party was aware or should have been aware was “significant enough to constitute proper cause to revisit the order.” *Id.* at 515. The *Vodvarka* Court concluded that one such unusual case occurs when the most recent custody order was entered without the parties’ consent and “the trial court was not apprised of any facts regarding which possible custodial arrangement would be in the child’s best interest.” *Id.* at 515-516.

In this case, as in *Vodvarka*, the default order of filiation determining custody of the minor child was entered without father’s consent and without the trial court’s consideration whether the custodial arrangement was in the child’s best interests. See *id.* Therefore, as an initial matter, the trial court was permitted to consider evidence that defendant submitted regarding significant events that occurred before the default judgment was entered in determining whether proper cause existed. See *id.* at 514-516. However, the trial court was still limited to circumstances that occurred after the entry of the default judgment when considering whether there was a material change in circumstances. See *id.* at 514.

In his motion for a change in custody and modification of parenting time, father alleged the following events in support of a proper cause or a change in circumstances determination: (1) mother continuously obstructed father’s ability to exercise reasonable parenting time, (2) mother had a dysfunctional relationship with another man, (3) mother had a history of anxiety and panic attacks, and (4) father’s “ability to exercise parenting time was inhibited and dictated by [mother]” until the PPO was removed. First, father explained that mother committed misconduct regarding custody arrangements by denying father reasonable parenting time and limiting his contact with the minor child to one hour of supervised visitation each week. However, “minor allegations of contempt or visitation complaints” are insufficient to establish proper cause of a material change in circumstances to warrant a reevaluation or a child custody order. *Vodvarka*, 259 Mich App at 510.

Second, even if the trial court took father’s allegations that mother’s relationship with another man was dysfunctional or that mother had a history of anxiety and panic attacks as true, these bald assertions alone without any explanation regarding how those facts had “or could have a significant effect on the child’s life” were insufficient to demonstrate by a preponderance of the evidence that proper cause for a reevaluation of custody existed. See *id.* at 508-509, 511. Similarly, father failed to explain how his ability to exercise parenting time was inhibited” by the PPO. In fact, father admitted that mother facilitated visits between father and the minor child at father’s house before the default judgment was entered and continued to do so on a regular basis for a couple months before making arrangements for supervised parenting visits as required by the default judgment. Therefore, the allegations regarding the PPO also failed to establish proper cause or a material change in circumstances. See *id.* at 508-509, 511, 513.

Additionally, father generally alleged that mother made misrepresentations to him regarding paternity, their relationship, and the support establishment hearing and made misrepresentations to the referee at the hearing. Any misrepresentations that mother initially made

regarding paternity were irrelevant to the custody order in this case because defendant admitted that he believed himself to be the biological father of the minor child before the child was born, and mother specifically asserted that father was the biological father of the child from the very beginning of this case when the paternity complaint was filed. Similarly, father failed to specify how any misrepresentations regarding his relationship with mother affected the custody of the minor child. Moreover, mother's alleged representation to father that he did not need to attend the support establishment hearing because they could determine custody and parenting-time arrangements on their own did not prevent father from attending the hearing or otherwise participating in the case, especially when he received multiple notices regarding the proceedings.

Regarding the alleged misrepresentations made to the referee at the support establishment hearing, the only thing that mother said at the hearing was that she met with father for the first time a few days before the hearing because he "really wanted to see [the minor child] for a while," but when she offered to let him see the child, he became quiet. Therefore, mother informed the referee that she did not know what his intentions were, and she denied that father said anything about why he was not involved in the case. Even assuming that mother's statements were false, it did not matter for the referee's determination that default should enter against father for his failure to attend the hearing or otherwise respond to the paternity complaint after proper notice was given. See MCR 2.603(1) ("If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, . . . the clerk must enter the default of that party"); MCL 722.717(1)(c) ("[T]he court shall enter an order of filiation declaring paternity and providing for the support of the child [if] [t]he defendant is served with summons and a default judgment is entered against him or her."). Therefore, none of the facts alleged by father in his motion established by a preponderance of the evidence the requisite proper cause or change in circumstances to warrant review of the custody order. See *Vodvarka*, 259 Mich App at 508-509.

Because the facts alleged in father's motion for modification of custody and parenting time failed to establish the threshold requirement of proper cause or a material change in circumstances to warrant a reexamination of the previous custody order, the trial court did not err by denying father's motion for lacking "a factual basis set to revisit the issue of custody." See *Vodvarka*, 259 Mich App at 508-509. Moreover, the trial court did not err by declining to hold an evidentiary hearing on the threshold issue of proper cause or change in circumstance because such a hearing is generally not required. *Corporan*, 282 Mich App at 605. We affirm the trial court's custody order because the trial court did not err or make findings of fact against the great weight of the evidence. *Liberman*, 319 Mich App at 76-77.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Jane M. Beckering