

STATE OF MICHIGAN
COURT OF APPEALS

ROSSEMARY HERRERA, a/k/a ROSSEMARY
GOMEZ-CABRERA,

Plaintiff-Appellee,

v

RAUL AQUILES HERRERA-PINA,

Defendant-Appellant.

UNPUBLISHED
November 20, 2014

No. 322082
Kent Circuit Court
LC No. 12-005913-DM

Before: M. J. KELLY, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Defendant father, Raul Aquiles Herrera-Pina, appeals as of right the May 13, 2014 order denying his motion for change of custody in regard to the parties' minor child, his motion for the disqualification of the trial judge, and his motion for plaintiff mother, Rossemary Herrera, to be held in contempt of court. We affirm.

Father's brief is unorganized, devoid of factual support, and without adequate authority for any of his positions. All of father's arguments are abandoned. Although submissions from pro se litigants such as father are to be "liberally construed" and are to be held to "less stringent standards," *Estelle v Gamble*, 429 US 97, 106; 97 S Ct 285; 50 L Ed 2d 251 (1976) (citation and quotation omitted), that does not mean that we will sustain claims without factual support or legal authority. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted). "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *Id.* at 339-340. Further, as appellant, father failed to satisfy his burden of furnishing this Court with a record to verify the factual basis of the arguments on which he is seeking reversal. *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540; 506 NW2d 890 (1993). Nevertheless, we have reviewed father's arguments and conclude that they are without merit.

I. JUDICIAL DISQUALIFICATION

In a May 7, 2014 motion, father requested that the trial court disqualify itself from this case and allow the case to be handled by an "impartial judge." However, the sum of father's argument before the trial court was that the court's rulings showed its bias. "The mere fact that a

judge ruled against a litigant, even if the rulings are later determined to be erroneous,” is insufficient to show bias or prejudice. *In re Contempt of Henry*, 282 Mich App 656, 680; 765 NW2d 44 (2009). Accordingly, the trial court did not err in denying father’s request for a new “impartial” judge. *Mitchell v Mitchell*, 296 Mich App 513, 523; 823 NW2d 153 (2012) (review of the trial court’s legal conclusion regarding a motion to disqualify is de novo).

For the first time on appeal, father raises a new assertion of bias. He contends that the trial court was biased and should have disqualified itself because the court was acquainted with the mother of mother’s boyfriend, Michael Salinas. Father provides no factual support for this claim. Additionally, there is no evidence in the record to support this claim of bias. Father has not satisfied his burden of overcoming the presumption of impartiality. *Id.* (“A trial judge is presumed unbiased, and the party asserting otherwise has the heavy burden of overcoming the presumption.”).

II. MOTION TO HOLD MOTHER IN CONTEMPT

In his May 7, 2014 ex parte motion, father also asked the trial court to find mother in contempt for misleading the court, violating court orders, and knowingly committing perjury. The trial court correctly recognized that the majority of father’s assertions had been raised in a prior motion, addressed by the trial court, and found to be meritless. With regard to the remainder of father’s claims, we note that father failed to provide sufficient support for his motion under MCR 3.606(A). Where, as is the case here, contempt proceedings are initiated by ex parte motion, the motion must be “supported by an affidavit of facts showing the alleged contemptuous conduct.” *In re Contempt of Calcutt*, 184 Mich App 749, 757; 458 NW2d 919 (1990). The affidavit supporting an ex parte contempt motion must provide a “sufficient foundation of competent evidence, and legitimate inferences therefrom,” before a court may further the contempt proceedings by issuing a show cause order. *Id.* Further, “[a]n affidavit attached to an ex parte motion for an order to show cause must meet the requirements of MCR 2.119(B). *In re Contempt of Steingold*, 244 Mich App 153, 158; 624 NW2d 504 (2000). This means that the affidavit “must be made on personal knowledge, state with specificity admissible facts establishing the grounds stated in the motion, and show affirmatively that the affiant, if sworn as a witness, can testify about the facts stated in the affidavit.” *Id.* The record reveals that father, rather than submitting affidavits, supported his ex parte contempt motion with his own unsworn statements, unsworn letters written by others, and documents not sworn to in an affidavit. Accordingly, there was no affidavit showing a “sufficient foundation of competent evidence, and legitimate inferences therefrom,” before the trial court that would have justified the court in furthering the contempt proceedings by issuing a show cause order against mother. *In re Contempt of Calcutt*, 184 Mich App at 757. The trial court did not abuse its discretion in denying father’s contempt motion or in refusing to address father’s claims of perjury in support of that motion. *Henry*, 282 Mich App at 671 (a court’s decision regarding the issuance of a contempt order is reviewed for an abuse of discretion). See also *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001) (citation and quotation omitted; alteration in original) (“[w]hen this Court concludes that a trial court has reached the correct result, this Court will affirm even if it does so under alternative reasoning.”).

III. CHANGE OF CUSTODY

In his May 7, 2014 motion, father also moved the trial court for a new custody hearing in front of a jury. A child custody award may only be modified after there has been “proper cause shown or because of change of circumstances” MCL 722.27(1)(c). “The movant, of course, has the burden of proving by a preponderance of the evidence that either proper cause or a change of circumstances exists” *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). “Proper cause” sufficient to warrant revisiting a custody order “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.” *Id.* at 511. To demonstrate a change of circumstances meriting consideration of a custody change, “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. “[T]he 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.

The trial court denied father’s motion for a new custody trial because father did not establish a change of circumstances or proper cause. The trial court’s finding that there was no change of circumstances or proper cause was not against the great weight of the evidence. MCL 722.28; *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009) (“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.”). None of the allegations raised by father demonstrated the type of circumstances that would have had a *significant* effect on the child’s life or well-being. See *Vodvarka*, 259 Mich App at 512-513. At most, father’s allegations amount to nothing more than normal life changes for the child or minor inconveniences to father in his attempts to interact with mother. See *id.* at 512-514. The trial court’s finding did not “clearly preponderate in the opposite direction.” *Corporan*, 282 Mich App at 605 (citation and quotation omitted).

IV. CLAIM FOR DAMAGES

Next, father briefly states that he suffered damages, including that his home and some of his retirement funds were “stolen” from him because he was misled “into a settlement because of knowingly false information submitted by [mother].” The trial court denied father’s request for damages because father failed to provide substantive evidence to support an award. On appeal, father once again fails to provide any factual support for his claim. Nor does he provide any argument explaining why he is entitled to an award of damages. Accordingly, father has abandoned this issue. *Houghton*, 256 Mich App at 339-340.

V. UNPRESERVED CONSTITUTIONAL CLAIMS

Father also raises an unpreserved argument that the trial court deprived him of his constitutional rights by entering its May 13, 2014 order without holding an evidentiary hearing, a bench trial, or a jury trial. We have reviewed this issue and find that father fails to show plain

error. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000) (explaining that review of unpreserved issues is for plain error).

Affirmed.

/s/ Michael J. Kelly
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro