

STATE OF MICHIGAN
COURT OF APPEALS

GREGORY A. SOLIS,

Plaintiff/Counterdefendant-
Appellee,

v

DEANNA M. SOLIS,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED
March 29, 2012

No. 301816
Lapeer Circuit Court
Family Division
LC No. 09-041639-DM

Before: JANSEN, P.J., and WILDER and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order denying her motion for an evidentiary hearing with regard to the custody of the parties' three minor children. We affirm.

Preliminarily, defendant takes issue with a provision in the judgment of divorce affording her the first right of refusal to watch the children when care is needed for a period in excess of four hours. She argues that this provision is enforceable even if plaintiff otherwise provides for adult supervision of the children in his home. After this appeal was filed, the trial court addressed this first right of refusal. The trial court's review of the issue ultimately resulted in the relief that defendant now seeks on appeal. Specifically, the trial court issued an order holding plaintiff in contempt for violating this right and holding that the provisions of the divorce judgment were to remain in full force and effect unless specifically modified. Because defendant has already obtained the relief she is seeking and this Court cannot provide "further meaningful relief," the issue is moot. *Detroit Edison Co v Pub Serv Comm*, 264 Mich App 462, 474; 691 NW2d 61 (2004).

Defendant also argues that the trial court erred by concluding that she had failed to establish proper cause or a change in circumstances sufficient to warrant an evidentiary hearing concerning the custody of the parties' children.

We review the 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. We defer to the trial court's findings of fact unless the record evidence clearly preponderates in the opposite direction. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009).

In a child custody dispute, the trial court may modify its previous orders “for proper cause shown or because of change of circumstances.” MCL 722.27(1)(c). “[I]f the movant does not establish proper cause or change in circumstances, then the court is precluded from holding a child custody hearing.” *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003).

In *Corporan*, 282 Mich App at 604-605, this Court explained the meaning of “proper cause” and “change of circumstances”:

“[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 has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors.”

* * *

“[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.” [Citation omitted.]

Defendant asserts that proper cause or a change of circumstances existed in this case because of the children’s school performance, improper care and supervision of the children by plaintiff, a change in plaintiff’s work schedule from first to second shift, and plaintiff’s hiring of a live-in childcare provider. The trial court did not address the children’s school performance. However, although the children struggled in school, the record evidence indicates that this was an ongoing problem attributable to both parents and not a new phenomenon. Nor did the trial court expressly address which parent was a better provider for the children. While defendant claimed that she was making substantial contributions for the children, plaintiff maintained that defendant’s contributions were not significant. Nonetheless, the trial court implicitly determined that the alleged disparity between plaintiff’s contributions and defendant’s contributions did not rise to the level of proper cause or a change of circumstances. We perceive no error in this regard. Neither the children’s school performance nor the alleged disparity between plaintiff’s and defendant’s contributions for the children constituted proper cause or a change of circumstances sufficient to reopen the issue of custody in this case. See *Shade v Wright*, 291 Mich App 17, 25; 805 NW2d 1 (2010).

The real thrust of defendant's argument is centered on the fact that the trial court's award of physical custody was made with the understanding that plaintiff would work first shift and would be home after school and during the evenings to take care of the children. Defendant contends that the change of plaintiff's work schedule to second shift and the associated need for in-home childcare constituted a change of circumstances. We simply cannot agree.

Not just any change will suffice to warrant the modification of a child custody order. *Killingbeck v Killingbeck*, 269 Mich App 132, 145 n 5; 711 NW2d 759 (2005). "[T]he evidence must 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 145-146 n 5. Quite simply, a change in one parent's work schedule is a normal change that is frequently encountered during a child's life. The change of plaintiff's work schedule from first to second shift may affect the specific hours during the day when plaintiff will be able to interact with the children. However, this change will not affect the total, overall amount of time that plaintiff will be able to spend with the children during any given period. We cannot conclude that the change in plaintiff's work schedule amounted to proper cause or a change of circumstances sufficient to warrant revisiting the issue of child custody.

Nor did plaintiff's decision to take on a live-in childcare provider constitute proper cause or a change of circumstances. It strikes us that the hiring of a childcare provider is merely a "normal life chang[e] . . . that occur[s] during the life of a child," *Vodvarka*, 259 Mich App at 513, and is not a sufficient change to warrant reopening the issue of child custody. The fact that the childcare provider actually lives in plaintiff's home does not alter our conclusion in this regard. See *Gerstenschlager v Gerstenschlager*, 292 Mich App 654, 658-659; ___ NW2d ___ (2011).

In sum, defendant did not establish by a preponderance of the evidence that "since the entry of the last custody order, the conditions surrounding custody of the child[ren], which have or could have a *significant* effect on the child[ren]'s well-being, have materially changed." *Id.* at 657, quoting *Vodvarka*, 259 Mich App at 513. The trial court did not err by determining that defendant failed to demonstrate the existence of proper cause or a change of circumstances sufficient to reopen the issue of custody, MCL 722.27(1)(c), or by declining to hold an evidentiary hearing concerning the custody of the parties' minor children, *Vodvarka*, 259 Mich App at 508-509.

Affirmed.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly