

STATE OF MICHIGAN
COURT OF APPEALS

KARL EDWARD CAMPBELL, JR.,

Plaintiff-Appellee,

v

JULIE VANDERHOEVEN,

Defendant-Appellant.

UNPUBLISHED

October 22, 2020

No. 351864

Oakland Circuit Court

Family Division

LC No. 2014-825694-DC

Before: METER, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Defendant-mother appeals the trial court’s order denying her motion to change custody and modify her parenting time of the parties’ minor child, MC. For the reasons stated in this opinion, we affirm.

I. BACKGROUND

MC was born in the summer of 2014 at which time the parties resided together. In November 2014, plaintiff-father filed a complaint for sole physical and joint legal custody of MC. The complaint and subsequent motions presented highly concerning allegations regarding defendant’s substance abuse issues. After an emergency motion in October 2015, the trial court granted plaintiff temporary sole physical custody and ordered that he be responsible for MC’s medical care. In February 2017, the trial court granted plaintiff sole legal and physical custody, and defendant received supervised parenting time. Plaintiff and his longtime girlfriend “Ashley” have now been MC’s primary caretakers for years. Defendant agrees with the court’s decision to grant plaintiff sole custody at that time given her drug and alcohol addiction that rendered her unable to care for the child. Defendant has since made efforts to address her substance abuse and obtained increasing parenting time as a result. In February 2019, after she tested negative on a 14-panel fingernail drug test, the trial court granted her unsupervised parenting time on alternating Sundays and Wednesdays.

The February 2019 order also addressed the parties’ ongoing disagreement about MC’s medical conditions. MC has impaired muscle strength, balance, and coordination and he often

falls. As a result, MC was prescribed a soft-padded helmet by a neurologist, but defendant has consistently argued that it is unnecessary for him to wear the helmet at all times. The February 2019 order directed defendant not to remove the child's helmet during parenting time "for any reason." MC also had a congenital urological anomaly that required surgery, which was scheduled for May 2019. The February 2019 order provided that both parents would keep MC in diapers and not begin weaning him from diapers until approved by the urologist.

On April 8, 2019, defendant filed the first of three motions seeking sole legal and physical custody. She asserted, in part, that plaintiff was attempting to alienate MC from her by, for example, telling MC to call her by her first name. She also alleged that plaintiff was being dishonest regarding how long it would take MC to recover from his upcoming surgery. On April 19, 2019, the trial court entered a consent order dismissing defendant's motion to change physical custody and held the issue of legal custody in abeyance. MC's surgery was completed in May 2019 as scheduled.

On September 11, 2019, defendant filed her second motion to change custody and also sought increased parenting time. The overriding allegation made in the motion was that plaintiff and Ashley were "creating" medical issues for MC, specifically that he suffers from a neurological or seizure disorder that resulted in him being prescribed a helmet. Defendant also argued that: plaintiff and Ashley were needlessly forcing MC to wear diapers; MC had fully recovered from his surgery and was using the toilet at defendant's house; and MC, who was now attending kindergarten through a special needs program, was embarrassed about wearing diapers. Defendant also asserted that plaintiff failed to follow the trial court's order to inform her about MC's medical appointments and absences from school. On September 25, 2019, the trial court entered a consent order granting defendant joint legal custody and increasing her unsupervised parenting time to every other weekend as well as two weeks in the summer.

Seven weeks later, on November 13, 2019, defendant filed her third motion to change custody, this time an emergency motion requesting that the court enforce the joint-custody order and grant her temporary legal and physical custody pending an evidentiary hearing. The motion alleged, in part, that: plaintiff was violating the joint-custody order by not informing defendant about school absences and medical appointments; MC had missed over 20 days of school; and plaintiff was refusing to send MC back to school and was planning on changing his school without any agreement from defendant. Defendant also alleged that plaintiff and Ashley were needlessly insisting that MC be enrolled in his school's special education program and being dishonest about his medical conditions. Defendant asserted that MC did not need to wear a helmet at all times, did not suffer cognitive delays, and did not need to be in diapers.

On November 13, 2019, the trial court entered an order denying ex parte relief and ordered that MC was to remain in school, and on November 20, 2019, the trial court held a hearing on defendant's motion.

At the hearing, defendant's counsel objected to the Friend of Court recommendation that her motion be denied and reiterated the allegations made in her motion. Plaintiff's counsel then addressed the allegations and explained that MC's school absences were due to doctor's appointments, being sent home from school for bad behavior, and an illness that lasted for over a week. Plaintiff's counsel asserted that plaintiff did not know that joint legal custody meant he had

to inform defendant about MC's absences and appointments, but would do so going forward. Plaintiff's counsel argued that it was necessary for MC to wear a helmet because he was a fall risk, and explained that plaintiff was considering sending MC to a different school that offered behavioral classes. Plaintiff's counsel also argued that defendant should not be granted sole legal and physical custody, because, while she was on the right track, she was just awarded jointed legal custody and expanded parenting time.

The trial court denied defendant's motion and informed the parties that they needed to start working together and set aside their disdain for one another to make decisions in the best interests of MC. The court ordered the parties to sign up for Our Family Wizard to communicate MC's appointments; directed them to meet together with MC's school regarding MC's placement in school; and ordered that MC was not to change schools without the approval of both parents. When asked about the helmet and diapers, the trial court told the parties that they needed to "figure it out" and suggested that they jointly attend doctor appointments. The court requested that defendant stop filing "constant motions" because the case would not "jump[] overnight," but rather would progress incrementally.

