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STATE OF MICHIGAN

COURT OF APPEALS

ERICA L. ELLISON,

Plaintiff/Counterdefendant-Appellant,

v

SAMUEL EUGENE ELLISON,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
September 11, 2026
1:29 PM

No. 378854
Midland Circuit Court
LC No. 14-001948-DM

Before: WALLACE, P.J., and CAMERON and KOROBKIN, JJ.

PER CURIAM.

In this child-custody dispute, plaintiff appeals as of right the trial court's order modifying parenting time and awarding defendant primary physical custody of their two minor children. We vacate the order and remand for further proceedings.

I. BACKGROUND

When plaintiff and defendant divorced, the judgment of divorce awarded them joint legal and physical custody of their children. The parties alternated parenting time every other week. After several years of this arrangement, defendant filed an ex parte petition asserting that plaintiff's live-in boyfriend, Brandon Houtz, was behaving inappropriately toward the children. The petition alleged that Houtz was touching the children on their buttocks, making inappropriate comments on their appearance, and had assaulted one of the minor children. Further, defendant alleged that plaintiff was not following a safety plan that she had signed from Children's Protective Services (CPS). The trial court ultimately ordered that plaintiff and defendant would continue to share joint legal and physical custody of the children and that parenting time would occur in alternating week intervals. The court ordered that during parenting time with plaintiff, Houtz "shall not be alone with the minor children" and "shall not touch (physical contact) the minor children under any circumstances."

Two years after this order entered, defendant again sought an ex parte modification of custody and parenting time because, he asserted, plaintiff had failed to comply with the prior order due to Houtz continuing to touch the children. The court entered a temporary order that suspended

plaintiff's parenting time. Plaintiff filed an objection, asserting that defendant's allegations were false and that it would be against the children's best interests to suspend her parenting time.

The trial court held a hearing on defendant's ex parte motion, at which Houtz and a law enforcement officer testified. The officer testified regarding an interview he conducted with plaintiff who confirmed that the children had been left with Houtz without another adult present, in violation of the court's order. Likewise, plaintiff admitted during the interview that Houtz continued to touch the children, including Houtz touching their legs with his hands, hugging them, and entering the children's rooms while they were in bed and removing the blankets. Houtz admitted to touching the children on their buttocks with his hand, wrestling with them, touching one of the children with his hand on her leg, hugging them (allegedly at their initiation), and pulling the blanket off of one of the children when she slept, purportedly in an attempt to wake her up after sleeping late. Houtz admitted that he had been in the children's presence when their mother was not home, but testified that he and plaintiff interpreted the court's order to indicate that he could do so as long as his children, who also lived in the home, were present.

At the conclusion of the hearing, the court expressed surprise that grown adults, i.e., plaintiff and Houtz, would interpret the court's order to indicate that Houtz could be present with the children, without either of their parents being present, because Houtz's own minor children were there. The court held that this was "clearly not the intent" of the order. It likewise expressed dissatisfaction with the violation of the no physical contact order. Ultimately, the court found that defendant presented evidence sufficient to find proper cause to revisit the prior order on parenting time and custody. The court scheduled a later evidentiary hearing on custody and parenting time and ordered that plaintiff's parenting time would occur at plaintiff's sister's residence.

At the evidentiary hearing, plaintiff and a CPS investigator confirmed that the children were subject to repeated instances of touching by Houtz after the prior order prohibiting Houtz from touching the children was in effect. Additionally, their testimony confirmed that the children were left alone with Houtz, even though Houtz and plaintiff contended that Houtz's teenage children were present, which, plaintiff argued, complied with the prior order.

Forensic interviews of the children were introduced as evidence, and the CPS investigator testified that the cases involving the children and Houtz were closed because the allegations of Houtz's misconduct did not rise to the level of CPS standards for sexual abuse.

The trial court held that there was an established custodial environment for the children with both plaintiff and defendant, and that defendant's motion to modify parenting time would change those established custodial environments. The trial court then made findings as to the best-interest factors contained in MCL 722.23 before it found clear and convincing evidence that it was in each of the children's "best interests for the parties to continue sharing joint legal custody, with physical custody to Defendant Father."

Plaintiff now appeals.

II. ANALYSIS

On appeal, plaintiff challenges whether the trial court found proper cause to revisit the prior order on parenting time and custody and argues that the trial court's findings on the best-interest factors were against the great weight of the evidence and clearly erroneous.

"We apply three standards of review in custody cases. The great weight of the evidence standard applies to all findings of fact." *Merecki v Merecki*, 336 Mich App 639, 644; 971 NW2d 659 (2021) (quotation marks and citation omitted). The Child Custody Act demands that "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." MCL 722.28. The trial court's determination as to whether a party has demonstrated proper cause or a change of circumstances is upheld unless it is against the great weight of the evidence. *Merecki*, 336 Mich App at 644-645. "A finding of fact is against the great weight of the evidence if the evidence clearly preponderates in the opposite direction." *Id.* at 645 (quotation marks and citation omitted). The trial court's discretionary rulings, "such as custody decisions," are reviewed for abuse of discretion. *Id.* (quotation marks and citation omitted). For child custody determinations, an abuse of discretion "exists when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id.* (quotation marks and citation omitted). "Questions of law are reviewed for clear legal error," which occurs when a trial court "incorrectly chooses, interprets, or applies the law." *Id.* (quotation marks and citation omitted).

