

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

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JAMES MICHAEL RYBINSKI,  
Plaintiff-Appellant,

UNPUBLISHED  
October 10, 2013

v

JOAN CHRISTINE RYBINSKI,  
Defendant-Appellee.

No. 315383  
Macomb Circuit Court  
Family division  
LC No. 2006-002077-DM

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Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion for change of custody of Jade Rybinski, the parties' minor child. We affirm.

In a 2007 Judgment of Divorce, the trial court granted the parties joint legal custody of their three children: Luke, Adam, and Jade, all of whom were minors at the time of the divorce. The trial court granted physical custody of the children to defendant. In January 2011, plaintiff sought a change in custody, alleging that defendant and her boyfriend spoke and acted inappropriately around the children. Plaintiff also alleged that the boyfriend was abusive to defendant and to the children, and that one of the children was developing behavioral problems. After conducting multiple evidentiary hearings, the trial court denied plaintiff's motion for change of custody, finding that plaintiff had failed to prove by clear and convincing evidence that it would be in the minor children's best interests to modify the established custodial environment. However, the court granted plaintiff additional parenting time. Although the trial court expressed concerns about a 2009 physical altercation between defendant and her boyfriend, the court concluded that the incident was an isolated event and that there was insufficient evidence to substantiate plaintiff's claims of ongoing domestic violence.

In July 2012, plaintiff again moved for a change in custody of the two younger children (the oldest, Luke, had reached age 18). The trial court referred the matter to the Friend of the Court for recommendations on custody and parenting time. The custody investigator found that plaintiff "demonstrated by clear and convincing evidence that Adam and Jade's best interests would be most served if the established custodial environment were modified," and recommended that the parties continue joint legal custody and that plaintiff receive sole physical custody. Under the terms of an August 30, 2012, consent order, plaintiff received sole physical

custody of Adam, and an evidentiary hearing was held concerning custody of Jade. The trial court denied plaintiff's motion for change of custody, concluding that the evidence did not show a sufficient change in circumstances to modify the custody order. The court denied plaintiff's motion for reconsideration.

On appeal, plaintiff argues that the trial court's determination was against the great weight of the evidence. We disagree.

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. This Court reviews a trial court's denial of a motion for reconsideration for an abuse of discretion. *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003).

A party seeking a change in custody must first establish proper cause or a change of circumstances. MCL 722.27(1) (c); *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003).<sup>1</sup> If modification or amendment of a custody order would change the established custodial environment of a child, the moving party must present clear and convincing evidence that the change is in the best interest of the child. MCL 722.27(1) (c); *Vodvarka*, 259 Mich App at 508-509. The moving party must show proper cause or a change in circumstances since entry of the last custody order, by a preponderance of the evidence, as a precondition to the trial court's reconsideration of the established custodial environment and best-interests factors. *Vodvarka*, 259 Mich App at 508-509, 514. To establish a sufficient change of circumstances, "a movant must prove that, since 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. The moving party 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." *Killingbeck v Killingbeck*, 269 Mich App 132, 145 n 5; 711 NW2d 759 (2005).

The record supports the trial court's determination that there was no change in circumstances since the entry of the last custody order. In reviewing the trial court's findings, we defer to the trial court's superior ability to assess the credibility of the witnesses. *McIntosh v McIntosh*, 282 Mich App 471, 474; 768 NW2d 325 (2009). The trial court in this case found a clear history of animosity between plaintiff and defendant. The trial court noted that plaintiff's allegations of a domestic violence incident between Adam and the defendant's boyfriend had been investigated by Child Protective Services (CPS), and that CPS had found no preponderance

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<sup>1</sup> Plaintiff argues only that a change in circumstances warranted revisit of the previous custody order; plaintiff does not argue that there was also proper cause to revisit the order.

of evidence of abuse or neglect. The court noted that there were inconsistencies in Adam's statements; in addition, the court interviewed Jade *in camera*. The court also noted that defendant had terminated her relationship with the boyfriend (defendant no longer resided with him although she lived in a house owned by him). On the basis of the factual findings and the credibility of the witnesses, the trial court validly reasoned that there was no material change of circumstances warranting reconsideration of the custody order.

Plaintiff also contends that defendant's relocation, itself, constituted a "change of circumstances" because it reduced the number of bedrooms in defendant's living arrangements. Plaintiff also appears to argue that Adam and Jade should be together in the same household. In support, plaintiff cites *Lustig v Lustig*, 99 Mich App 716; 299 NW2d 375 (1980). This Court held in *Lustig* that a change of circumstances had occurred because the older child had changed residences, and the younger child "prefer[red] to be with his brother and the reasonableness of this preference was not only the main issue at trial, but was the main circumstance considered by the court." *Id.* at 731. Here, in contrast, the separation of Adam and Jade is at least in part the result of Adam's reaching the age of 18, and is accordingly a "normal life change[] . . . that occur[s] during the life of" a younger sibling. See generally *Killingbeck*, 269 Mich App at 145 n 5.

In sum, the record demonstrates that the trial court carefully considered the evidence and the issues before determining that plaintiff failed to meet the threshold requirement of establishing a change in circumstances. There was sufficient evidence to support the trial court's denial of defendant's motion for a change in custody.

Affirmed.

/s/ Jane M. Beckering  
/s/ Peter D. O'Connell  
/s/ Douglas B. Shapiro