

STATE OF MICHIGAN
COURT OF APPEALS

RHONDA MARIE STAFFORD,

Plaintiff-Appellant,

v

DOUGLAS THOMAS STAFFORD,

Defendant-Appellee.

UNPUBLISHED

December 13, 1996

No. 191564

LC No. 94-3329 DM

Before: Young, P.J., and O'Connell and W.J. Nykamp,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order changing custody of the parties' minor child to defendant. We reverse and remand for further proceedings.

Plaintiff, who has custody of the child per the parties' judgment of divorce, asked defendant to take the child six weeks earlier than the parties' original plan, which was for defendant to have the child in June, July and August 1995. Defendant agreed and did so. In June 1995, defendant obtained an ex parte order that granted him temporary custody of the child. Following a hearing, the trial court modified the judgment of divorce to award physical custody of the child to defendant.

Plaintiff first contends that the trial court's finding that the parties had not reached a mutual understanding that the transfer of custody would be temporary was against the great weight of the evidence. Plaintiff correctly argues that courts must give effect to agreements in which the parties agree to temporarily transfer custody from one parent to the other in the best interests of the child. *Loyd v Loyd*, 182 Mich App 769, 780; 452 NW2d 910 (1990). However, the parties' testimony does not support the finding that the parties had a mutual understanding about the duration of defendant's custody. The evidence indicated that while plaintiff believed that the child would return to her custody at the end of the summer, defendant understood that plaintiff transferred custody to him because the child was unhappy, that the parties agreed that the child would remain with defendant as long as the child was happy, and that the parties never agreed on a specific date that the child would be returned to his mother. Thus, the trial court's finding was not against the great weight of the evidence.

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

Since the trial court's findings of fact on the issue of an agreement to temporarily transfer custody were not against the great weight of the evidence, the trial court did not abuse its discretion in refusing to return custody to plaintiff on this basis. However, the trial court committed clear legal error when it modified the parties' former custody order without properly evaluating the issues of proper cause or change of circumstances, the existence of an established custodial environment, and the best interests of the child. The Child Custody Act of 1970 provides that for the best interests of the child, the circuit court may

[modify] or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age 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 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. [MCL 722.27(1)(c); MSA 25.312(7)(1)(c).]

Before a custody order may be modified, the petitioning party must demonstrate either a proper cause or a change in circumstances. *Rossow v Aranda*, 206 Mich App 456, 458; 522 NW2d 874 (1994). Once this has been established, the court must determine whether an established custodial environment exists. MCL 722.27(1)(c); MSA 25.312(7)(1)(c). If the court finds that a custodial environment exists then the petitioning party must establish by clear and convincing evidence that it is in the best interests of the child for the court to modify the existing custody order. *Id.* However, if the court determines that no custodial environment exists, then the burden of proof is a preponderance of the evidence. *Hayes v Hayes*, 209 Mich App 385, 387; 532 NW2d 190 (1995). It is only after this determination has been made that the court may evaluate the best interests of the child. *Id.* Where, as in this case, the trial court failed to state specific findings on the record regarding an established custodial environment and each of the factors used to evaluate the best interests of the child, the trial court's order must be reversed and the case must be remanded for further findings of fact and conclusions of law. *Underwood v Underwood*, 163 Mich App 383, 389; 414 NW2d 171 (1987); *Williamson v Williamson*, 122 Mich App 667, 672; 333 NW2d 6 (1982).

Accordingly, the trial court's order granting custody of the child to defendant is reversed and this matter is remanded for findings consistent with this opinion. Although we appreciate brevity in trial court decisions, in the instant case, the trial court's opinion is incapable of meaningful appellate review because of its brevity. The trial court is directed to make complete findings of fact and conclusions of law. The trial court, in its discretion, may grant a new hearing. We do not retain jurisdiction.

/s/ Robert P. Young
/s/ Peter D. O'Connell
/s/ Wesley J. Nykamp