S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

STASIA A. SCHEMANSKI, f/k/a STASIA A. SKANK,

Plaintiff-Appellee,

v

ALLEN JOHN SKANK,

Defendant-Appellant.

UNPUBLISHED
August 11, 2005

No. 261356
Genesee Circuit Court
LC No. 95-180277-DM

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting summary disposition in favor of plaintiff on defendant's motion to modify parenting time to permit the parties' minor child to attend a private school in the vicinity of defendant's residence. We affirm.

Defendant and plaintiff have been divorced since 1998, and are the parents of one minor child. The current custody order provides for the parties to share joint physical and legal custody, with plaintiff having the minor child predominantly reside with her in Grand Rapids, Michigan, during the school year and with defendant in Ann Arbor, Michigan during the summer. The parties alternate and maintain a specific schedule for holidays, school breaks and weekends with the minor child. This appeal arises from the trial court's denial of defendant's motion for modification of parenting time and amendment of divorce as it relates to parenting arrangements. This Court reviews parenting time orders de novo. *Brown v Loveman*, 260 Mich App 576, 591-592; 680 NW2d 432 (2004).

An order will not be reversed unless (1) the factual findings on which the order is based are against the great weight of the evidence; (2) the court abused its discretion; or (3) it committed a clear legal error. *Id.*

Defendant contends the trial court erred in treating his motion for modification of parenting time as a request for a change of custody, thus, applying the wrong standard. Defendant further contends it was error for the trial court to not conduct a hearing on the best interest factors.

Disputes pertaining to parenting time are governed by the Child Custody Act, MCL 722.21 *et seq*. *Thames v Thames,* 191 Mich App 299, 305; 477 NW2d 496 (1991). A trial court

can modify or amend its previous orders for parenting time only for proper cause shown or because of a change in circumstances. MCL 722.27(1)(c); *Terry v Affum (On Remand),* 237 Mich App 522, 534-535; 603 NW2d 788 (1999). This Court has defined "proper cause" to require:

> [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. [*Vodvarka v Grasmeyer,* 259 Mich App 499, 512; 675 NW2d 847 (2003).]

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. [*Id.* at 513-514.]

Defendant has failed to demonstrate the existence of either "proper cause" or a "change in circumstances" sufficient to necessitate the trial court's consideration of his request for a modification in either parenting time or custody. Defendant's primary contention in support of his request for modification of parenting time is the preference of the minor child to attend school in Ann Arbor. While the child's preference is not disputed, this Court has previously indicated that such an allegation, standing alone, does not constitute a proper cause or change of circumstances, for modification of custody. *Curlyo v Curlyo,* 104 Mich App 340, 349; 304 NW2d 575 (1981). The child's stated preference, unaccompanied by any demonstration by defendant of the child's dissatisfaction, academic failure or the substandard nature of her current educational setting, is insufficient to constitute proper cause or a change in circumstances. See *id.*

Defendant's only other significant argument to substantiate his request for modification is the alleged superiority of his residential environment over that afforded by plaintiff. Defendant contends the absence of the minor child's stepfather from plaintiff's home, while serving a military assignment overseas, results in plaintiff maintaining a single-parent household, which defendant implies is deficient in comparison to the home he has now established in Ann Arbor and which includes his new wife. Defendant has failed to demonstrate that absence of the minor child's stepfather from plaintiff's home has had a "significant effect on the child's well-being." *Vodvarka, supra* at 513. Additionally, defendant has failed to demonstrate that his remaining allegations, pertaining to problems with communication between the parties, is a new phenomena and did not previously exist between the parties. If the alleged problems do not comprise a recent change in behavior or circumstances and have not interfered with the parties' respective relationships with the minor child or their parenting time, they fail to comprise a sufficient

change of circumstances to necessitate revision of the current parenting time or custody order. *Vodvarka, supra* at 515.

Defendant contends the trial court erred in failing to conduct an evidentiary hearing on the best interest factors. Notably, while it is error for a trial court to modify parenting time without conducting an evidentiary hearing and engaging in fact finding to support the modification, *Terry, supra* at 535, 537, in this instance the trial court declined to order a change in the parenting time schedule. This Court has determined that the text of MCL 772.27(1)(c), demonstrates the Legislature's intent that the statutory best interest factors only be considered when a party seeking modification of a prior custody order has shown either proper cause or a change in circumstances. *Rossow v Aranda,* 206 Mich App 456, 458; 522 NW2d 874 (1994). Because defendant has failed to show proper cause or a change in circumstances, sufficient to meet the requisite preliminary showing, the trial court was not required to conduct an evidentiary hearing. *Dehring v Dehring,* 220 Mich App 163, 164-165; 559 NW2d 59 (1996).

Defendant further contends the trial court erred in evaluating his petition for modification of parenting time as a request for a change in custody. Defendant fails to recognize that his characterization of the dispute as comprising a modification of parenting time is not dispositive.[1] MCL 722.27(1)(c) allows a court to modify or amend its previous judgments or orders only "for proper cause shown or because of change of circumstances." In turn, this Court has explained the statutory language to mean that a party seeking to modify or amend a prior order or judgment must first prove, by a preponderance of the evidence, the existence of proper cause or a change in circumstances prior to a trial court considering whether an established custodial environment exists and conducting a review of the best interest factors. *Vodvarka, supra* at 509. Based on defendant's failure to plead sufficient allegations to meet the preliminary requirements to establish either proper cause or a change of circumstances necessary for a modification of parenting time or a change of custody, the trial court did not err in granting plaintiff's motion for summary disposition without conducting an evidentiary hearing.

Affirmed.

/s/ Helene N. White
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder

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[1] Further, the trial court did no more than state the obvious when it observed "Requesting a change in school will involve changing the physical custody of the minor child *during the school year*." [Emphasis added.]