STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY GAROFALI, Plaintiff-Appellant,	UNPUBLISHED March 19, 2013
v	No. 311537 Wayne Circuit Court Family Division LC No. 04-419373-DC
CATHERINE RENAUD, Defendant-Appellee.	

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order denying his motion for increased parenting time with the parties' minor son. We affirm.

The parties, who were never married, are the parents of a child born in 2004. They share joint legal and physical custody of the child, who lives with defendant. Since the child's birth, the trial court has issued several orders regarding plaintiff's parenting time requests. The most recent order provided plaintiff with a parenting time schedule that included alternating weekends and days during the week, including overnight stays. Plaintiff's parenting time amounted to approximately 40 to 45 percent, while defendant's about 55 to 60 percent. This appeal arises from the denial of plaintiff's motion requesting equal parenting time, i.e., 50 percent.

Plaintiff alleged in his motion for increased parenting time that there had been a change in circumstances warranting the requested modification of the parenting time schedule. The purported change in circumstances included that the child was getting older and plaintiff could help the child with his math and science homework, as well as assist him with various extracurricular activities, including fishing and karate. Plaintiff also argued that the child would need to bond with plaintiff's new wife and stepson, and could benefit from plaintiff's new home environment and neighborhood. Plaintiff alleged that the current schedule caused too much disruption and, in light of the normal life changes that occur when a child gets older, an equalized parenting time schedule would be in the best interests of the child.

After the motion was denied by a referee, plaintiff filed objections and a de novo hearing on the motion was held. Following the hearing, the trial court issued an order denying the motion. The court held that there was "no showing of either proper cause or change of circumstances affecting the promotion of a strong relationship between the minor child and his parents. Absent such a showing, Plaintiff's motion must be denied." This appeal followed.

Plaintiff argues that his motion for increased parenting time should have been granted because a change in circumstances warranted the requested modification of the parenting time schedule. We disagree.

Three standards govern our review of an order concerning parenting time. See MCL 722.28; *Shade v Wright*, 291 Mich App 17, 20-21; 805 NW2d 1 (2010). First, this Court will not disturb the trial court's findings of fact unless they are against the great weight of the evidence, i.e., the facts clearly preponderate in the opposite direction. *Id*. at 20-21. Second, the trial court's discretionary rulings are reviewed for an abuse of discretion, i.e., a decision "so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id*. at 21 (citation omitted). Third, we determine whether the trial court made a clear legal error on a major issue. *Id*.

Under the Child Custody Act, MCL 722.21 *et seq*., a trial court may modify or amend its previous judgment or order for proper cause shown or because of a change of circumstances. MCL 722.27(1)(c); *Shade*, 291 Mich App at 22. A party seeking modification of a parenting time order is required to establish proper cause or a change of circumstances. *Id*. at 22-23; *Terry v Affum (On Remand)*, 237 Mich App 522, 534-535; 603 NW2d 788 (1999). In this case, plaintiff alleges a change of circumstances warranted the modification. When modification of a parenting time order does not alter the child's established custodial environment, the "change in circumstances" requirement is less stringent because the concern of "providing a stable environment for children that is free of unwarranted custody changes" is not implicated. *Shade*, 291 Mich App at 28-29 (citation omitted).

Plaintiff relies on our holding in *Shade* to support his argument that the change in circumstances presented in this case is sufficient to warrant the requested modification. In *Shade*, this Court noted that the focus of parenting time is to foster a strong relationship between the child and his parents. *Id*. at 29. A significant fact in that case was that the parties lived in different states, requiring extensive travel time to accommodate the exercise of parenting time. *Id*. at 31. Thus, we held that the normal life changes experienced by the minor child at issue were sufficient to support modification of the parenting time schedule because the existing schedule and distance between the parents' homes prohibited the child from engaging in certain activities. *Id*. at 29-31.

The circumstances at issue in *Shade* are simply not present in this case. Rather, plaintiff lives within five miles of defendant. Plaintiff testified that he spends a lot of time helping his child with his homework, the child is able to participate in extracurricular activities, and plaintiff is able to attend those activities. The current parenting time schedule clearly fosters the child's relationship with plaintiff. The child's age, alone, is not a "change in circumstances" sufficient to support modification of parenting time, particularly here where the growing child's needs are not negatively affected and are met by the current schedule. Further, plaintiff's reliance on the State Court Administrative Office Parenting Time Guidelines (SCAO Guidelines) is misplaced. While the Guidelines suggest that frequency and duration of parenting time before a child begins school may be different after the child is enrolled in school, in this case the parenting time schedule was already modified to accommodate that change in circumstance. Accordingly, the trial court's conclusion that plaintiff failed to show a change of circumstances sufficient to warrant a modification of the parenting time schedule is affirmed.

Next, plaintiff argues that the trial court abused its discretion when it failed to admit expert testimony regarding the positive and beneficial effects of equalized parenting time on the minor child. We disagree.

A trial court's decision to admit or exclude expert testimony is reviewed for an abuse of discretion. *Surman v Surman*, 277 Mich App 287, 304-305; 745 NW2d 802 (2007). A court abuses its discretion when it chooses an outcome that is outside the range of principled results. *Id*. at 305.

MRE 702 governs the admission of expert testimony and provides:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

To be admissible, proposed expert testimony must meet a three-part test. *In re Wentworth*, 251 Mich App 560, 563; 651 NW2d 773 (2002). "First, the expert must be qualified. Second, the evidence must provide the trier of fact a better understanding of the evidence or assist in determining a fact in issue. Finally, the evidence must be from a recognized discipline." *Id*.

Here, plaintiff sought the admission of expert testimony from Reverend Steve Goodrum, who would testify that he is "familiar with the research and the studies and everything about shared parenting time and how that's beneficial to a child, all else being equal." The court denied the admission of such "expert" testimony because Goodrum had not met with both parties and the child. Accordingly, it appears that the trial court concluded that Goodrum's proposed expert testimony would not provide the court with a better understanding of the evidence or assist the court in determining a fact in issue. Goodrum did not meet with the parties and the child so he did not and could not apply "the principles and methods reliably to the facts of the case." MRE 702. Further, Michigan law recognizes that parenting time is in the best interests of the child because it promotes a strong relationship between the child and his parents. See MCL 722.27a(1). Therefore, the trial court's exclusion of Goodrum's proposed "expert" testimony did not constitute an abuse of discretion.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Douglas B. Shapiro