STATE OF MICHIGAN

COURT OF APPEALS

TERRIY D. WHITEHEAD, also known as TERI WHITEHEAD, Plaintiff-Appellant, v PAUL S. DHRUVAN, Defendant-Appellee.	UNPUBLISHED September 20, 2018 No. 343395 Oakland Circuit Court LC No. 2009-765745-DM

Before: TUKEL, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Plaintiff-mother appeals[1] an order denying her objections to the Friend of the Court referee's recommendation to deny her motion to change parenting time. We affirm.

I. FACTS AND PROCEDURAL HISTORY

In October 2010, a consent judgment of divorce was entered granting plaintiff and defendant-father joint physical custody of the minor child. Since then, plaintiff and defendant have filed numerous motions with the trial court regarding enforcement and custody modification issues concerning the child. Notably, in December 2013, the trial court found that plaintiff made serious, untrue allegations toward defendant's family. In December 2014, defendant moved the trial court to modify custody, and after a lengthy evidentiary hearing conducted over the course of 2015, the Friend of Court referee recommended that defendant be awarded primary physical custody. In May 2016, a consent order was entered to that effect. Plaintiff was given parenting time on alternating weekends from Friday afternoon to Monday

[1] Whether plaintiff has a right to appeal an order denying a motion to modify parenting time is questionable. See *Madson v Jaso*, 317 Mich App 52, 66-67; 893 NW2d 132 (2016), rev'd 501 Mich 1024 (2018); *Madson v Jaso*, 501 Mich 1024, 1024; 908 NW2d 298 (2018). However, even if plaintiff does not have a right to appeal this order, in the interests of judicial economy, we would treat plaintiff's appeal as an application for leave to appeal, grant leave, and address the issues presented on their merits. See *Rains v Rains*, 301 Mich App 313, 320 n 2; 836 NW2d 709 (2013).

morning, midweek dinner parenting time on alternating Wednesdays from 5:00 p.m. to 8:00 p.m., and three weeks of summer parenting time. In January 2017, plaintiff was granted an additional overnight on her alternating weekends.

In November 2017, plaintiff moved the trial court to change the child's parenting time to grant her two additional overnights every other week. In her motion, plaintiff asserted that changing parenting time would foster her relationship with the child. She also referenced the fact that the child now had an extra-curricular activity scheduled on one of her parenting-time nights. However, while that matter was briefly explored at the motion hearing, plaintiff primarily relied on her recent compliance with court orders and her completion of therapeutic treatment in support of her motion. Additionally, plaintiff and defendant were getting along at the child's extracurricular activities, and the child had been doing well since plaintiff was awarded an additional overnight. The referee found that plaintiff did not meet her burden of establishing by a preponderance of the evidence that a proper cause or change of circumstances existed to warrant modifying parenting time, or that such a change would be in the child's best interests.

Plaintiff objected to the referee's recommendation and requested a de novo hearing before the trial court. Plaintiff argued in part that the referee inappropriately relied on *Vodvarka v Grasmeyer*, 259 Mich App 499; 675 NW2d 847 (2003), in deciding her motion. After a motion hearing, the trial court denied plaintiff's objections and ultimately adopted the referee's recommendation.

II. STANDARD OF REVIEW

We must affirm the trial court's parenting-time order "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." *Shade v Wright*, 291 Mich App 17, 20-21; 805 NW2d 1 (2010) (quotation marks and citation omitted). "A trial court commits legal error when it incorrectly chooses, interprets, or applies the law." *Sulaica v Rometty*, 308 Mich App 568, 577; 866 NW2d 838 (2014). We review "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." *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). A trial court's factual findings are against the great weight of the evidence when "the evidence clearly preponderates in the opposite direction." *Ireland v Smith*, 214 Mich App 235, 242; 542 NW2d 344 (1995).

III. ANALYSIS

Plaintiff argues that the trial court committed a clear legal error when it applied the wrong legal standard to her motion to change parenting time. We disagree.

