

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ERIC JOSEPH SIESEL,

Plaintiff-Appellant,

v

TINA MARIE POUNTNEY,

Defendant-Appellee.

UNPUBLISHED

June 18, 2019

No. 346930

Chippewa Circuit Court

Family Division

LC No. 14-013322-DM

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Before: K. F. KELLY, P.J., and FORT HOOD and REDFORD, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying his motion for a change of legal custody of the parties' minor children, BWS and ARS, and retaining defendant's sole legal custody of the children. We affirm.

I. BACKGROUND

The parties divorced in September 2016 and the judgment of divorce awarded the parties joint physical custody of the children but gave defendant sole legal custody. In 2017, disputes arose about the children's participation in extracurricular activities. That year, just before the start of the season, defendant decided that BWS would not participate in football because plaintiff coached the team and his commitment to coaching interfered with his transporting of ARS to her dance activities. The parties also disagreed about the children's use of cell phones that plaintiff purchased for them without defendant's input. Plaintiff moved for joint legal custody on the ground that defendant abused her authority as the children's sole legal custodian by disregarding their best interests. He alleged that proper cause and a change of circumstances occurred that allowed the trial court to modify legal custody.

Following an evidentiary hearing, the referee concluded that plaintiff had not met his initial burden of demonstrating proper cause or a change in circumstances sufficient to justify modification of legal custody. The referee recommended denial of plaintiff's motion. Plaintiff objected and the trial court reviewed the matter de novo. The trial court found that the parties demonstrated an inability to agree on parenting issues but defendant's decisions were not arbitrary or capricious. The trial court affirmed the referee's conclusion that plaintiff failed to

meet his burden of establishing by a preponderance of the evidence that proper cause or a change of circumstances warranted modification of legal custody. Therefore, it denied plaintiff's motion.

Plaintiff argues that the trial court erred by finding that proper cause or a change of circumstances did not exist warranting consideration of the best-interest factors. He contends that he presented sufficient evidence to prove that proper cause and a change of circumstances existed requiring modification of legal custody. We disagree.

## II. STANDARD OF REVIEW

MCL 722.28 provides:

To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court 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.

We review the trial court's decision "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) (citation omitted). Under this standard, we defer to the trial court's findings of fact unless the facts clearly preponderate in the opposite direction. *Id.* We also defer to the trial court's determination of credibility. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011). We review for an abuse of discretion "the trial court's discretionary rulings such as custody decisions" and review for clear legal error questions of law. *Corporan*, 282 Mich App at 605 (citation omitted). "A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law." *Id.* (citation omitted). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Id.* at 605-606 (citation omitted).

## III. ANALYSIS

The Child Custody Act of 1970, MCL 722.21 *et seq.*, governs child custody disputes between parents. *Mauro v Mauro*, 196 Mich App 1, 4; 492 NW2d 758 (1992). A custody award may be modified only upon a showing of proper cause or a change of circumstances establishing that the modification is in the children's best interests. MCL 722.27(1)(c); *Lieberman v Orr*, 319 Mich App 68, 81; 900 NW2d 130 (2017). The party seeking change must establish by a preponderance of the evidence that proper cause or a change of circumstances exists before the existence of an established custodial environment and the best-interest factors may be considered or a previous valid custody decision may be changed. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003).

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." *Id.* at 511. A particular fact raised by a party must be relevant and "must be of a magnitude to have a significant effect on the child's well-being to the extent that revisiting the custody order would be proper." *Id.* at 512. "When a movant has

demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interest factors.” *Id.*

“[T]o 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. The evidence, however, must establish “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. Trial courts must determine whether a material change of circumstances has occurred based on the facts of each case, gauging their relevance in relation to the statutory best-interest factors. *Id.* at 514.

In this case, the trial court considered the evidence and determined that plaintiff failed to establish by a preponderance of the evidence that proper cause or a change of circumstances existed sufficient to require revisiting the last custody order. Plaintiff contends that the referee and the trial court erred because the evidence clearly established that defendant made decisions based on her spite for him in total disregard for the children. The record, however, reflects that defendant’s decisions respecting extracurricular activities and cell phone usage related to normal life circumstances typical of elementary-aged children. Respecting the issue of extracurricular activities, the record reflects that the primary reason for defendant’s decision was to ensure that both children could participate without disruption to their schedules because of transportation issues. Although defendant’s conduct may have in part been based on animosity for plaintiff, the record does not support concluding that her decision arose solely out of this. Further, the facts presented by plaintiff to prove the existence of proper cause fell far short of establishing that defendant’s decisions were of such magnitude that they had a significant effect on the children’s well-being. The record does not establish that the children’s well-being suffered in any significant way. The record also does not establish that material changes have had or will almost certainly have an effect on the children. The decisions involving scheduling extracurricular activities and managing conflicting schedules appear to have been nothing more than an effort to deal with the normal life changes that occurred during the life of the children. The trial court did not err by finding that the facts established that the parties could not agree on parenting roles and were unwilling to cooperate with each other. The record does not establish that the facts clearly preponderate in the opposite direction.

Plaintiff also argues that defendant’s refusal to allow the children to use the cell phones he gave them, or communicate with plaintiff by means other than her cell phone, demonstrates defendant’s desire to hurt plaintiff irrespective of the children’s best interests. Review of the record, however, does not support plaintiff’s contention. MCL 722.26a(4) provides, “During the time a child resides with a parent, that parent shall decide all routine matters concerning the child.” Decisions regarding the children’s use of phones, electronic devices, or social media while at defendant’s residence pertain to routine matters left to defendant’s discretion while the children are in her physical custody. Her discretionary decisions do not establish proper cause or a change in circumstances warranting revisiting the previous legal custody order. The evidence related to defendant’s decisions regarding such conduct in defendant’s home neither establish that the children’s well-being has been significantly impacted nor that material changes have had or will almost certainly have an effect on them. Accordingly, we find no merit to plaintiff’s

claim of error because he failed to present sufficient evidence that warranted revisiting the previous legal custody order.

Plaintiff argues that, if the trial court had analyzed the best-interest factors, it would have found that several factors favored plaintiff. The trial court, however, had no obligation to engage in a best-interests analysis because plaintiff failed to meet his threshold burden of establishing by a preponderance of the evidence that proper cause or a change of circumstances warranted revisiting the previous legal custody order. We agree with the trial court that plaintiff failed to establish by a preponderance of the evidence either proper cause or a change of circumstances sufficient to warrant reconsideration of the previous custody order. After making this threshold determination, the trial court did not abuse its discretion by denying plaintiff's motion for change of legal custody. The great weight of the evidence supported the trial court's conclusion that plaintiff failed to establish by a preponderance of the evidence one or more appropriate grounds warranting review of the legal custody order previously entered in this case. Accordingly, the trial court did not err.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood  
/s/ James Robert Redford