

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT ALAN WEST,

Plaintiff-Appellee,

v

CAROLE BROWN,

Defendant-Appellant.

UNPUBLISHED

June 4, 1996

No. 180483

LC No. 88-356754

Before: Murphy, P.J., and Griffin and E.R. Post,* JJ.

PER CURIAM.

Defendant mother appeals as of right a trial court order denying her motion to change custody of the parties' minor child, Kyle Thomas Brown (d/o/b 8/14/88). We affirm.

All custody orders of the trial court shall be affirmed on appeal unless the trial court made findings of fact against the great weight of the evidence, committed a palpable abuse of discretion, or made a clear legal error on a major issue. MCL 722.28; MSA 25.312(8); *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). If an established custodial environment exists, clear and convincing evidence must be presented to change custody of a child. *Hayes v Hayes*, 209 Mich App 385, 387; 532 NW2d 190 (1995). However, if no custodial environment exists, the trial court may modify the custody order if the petitioner can convince the court by a preponderance of the evidence that it should change custody. *Id.* Whether an established custodial environment exists is a question of fact for the trial court to resolve based on statutory criteria. *Id.*, 387-388. Findings of fact in child custody disputes are reviewed under the great weight of the evidence standard. *Fletcher, supra*, 877-879. Discretionary rulings, such as who is granted custody, are reviewed for an abuse of discretion. *Id.*, 879-880.

After carefully reviewing the trial court's opinion, we agree that it was in Kyle's best interests to remain in the custody of plaintiff. It was proper for the trial court to conclude that it was unnecessary to determine whether an established custodial environment existed because defendant failed to carry the

* Circuit judge, sitting on the Court of Appeals by assignment.

initial burden of establishing either a proper cause or a change of circumstances necessitating a change in custody. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994). However, because defendant failed to establish proper cause or a change of circumstances warranting a change of custody, the trial court was unauthorized to reconsider the statutory best interest factors and should not have done so. *Id.* Nonetheless, this error was harmless because defendant's failure to present sufficient proof of proper cause or changed circumstances precluded the trial court from further considering her motion to change custody. *Id.* Accordingly, we conclude that the trial court's decision that it was in Kyle's best interests to remain in the custody of plaintiff was not an abuse of discretion.

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Edward R. Post