

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE J. SEALY,

Plaintiff-Appellant,

v

JOHN D. KENOYER,

Defendant-Appellee.

UNPUBLISHED

August 12, 2004

No. 254775

Eaton Circuit Court

LC No. 95-000922-DM

Before: Murray, P.J., and Markey and O’Connell, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order modifying custody. Specifically, she appeals the trial court’s disposition of this case on remand from this Court. We affirm.

In her first appeal to this Court, plaintiff asserted that the trial court erred by failing to determine whether proper cause or a change in circumstances justified modifying custody. She contended as well that the trial court incorrectly utilized the preponderance of the evidence standard, as opposed to using the clear and convincing evidence standard. We agreed with both of these arguments.

Plaintiff now argues that the trial court erred when it entered its decision on remand without first conducting further proceedings consistent with our previous opinion in this case. We disagree. The trial court was required on remand to determine whether a change in circumstances or proper cause were proven to exist, and to apply the clear and convincing standard to the facts. The trial court did both. The trial court sufficiently articulated what factors it relied upon in determining a change in circumstances and proper cause, citing to specific evidence. Moreover, the trial court explicitly concluded that its view of the facts, even under a clear and convincing evidence standard, was sufficient to warrant its decision.

Plaintiff’s reliance on *Fletcher v Fletcher*, 447 Mich 871; 526 NW2d 889 (1994), is misplaced. In *Fletcher*, the Court found that the trial court erred in relying on certain factors when making its custody decision, and therefore remanded the case to reevaluate the factors. *Id.* at 889. In doing so, the Court indicated that the trial court should obtain up-to-date information. *Id.* Unlike *Fletcher*, in the instant case we remanded for the court to make the legal conclusion whether proper cause or a change in circumstances existed and to apply the clear and convincing evidence standard to the facts. With regard to both issues, we did not conclude that the trial court relied on invalid factors or erred in any particular factual findings; indeed, we concluded

that the trial court made legal errors by not first determining whether proper cause or a change in circumstances existed and by improperly determining that the preponderance of the evidence standard applied. As a result, we simply remanded so the trial court could apply the correct legal standards to the facts, which it has done.¹

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell

¹ Although the trial court should have awaited the return of the record before acting on our prior opinion, MCR 7.215(F), its failure to do so does not warrant reversal.