

STATE OF MICHIGAN
COURT OF APPEALS

SHEILA M. HARGER,

Plaintiff-Appellant,

v

THOMAS STEWART MURDOCK,

Defendant-Appellee.

UNPUBLISHED
February 10, 2015

No. 323438
Alger Circuit Court
Family Division
LC No. 2005-004269-DM

Before: O'CONNELL, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's August 12, 2014 order denying her motion for sole legal custody of the parties' two children. We affirm.

Plaintiff and defendant were divorced on February 28, 2006. The judgment awarded the parties joint legal custody and plaintiff primary physical custody of their two children. Since that date, plaintiff and defendant have both filed several motions regarding custody and parenting time. This appeal is based on plaintiff's July 3, 2014 motion requesting that she be awarded sole legal custody over the parties' children.¹ The trial court heard the motion on August 11, 2014, and, after hearing testimony, argument, and reviewing the parties' submissions, the trial court found that there had not been a sufficient change in circumstances relating to the parties' ability to have input into major life decisions affecting the children. Accordingly, the trial court denied plaintiff's motion.

We conclude that plaintiff has abandoned each of the five questions presented on appeal. *Estelle v Gamble*, 429 US 97, 106-107; 97 S Ct 285; 50 L Ed 2d 251 (1976) (*pro se* pleadings will generally not be held to the same strict scrutiny as those drafted by an attorney). "It is well

¹ Plaintiff also attempted to appeal the trial court's July 15, 2014 order maintaining the status quo pending review of plaintiff's motion. That appeal was dismissed for lack of jurisdiction because it was untimely, MCR 7.204(A)(1)(a)-(b), and because it was not a final order that was appealable by right, MCR 7.202(6)(a); MCR 7.203(A). *Harger v Murdock*, unpublished order of the Court of Appeals, entered September 24, 2014 (Docket No. 323438).

settled that mere statement of a position without argument or citation of authority is insufficient to be considered by an appellate court.” *Haynes v Monroe Plumbing & Heating Co.*, 48 Mich App 707, 719; 211 NW2d 88 (1973); see also *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Nevertheless, even giving plaintiff’s arguments a liberal review, *Estelle*, 429 US at 106-107, we conclude that the record shows that they are without merit.

First, plaintiff argues that the trial court erred in “considering” proper cause and the change of circumstances. We disagree. “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). Under this standard, “this Court defers to the trial court’s findings of fact unless the trial court’s findings ‘clearly preponderate in the opposite direction.’ ” *Id.*, quoting *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994).

Before the trial court, plaintiff made no mention of whether proper cause existed. Accordingly, we need not address that argument on appeal. See *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993) (“Issues raised for the first time on appeal are not ordinarily subject to review.”). Plaintiff did, however, argue that a change in circumstances occurred when defendant, who was already in prison, was resentenced to a longer prison term.

The Child Custody Act, MCL 722.21 *et seq.*, “applies to all circuit court child custody disputes and actions, whether original or incidental to other actions.” MCL 722.26(1). “The purposes of the act are to promote the best interests of the child and to provide a stable environment for children that is free of unwarranted custody changes.” *Pierron v Pierron*, 282 Mich App 222, 243; 765 NW2d 345 (2009). A custody order, once entered, “is legally binding on the parents and the order cannot be modified absent court approval or compliance with the applicable provisions of the Child Custody Act.” *Grange Ins Co of Michigan v Lawrence*, 494 Mich 475, 508; 835 NW2d 363 (2013).

“If a parent wishes to modify a custody order, the [Child Custody] Act requires a parent to move for modification of the custody order and to demonstrate a proper cause or change of circumstances related to the established custodial environment.” *Id.* at 509; MCL 722.27(1). To establish proper cause, the moving party must prove an appropriate ground exists for legal action to be taken by the trial court, one that is relevant to at least one of the twelve statutory best interest factors and has a *significant* effect on the child’s well-being. *Vodvarka v Grasmeyer*, 259 Mich App 499, 512; 675 NW2d 847 (2003). Similarly, “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 (emphasis in original).

If the trial court finds sufficient proper cause or a change in circumstances to revisit an existing custody order, it must next determine whether an established custodial environment exists. *Pierron*, 282 Mich App at 244. “An established custodial environment exists ‘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.’ ” *Id.*, quoting MCL 722.27(1)(c). A “court shall not modify or amend its previously 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.” MCL 722.27(1)(c).

On appeal, plaintiff argues regarding whether she demonstrated proper cause or a change in circumstances: “There is a significant change of circumstances with [defendant]’s extended sentencing by [the trial court], which he pointedly showed the years of repeated drunken behavior resulting in arrests, PPOs, DWI and OWI and loss of parenting time, all of which were a factor to his decision.” As the trial court indicated, however, plaintiff has never argued that defendant’s incarceration impacts his ability to make major life decisions regarding their children. Instead, plaintiff merely states that defendant’s extended sentence amounts to a change in circumstances. Plaintiff has failed to articulate any material change of circumstances that significantly affects the children’s well-being. The fact that defendant faces a more lengthy incarceration than he did at the time of the court’s original determination is not a material change and does not significantly affect the children’s well-being: Plaintiff had and still does have their physical custody, and defendant was and remains incarcerated, albeit longer. Accordingly, the trial court’s decision that plaintiff had not demonstrated a change in circumstances was not against the great weight of the evidence.

Second, plaintiff argues that the trial court erred in considering the children’s preferences. We disagree. All custody disputes must be resolved in the child’s best interests by weighing the statutory factors outlined in MCL 722.23. *Eldred*, 246 Mich App at 150. One of those factors is the “reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.” MCL 722.23(i). “The child’s preference does not automatically outweigh the other factors, but is only one element evaluated to determine the best interests of the child.” *Treutle v Treutle*, 197 Mich App 690, 694; 495 NW2d 836 (1992). Moreover, because plaintiff did not establish the requisite change of circumstances or proper cause, the trial court was not required to analyze the best-interest factors, including the children’s preference. *Vodvarka*, 259 Mich App at 508-509.

Nevertheless, the record shows that the trial court, in an in-chambers, recorded interview, met with each child. The trial court indicated that although the children expressed a desire to no longer have contact with defendant while he was in prison, they also indicated that they loved defendant and were willing to continue seeing him. The trial court expressed its concern that the children’s expressed desire to no longer have contact with defendant may have been, in part, due to their desire to please plaintiff. Taking this into consideration, the trial court altered defendant’s telephone parenting time. Thus, it is clear that the court did consider the children’s preferences. There is also nothing in the record to show that the court in any way coerced the children.

We affirm.

/s/ Peter D. O’Connell
/s/ David H. Sawyer
/s/ Jane E. Markey