

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL R. KERKELA,
Plaintiff-Appellee,

UNPUBLISHED
July 11, 2006

V

JESSICA A. NADEAU,
Defendant-Appellant.

No. 267423
Marquette Circuit Court
LC No. 96-031927-DM

Before: O’Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying her motion for a change in custody of the parties’ minor children. We affirm.

In reviewing a custody decision, three standards of review apply:

The great weight of the evidence standard applies to all findings of fact. A trial court’s findings regarding the existence of an established custodial environment and regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. An abuse of discretion standard applies to the trial court’s discretionary rulings such as custody decisions. Questions of law are reviewed for clear legal error. A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law. [*Vodvarka v Grasmeyer*, 259 Mich App 499, 507-508; 675 NW2d 847 (2003) (citations omitted).]

A custody award may be modified only when the moving party first establishes by a preponderance of the evidence “proper cause” or “change of circumstances” which establishes that the modification is in the child’s best interests. MCL 722.27(1)(c); *Vodvarka, supra* at 508. “[P]roper cause means one or more appropriate grounds that have or could have a significant effect on the child’s life to the extent that reevaluation of the child’s custodial situation should be undertaken.” *Vodvarka, supra* at 511. Appropriate grounds for establishing proper cause should be based on the statutory best interest factors, MCL 722.23(a)-(l). *Id.* at 511-512. Typically, for purposes of establishing proper cause, the trial court is limited to consider matters that occurred after the entry of the last custody order unless unusual circumstances arise. *Id.* at 515.

To establish a change of circumstances, the moving party must show that the conditions surrounding custody of the child since the entry of the last custody order have materially changed and therefore “have or could have a *significant* effect on the child’s well-being[.]” *Vodvarka, supra* at 513 (emphasis in original). “[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. A change of circumstances determination is case specific and should also be based on the statutory best interest factors. *Id.* at 514.

If the moving party does not meet the initial burden of establishing proper cause or a change in circumstances, the trial court cannot completely reevaluate the statutory best interest factors or consider whether an established custodial environment exists. *Vodvarka, supra* at 509. An evidentiary hearing is not always necessary to resolve this initial issue if “the facts alleged to constitute proper cause or a change in circumstances will be undisputed, or the court can accept as true the facts allegedly comprising proper cause or a change in circumstances, and then decide if they are legally sufficient to satisfy the standard.” *Id.* at 512 (citing MCR 3.210(C)(8)).

Specifically, MCR 3.210(C)(8) provides as follows:

In deciding whether an evidentiary hearing is necessary with regard to a postjudgment motion to change custody, the court must determine, by requiring an offer of proof or otherwise, whether there are contested factual issues that must be resolved in order for the court to make an informed decision on the motion.

Defendant argues that the trial court erred in denying her request for a full evidentiary hearing. We disagree and find that the trial court did not err in holding that defendant failed to establish proper cause to revisit the child custody factors. In determining that a full evidentiary hearing was not warranted, the trial court assumed plaintiff’s offers of proof to be true and concluded that a change of custody could not address the concerns raised by defendant about the minor children any better than they were already being addressed in the existing custodial environment. This finding, that defendant failed to establish “one or more proper grounds that have or could have a significant effect on the child[ren’s lives] to the extent that a reevaluation of the child[ren’s] custodial situation would be undertaken,” is not an incorrect application of the law on these facts. Since we find there was no legal error in the trial court’s conclusion that an evidentiary hearing was not warranted, we also find no abuse of discretion in the trial court’s denial of defendant’s motion for change of custody. *Vodvarka, supra* at 507-508.

Because we find no abuse of discretion in the trial court’s denial of defendant’s motion for change of custody, we need not address defendant’s remaining issue.

Affirmed.

/s/ Peter D. O’Connell
/s/ Willaim B. Murphy
/s/ Kurtis T. Wilder