The Child Custody Act of 1970, MCL 722.21 *et seq*., authorizes a trial court to issue custody and parenting-time orders that are in the child's best interests. *Lieberman v Orr*, 319 Mich App 68, 78; 900 NW2d 130 (2017). MCL 722.27(1)(c) allows the trial court to "modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances . . . ." A showing of proper cause or change of circumstances is required to

modify a parenting-time order. *Terry v Affum (On Remand)*, 237 Mich App 522, 534-535; 603 NW2d 788 (1999). "The movant has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstances exists." *Dailey v Kloenhamer*, 291 Mich App 660, 665; 811 NW2d 501 (2011). Unless a parenting-time modification would change the child's established custodial environment, "the burden is on the parent proposing the change to establish, by a preponderance of the evidence that the change is in the child's best interests." *Shade*, 291 Mich App at 23.

In *Vodvarka*, 259 Mich App at 510-514, a custody case, we defined the phrases "proper cause" and "change of circumstances." However, in *Shade*, 291 Mich App at 28, we determined that "[t]he *Vodvarka* definitions" are "far less applicable with respect to parenting time determinations." Considering that the focus in parenting-time decisions is the child-parent relationship rather than avoiding unnecessary custody changes, we held "that a more expansive definition of 'proper cause' or 'change of circumstances' is appropriate for determinations regarding parenting time when a modification in parenting time does not alter the established custodial environment." *Id*. at 28-29. For example, the normal life changes of a child are insufficient to establish a change of circumstances under *Vodvarka*, but such changes could warrant modification of parenting time. *Id*. at 29.

In this case, the referee cited and relied on *Vodvarka*, but each time he did so he also cited and relied on *Shade*. Ideally, the referee would have relied solely on *Shade*. However, the referee was aware that there are different evidentiary standards for proving the child's best interests depending on whether the movant is seeking a change to custody or parenting time.[2] We presume that the referee's citation of *Vodvarka* and *Shade* reflected his understanding that there are also different standards for establishing proper cause or change of circumstances. In any event, we decline to hold that a few errant references to *Vodvarka* constitute legal error under the circumstances of this case.

After reviewing the record, we conclude that the finding that plaintiff failed to prove proper cause or change of circumstances was correct even applying the more expansive *Shade* standard. Plaintiff's proofs related mostly to her own personal improvement. The referee complimented plaintiff on her "advances" but failed to see grounds for modifying parenting time. We see no error in this reasoning. The best interests of the child controls parenting time and changes must be grounded in the needs of the child, not the parent. See MCL 722.27a(1).

Further, at the hearing to address her objections to the referee's recommendation, plaintiff did not identify any evidence that the referee failed to consider because it erroneously relied on *Vodvarka*. In other words, plaintiff's motion did not rest on normal changes in the child's life that are insufficient under *Vodvarka* but that could have been properly considered in a motion to change parenting time. In addition, there was no evidence that the present parenting-time

[2] The referee expressly declined to decide if plaintiff's proposed parenting time modification would amount to a change in custody and proceeded to analyze plaintiff's motion as if it would not constitute such a change, i.e., the referee noted that the burden of proof was by a preponderance of the evidence, not clear and convincing evidence.

schedule was insufficient for plaintiff to maintain a strong relationship with the child. For those reasons, under the circumstances of this case, the referee's simultaneous reliance on *Vodvarka* and *Shade* was not a legal error. Alternatively, the error was harmless. See MCR 2.613(A).

Finally, we conclude that plaintiff has abandoned the remainder of her issues on appeal by failing to elaborate on them and support them with legal authority. *Riemer v Johnson*, 311 Mich App 632, 653; 876 NW2d 279 (2015). That said, we note that in reviewing plaintiff's motion the referee miscalculated the number of overnights she was receiving. After plaintiff raised this issue in her objections to the referee's recommendation, the trial court directed the referee to reconsider this matter and the referee acknowledged his error in an amended opinion and recommendation. We do not think that this error warranted a new hearing or a reconsideration of plaintiff's motion because the amount of overnights she was receiving had no bearing on whether she proved proper cause or change of circumstances to modify parenting time.

Affirmed.

/s/ Jonathan Tukel
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro