STATE OF MICHIGAN

COURT OF APPEALS

SHAWN MOORE, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED September 13, 2007
v	No. 277533 Saginaw Circuit Court
JAMIE MOORE, a/k/a JAMIE WILLIAMS, Defendant/Counter-Plaintiff-Appellee.	LC No. 04-053831-DM

Before: Bandstra, P.J., Zahra and Owens, JJ.

PER CURIAM.

In this custody dispute, appellant father appeals as of right from the December 7, 2006, judgment of divorce, in which the parties were awarded joint legal and physical custody of their daughter. We affirm.

The parties married on October 6, 2001, and their daughter was born on December 23, 2003. Appellant filed for separate maintenance on September 8, 2004. In November 2004, the trial court entered a stipulated order regarding custody, giving the parties joint legal custody and appellant physical custody of their daughter. In December 2004, appellee moved out of the marital home, filed an objection to the custody order on grounds that she had not been represented by an attorney and had been coerced into signing it, and filed a counter-complaint for divorce. In October 2006, the trial court issued an opinion that modified custody, giving the parties joint physical and legal custody of the child, and included these terms in the parties' judgment of divorce.

Appellant contends that the trial court erred by modifying custody without making a finding that a significant change in circumstances had occurred. We disagree. We must affirm the trial court's order in a child custody dispute "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." MCL 722.28.

A party seeking a custody modification may meet its initial burden by proving either a change in circumstances *or* proper cause. MCL 722.27(1)(c); *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). From the record, it appears that the evidence proffered by appellee was relevant to a proper cause analysis. The trial court noted appellee's

contention that she felt "intimidated" into signing the November 2004 stipulated order. Considering the record evidence, including appellee's testimony on the matter, the trial court could properly find that she signed the stipulated order under duress. As this Court indicated in *Rossow v Aranda*, 206 Mich App 456, 457-458; 522 NW2d 874 (1994), proof of duress is sufficient to establish proper cause to consider a modification of custody.

Appellant also argues that the trial court erred in modifying custody where the statutory best interest factors, which are found at MCL 722.23, weighed evenly for each party. We disagree. The court found that MCL 722.23(a) favored appellant because he had been the child's primary caregiver since the parties' separation. The court found the parties equal on all other factors except MCL 722.23(j). On this factor, the court found that "[d]espite [appellant's] recognition that the child would benefit from additional time with [appellee], . . . he continues to have difficulty facilitating this relationship through increased parenting time. The Court therefore finds [appellee] to be at a slight advantage on this factor." The court reviewed the evidence on other factors, noting that both parties had engaged in "inappropriate" behavior. Although the court noted that the parties' past drug use created some concern, the court stated that it was "encouraged by evidence that both parents have made real efforts to improve themselves as individuals and as parents since the commencement of this action," and found that "both parents are relatively equal in their ability to parent this child."

In *Heid v AAASulewski* (*After Remand*), 209 Mich App 587, 592; 532 NW2d 205 (1995), the statutory best interest factors weighed equally between the parents. The *Heid* Court held, "[A] finding of equality or near equality on the [statutory best interest] factors . . . will not necessarily prevent a party from satisfying the burden of proof by clear and convincing evidence on a motion to modify custody." *Id.* at 593. The *Heid* Court continued, "It is eminently reasonable and just to hold, on this record, that this child's best interest is significantly advanced by having two parents who are at all times responsible for and actively involved in his care." *Id.* at 594-595. The same reasoning applies in this case. Accordingly, we find no abuse of discretion in the trial court's custody award.

Affirmed.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Donald S. Owens