II. ANALYSIS

Defendant argues that the trial court erred by denying her motion to change custody and parenting time. We disagree.¹

Section 7 of the Child Custody Act, MCL 722.21 *et seq.*, allows a trial court to "modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances," so long as the modification would be in the child's best interests. MCL 722.27(1)(c). For purposes of revisiting custody orders, "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." *Vodvarka v Grasmeyer*, 259 Mich App 499, 511; 675 NW2d 847 (2003). "[I]n order 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." *Id.* at 513. To constitute a change of circumstances under MCL 722.27(1)(c), "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.

¹ A trial court's order resolving a child custody dispute "shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28. "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." *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), *aff'd* 451 Mich 457 (1996).

Defendant first argues that the trial court erred by denying her motion without addressing whether there was a proper cause or change of circumstances to modify its prior order. While the better course would be for the trial court to expressly address the threshold question, it is clear from the record that the court concluded that there were no grounds to revisit the issues of custody or parenting time. We see no error in this determination because the allegations supporting defendant's motion did not establish proper cause or a sufficient change of circumstances.

The trial court's September 25, 2019 order granting joint legal custody and extending defendant's unsupervised parenting time was the last order that she was seeking to modify. In the motion at issue filed seven weeks later, defendant argued that proper cause or a change of circumstances existed, in part, because plaintiff was not informing her of MC's medical appointments or school absences, was being dishonest about MC's medical conditions and cognitive delays, and was unnecessarily insisting that MC wear a helmet and diapers. However, substantially same issues were presented in defendant's motion that led to the September 25, 2019 consent order granting joint legal custody, which meant that "the parents shall share decision-making authority as to the important decisions affecting the welfare of the child." MCL 722.26a(7)(b). "Medical and educational decisions are clearly important decisions affecting the welfare of the children." *Shulick v Richards*, 273 Mich App 320, 327; 729 NW2d 533 (2006) (quotation marks and citation omitted). Thus, following the joint-custody order, the parties were required to co-parent on the medical and educational issues. According to plaintiff, however, this was not explained to him.

In any event, while defendant's November 2019 motion to change custody and parenting time again set forth the parties' diverging opinions on whether MC should wear a helmet or diapers and the underlying medical conditions, the *new* allegations mostly pertained to plaintiff's failure to follow the joint-custody order. Specifically, plaintiff did not keep defendant informed about MC's medical appointments and school absences. Also, plaintiff was contemplating making a unilateral change as to where MC attend school. The parties were also clearly not attempting to resolve their disagreement about MC's medical conditions. Not abiding by a joint-custody order certainly could be a sufficient reason to revisit a prior order. However, considering that defendant's motion was brought only seven weeks after joint legal custody had been granted, it was reasonable for the trial court to instead direct the parties to attempt to reach an agreement on the medical and educational issues.

In arguing that proper cause or a change of circumstances exists, defendant relies on information she was able to obtain regarding MC's medical conditions and education after she obtained joint legal custody. For instance, defendant learned that MC's school no longer believed that he needs to be in a special needs program. Defendant had also learned that plaintiff had not followed the recommendations of MC's neurologist for MC to undergo an MRI and an electroencephalogram test (EEG), participate in physical therapy, and have a neuropsychic evaluation. However, this newly discovered information related to the medical and educational decisions that the parties were now required to decide jointly. Notably, defendant's motion did not ask the court to decide those matters. Nor would that have been warranted considering that the parents had not yet even attempted to resolve their differing opinions since joint legal custody was granted. See *Lombardo v Lombardo*, 202 Mich App 151, 159; 507 NW2d 788 (1993) ("[W]here the parents as joint custodians cannot agree on important matters such as education, it is the court's duty to determine the issue in the best interests of the child."). Under the

circumstances, we see no error in the trial court's ruling that effectively directed the parties to make a good-faith effort at co-parenting before considering whether modification of the September 2019 consent order was in the child's best interests.

We note that there were allegations supporting defendant's motion that did not relate to the parties' disputes regarding MC's medical conditions and education. For instance, defendant asserted that MC was arriving at school with bruises and cuts all over his body, which plaintiff attributed to MC playing with Ashley's children. In addition, defendant renewed her oft-repeated allegation that plaintiff and Ashley were attempting to alienate MC from her. Overall, these assertions, brought less than two months after the last order, were not of such a magnitude that we can say that the trial court erred by denying defendant's motion. We also note that it took years for defendant to reobtain joint legal custody of MC and the substantial unsupervised parenting time granted by the September 2019 consent order. Absent compelling circumstances, it was not reversible error for the trial court to deny further modification on the basis of a motion brought seven weeks later.

In sum, defendant's motion to change custody and parenting time reiterated the parties ongoing dispute regarding MC's medical conditions and presented related questions relating to MC's education. These are plainly important decisions regarding the child that the parties must attempt to agree on before seeking court involvement. Because the court had only recently granted joint legal custody, it did not err by denying defendant's motion and entering an order clarifying the parties' responsibility to co-parent. The remainder of the allegations presented in defendant's motion to change custody and parenting are not of such a magnitude so as to require an evidentiary hearing. See *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009) ("Although the threshold consideration of whether there was proper cause or a change of circumstances might be fact-intensive, the court need not necessarily conduct an evidentiary hearing on the topic.").

Affirmed.

/s/ Patrick M. Meter
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan