

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN JOSEPH COLETTI,

Plaintiff-Appellee,

v

ELIZABETH LYN COLETTI a/k/a ELIZABETH  
LYN ROSS,

Defendant-Appellant.

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UNPUBLISHED  
August 16, 2011

No. 303111  
Lapeer Circuit Court  
LC No. 04-034960-DM

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's order denying her motion for a change of custody. Because proper cause to revisit the custody order did not exist, we affirm.

**I. FACTUAL BACKGROUND**

Plaintiff and defendant were divorced in 2005. The parties share two minor children born September 13, 1997, and July 22, 2000. During the divorce proceedings, the parties agreed that they would share legal custody of the two children and that the children would reside with defendant. The parties also agreed to a parenting time schedule. The agreement was incorporated into the consent judgment of divorce.

For the first few years, most of the disputes between the parties centered on issues of support, attorney fees, and court ordered counseling for the children. However, in 2008 defendant moved for a change of domicile and parenting time. Defendant requested that she be allowed to change the children's domicile and residence to Austin, Texas. Defendant argued that moving to Austin would improve the quality of life for both her and the children because her husband had business opportunities and property in Austin, which would benefit the family financially.

On August 22, 2008, a hearing on defendant's motion was held by a domestic relations referee. Following the testimony of defendant, defendant's husband, and plaintiff, the referee recommended that defendant's motion be denied. The referee determined that defendant and her husband never intended to stay in Michigan and that neither had made an honest attempt to find employment in Michigan. Therefore, defendant could not reasonably argue that moving to Texas had the capacity to improve their lives. The referee also noted that defendant had not

provided any realistic plan for fostering the children's relationship with plaintiff if they were allowed to move to Texas. On October 17, 2008, a temporary order denying defendant's motion was entered. Defendant filed an objection and request for de novo review by the circuit court, which was denied. This Court subsequently denied defendant's application for leave to appeal. *Coletti v Ross*, unpublished order of the Court of Appeals, entered August 12, 2009 (Docket No. 291909).

On August 5, 2010, defendant filed a motion for a change of custody and a change of domicile, which is the subject of this appeal. Defendant argued that a change of custody was appropriate because plaintiff was interfering with the medical treatment of one of their children who was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). And defendant again requested that she be allowed to change the children's domicile and residence to Austin, Texas. Defendant set forth many of the same reasons she had cited in her 2008 motion. The only significant difference was that defendant had obtained employment in Austin as a substitute teacher.

On October 12, 2010, a hearing on defendant's motion was held. Following some testimony, the hearing was adjourned by the domestic relations referee so that the parties' child could be evaluated by an ADHD expert. On December 9, 2010, the hearing was continued and, after both defendant and plaintiff testified, the referee recommended that defendant's motion be denied. The referee concluded that nothing had changed since the 2008 motion, and that defendant's motion for a change in domicile was motivated by her own best interests, not the children's. In addition, the referee concluded that defendant had not shown proper cause or a change in circumstances justifying a review of the previous custody order. The referee noted that there were some issues of concern with the parties' daughter who had been diagnosed with ADHD. However, defendant submitted no evidence, other than her own opinion and belief, that plaintiff was the source of those problems. On January 18, 2011, a temporary order denying defendant's motion was entered. Defendant filed an objection to the temporary order, which was denied by the circuit court on March 3, 2011. This appeal followed.

Defendant argues that the circuit court erred when it determined that proper cause to revisit the custody order did not exist. In support of her claim, defendant cites to an incident that occurred on June 9, 2010, when plaintiff called Children's Protective Services (CPS). Defendant also references the child's ADHD diagnosis, and argues that plaintiff was uncooperative in getting the child evaluated and that he was interfering with her treatment.

## II. STANDARD OF REVIEW

All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made 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 whether a party has demonstrated proper cause or a change of circumstances under the great weight of the evidence standard. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). Under this standard, we defer to the trial court's findings of fact unless the findings "clearly preponderate in the opposite direction."

*Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994) (citation and quotation marks omitted).

### III. DISCUSSION

Before modifying or amending a custody order, the circuit court must determine whether there has been a change in circumstances or if proper cause exists to revisit the custody order. MCL 722.27(1)(c); *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). Defendant does not argue that there has been a change in circumstances. Rather defendant argues that proper cause exists to revisit the custody order. “[P]roper 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. Whether proper cause exists is a fact-intensive analysis to be guided by consideration of the statutory best interest factors. *Id.* at 511-512. Because defendant filed the motion for a change of custody, defendant had the burden of proving by a preponderance of the evidence that proper cause existed. See *id.* at 509.

Defendant argues that the circuit court erred when it determined that proper cause did not exist to revisit the custody order. In support, defendant cites two occurrences: plaintiff’s telephone call to CPS, and the child’s ADHD diagnosis.

As to the first occurrence, defendant testified about an incident in which plaintiff called CPS after the child made statements to defendant about running away from home or committing suicide. These statements were allegedly made when the child came home from school in an agitated state because she was concerned that she was going to get a call from plaintiff about a homework assignment. Defendant testified that she called plaintiff and he expressed no concern. Later that evening, however, defendant received a call from CPS, who essentially forced her to take the child in for an immediate evaluation. Defendant testified that she had to wake the child up in the middle of the night, and that the child was screaming and crying hysterically for several hours. Defendant, who did not believe that the child was serious but was merely acting out, characterized the incident as both an example of the lack of cooperation between the parties and a deliberate attempt on plaintiff’s part to undermine her authority as a parent and cause stress to her and the child.

Plaintiff, however, testified that he made the call out of concern because defendant refused to let him talk to the child about the situation. Plaintiff stated that he received a call from the child’s teacher concerning a homework assignment that was not complete, and that he tried to call the child to speak to her about it. Eventually, he received a call from defendant informing him that the child was making statements about running away or committing suicide. According to plaintiff, when he asked to speak to the child, defendant refused his request and hung-up the phone. Plaintiff then called Friend of the Court, the suicide prevention hotline, and finally CPS.

The domestic relations referee properly characterized the dispute between plaintiff and defendant as a classic example of “he says she says.” The trial court’s determination that this incident did not establish proper cause to revisit the custody order was not against the great weight of the evidence. While defendant asserts that plaintiff’s conduct undermined her parental authority, was abusive, and only made the situation worse, she provided nothing but opinion and

speculation regarding plaintiff's motives. In contrast, plaintiff testified that he was very concerned for his daughter after defendant would not let him talk to her. Whether his response was premature is unknown. However, it does not appear overly drastic in light of the fact that defendant called plaintiff and said that the child was talking about running away from home or killing herself.

Defendant also argues that proper cause existed because plaintiff refused to accept the child's ADHD diagnosis, and actively opposed and interfered with defendant's attempts to have the child evaluated. At the October 12, 2010 hearing, defendant testified that the child had been diagnosed with ADHD. Defendant stated that she had an evaluation that proved the child had ADHD. Plaintiff, however, argued that the evaluation was inconclusive and that the child did not have ADHD. On its own motion, the domestic relations referee adjourned the hearing so that the child could be evaluated for ADHD by an independent expert.

At the December 9, 2010 hearing, defendant testified that the court ordered evaluation showed that the child had ADHD. Defendant also stated that plaintiff was uncooperative during the evaluation. Defendant testified that plaintiff submitted documents to the expert, but he would not let defendant see them, so she had no idea what they were. Defendant further stated that plaintiff actively tried to undermine her attempt to have the child evaluated for ADHD, and represented to the doctor that defendant was deranged and demented. Plaintiff, however, testified that he had done nothing to undermine defendant during the evaluation. He provided the expert with documentation concerning the divorce and custody proceedings, the previous evaluation, school records, and a letter that defendant's husband had sent plaintiff. Plaintiff also testified that he had read the expert's evaluation and that he was willing to follow all of the doctor's recommendations.

After reviewing this testimony, we agree with the circuit court that defendant failed to establish that proper cause to revisit the custody order existed. While it appears that the parties had some disagreement regarding the initial ADHD diagnosis, that disagreement has been resolved. Defendant argued that the child has ADHD, and plaintiff argued that the child did not. The domestic relations referee adjourned the custody hearing and ordered that an evaluation be performed. Both parties agreed to have the evaluation done, and plaintiff agreed to pay for it. When the evaluation was done and the child was diagnosed with ADHD, plaintiff accepted the results and testified that he was willing to do everything the doctor recommended. Therefore, the evidence did not show that plaintiff refused to accept the child's ADHD diagnosis.

In summary, the trial court properly concluded that defendant failed to establish that proper cause existed to revisit the custody order.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kurtis T. Wilder  
/s/ Donald S. Owens