

STATE OF MICHIGAN
COURT OF APPEALS

SHEELA MARY RICHER,

Plaintiff-Appellee,

v

MATTHEW JON RICHER,

Defendant-Appellant.

UNPUBLISHED
December 10, 2013

No. 316358
Delta Circuit Court
Family Division
LC No. 11-021236-DM

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

In this child-custody matter, defendant, Matthew Jon Richer, appeals as of right the trial court's order granting the motion of plaintiff, Sheela Mary Richer, to change custody of their two minor children from joint physical custody to sole physical custody with plaintiff. We affirm.

Defendant first argues that the trial court erred by not holding an offer-of-proof hearing to determine if a factual dispute existed as required by MCR 3.210(C)(8). This assertion lacks merit because the record clearly shows that such a hearing was held on November 29, 2012.

Defendant next argues that the trial court erred because there was no legally sufficient proper cause or change in circumstances warranting a change in physical custody. We disagree.

Three different standards of review apply in child-custody cases. *Foskett v Foskett*, 247 Mich App 1, 4; 634 NW2d 363 (2001). "The clear legal error standard applies where the trial court errs in its choice, interpretation, or application of the existing law." *Id.* at 4-5. This Court reviews under the great-weight-of-the-evidence standard the trial court's findings of fact and for an abuse of discretion the trial court's discretionary rulings, including the court's determination of custody. *Id.* at 5. Under the great-weight-of-the-evidence standard, "a reviewing court should not substitute its judgment on questions of fact unless they 'clearly preponderate in the opposite direction.'" *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994). "An abuse of discretion exists when the trial court's decision is 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.”¹ *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008).

The Child Custody Act (CCA), MCL 722.21 *et seq.*, gives the circuit court the power to “[m]odify or amend its previous judgments or orders for proper cause shown or because of change of circumstances.” MCL 722.27(1)(c). This Court defined the terms “proper cause” and “change of circumstances in *Vodvarka v Grasmeyer*, 259 Mich App 499; 675 NW2d 847 (2003). In *Vodvarka*, we held 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. To demonstrate a change in 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. . . . [T]he 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. [*Id.* at 513-514 (emphasis in original).]

Furthermore, this Court has recently stated the following:

Appropriate grounds should include at least one of the 12 statutory best-interest factors and must concern matters that have or could have a significant effect on the child’s life. Only after a moving party has established proper cause or a change of circumstances may the trial court reevaluate the statutory best-interest factors. [*Mitchell v Mitchell*, 296 Mich App 513, 517-518; 823 NW2d 153 (2012) (citations omitted).]

After the moving party demonstrates proper cause or change in circumstances, the trial court must determine the evidentiary standard to apply when reviewing the best-interest factors. *Vodvarka*, 259 Mich App at 517; *Mogle v Scriver*, 241 Mich App 192, 197; 614 NW2d 696 (2000). To determine the evidentiary standard, the statute requires the court to determine whether an established custodial environment exists. *LaFleche v Ybarra*, 242 Mich App 692, 696 & n 2; 619 NW2d 738 (2000). MCL 722.27(1)(c) provides, in pertinent part:

The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless

¹ This definition of abuse of discretion still applies in child-custody determinations despite the existence of a revised definition for an abuse of discretion, i.e., a decision falling outside the range of principled outcomes, as articulated by the Supreme Court in *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). *Shulick v Richards*, 273 Mich App 320, 323-325; 729 NW2d 533 (2006).

there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

If the trial court determines that there is no established custodial environment, the standard is by preponderance of the evidence. *LaFleche*, 242 Mich App at 696. Here, the trial court concluded that “there does not exist an established custodial environment with either parent, and certain [sic] not with both parents. The burden of proof shall then be preponderance of the evidence.” The court then applied the twelve best-interest factors and determined that sole physical custody with plaintiff was in the best interests of the children.

Defendant argues that the trial court erred by awarding physical custody to plaintiff because plaintiff failed to establish that proper cause or a change in circumstances existed warranting review of the original custody determination. Specifically, defendant contends that a parent’s change in work schedule is not a legally sufficient change in circumstances warranting review of a court’s prior custody determination.

The trial court found that defendant’s return to the late shift “created substantial uncertainty regarding the custodial arrangement for these children” and required the children “to be in at least three different households for overnight care within a two-week period.” In its discussion of the best-interest factors the trial court stated, “[C]ircumstances of employment make it more difficult for defendant to provide the day-to-day care without relying on others.” The court described the home environment of the children as safe but needlessly disruptive. This overall change in the children’s home environment was caused by defendant’s return to the midnight shift. It was not against the great weight of the evidence or clear legal error to conclude that these changes could have a significant effect on the children’s well-being. *Vodvarka*, 259 Mich App at 511, 513.

Given the facts of record in this case, it was not error for the court to determine by a preponderance of the evidence that proper cause or a change in circumstances existed.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Jane M. Beckering