"Before modifying a custody order or a parenting-time order, a court must first consider whether the moving party has demonstrated by a preponderance of the evidence a change of circumstances or proper cause." *Barretta v Zhitkov*, 348 Mich App 539, 552; 19 NW3d 420 (2023).

> In order 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. Again, not just any change will suffice, for over time there will always be some changes in a child's environment, behavior, and well-being. Instead, the 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. [*Quint v Quint*, 351 Mich App 162, 170; 34 NW3d 616 (2024) (brackets omitted), quoting *Vodvarka v Grasmeyer*, 259 Mich App 499, 513-514; 675 NW2d 847 (2003).]

Proper cause "requires the party seeking the custody change to prove by a preponderance of the evidence the existence of an appropriate ground." *Pennington v Pennington*, 329 Mich App 562, 571-572; 944 NW2d 131 (2019). Additionally, "the ground must be relevant to at least one of the twelve statutory best-interest factors." *Id.* at 572.

The trial court concluded that defendant presented sufficient evidence to find proper cause to revisit the prior parenting time and custody order. It noted that plaintiff directly violated the

previous order and that the record reflected that the children were clearly uncomfortable with Houtz's conduct. Additionally, the trial court stated that it was confused as to why the children continued to be subjected to unwanted touching by Houtz when the prior order was put in place to prevent this conduct. Plaintiff's argument that the trial court found proper cause based on the violation of the prior order alone is misplaced, because the trial court's reasoning reflects that it was considering the substantive effect of Houtz's conduct on the children.

Nevertheless, plaintiff argues that neither finding rises to the level of proper cause and additionally questions the integrity of the CPS investigation as well as the children's statements in their respective forensic interviews. Plaintiff characterizes the allegations against Houtz as baseless and unsubstantiated, but plaintiff has mischaracterized the reports. The CPS report notes that CPS would not pursue further investigation based upon its opinion that Houtz's alleged conduct did not rise to the level of sexual abuse, not because the CPS investigator found the children's statements lacked veracity. The report's notes indicate that the CPS investigator and a law enforcement officer characterized Houtz's behavior as "grooming," and he might have been testing the older child to see what he could get away with around her. Overall, the record before this Court reflects that the children were subjected to unwanted touching by Houtz repeatedly and consistently while the prior order was in effect. The children having their bodily autonomy and boundaries repeatedly disregarded by an unrelated adult while at plaintiff's residence directly bears on their mental well-being and calls into question whether it is a "stable, satisfactory environment" under MCL 722.23(d). The trial court's finding of proper cause was not against the great weight of the evidence.

Plaintiff also argues that the trial court clearly erred in making findings against the great weight of the evidence when it found that the best-interest factors clearly and convincingly supported awarding defendant physical custody of the children. Custody decisions require that the trial court make findings as to every MCL 722.23 best-interest factor while parenting time decisions only require findings as to factors relevant to contested issues. *Shade v Wright*, 291 Mich App 17, 31-32; 805 NW2d 1 (2010). Our Supreme Court has also held the following regarding a trial court's findings concerning the best-interest factors:

> To summarize, when considering an important decision affecting the welfare of the child, the trial court must first determine whether the proposed change would modify the established custodial environment of that child. In making this determination, it is the child's standpoint, rather than that of the parents['], that is controlling. If the proposed change would modify the established custodial environment of the child, then the burden is on the parent proposing the change to establish, by clear and convincing evidence, that the change is in the child's best interests. Under such circumstances, the trial court must consider all the best-interest factors because a case in which the proposed change would modify the custodial environment is essentially a change-of-custody case. On the other hand, if the proposed change would *not* modify the established custodial environment of the child, the burden is on the parent proposing the change to establish, by a preponderance of the evidence, that the change is in the child's best interests. In addition, under those circumstances, although the trial court must determine whether each of the best-interest factors applies, if a factor does not apply, the trial court need not address it any further. In other words, if a particular

best-interest factor is irrelevant to the question at hand, i.e., whether the proposed change is in the best interests of the child, the trial court need not say anything other than that the factor is irrelevant. [*Pierron v Pierron*, 486 Mich 81, 92-93; 782 NW2d 480 (2010).]

MCL 722.23 sets forth the following factors that a court must consider and weigh in a best-interest determination:

> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
>
> (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
>
> (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
>
> (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
>
> (f) The moral fitness of the parties involved.
>
> (g) The mental and physical health of the parties involved.
>
> (h) The home, school, and community record of the child.
>
> (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
>
> (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.
>
> (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
>
> (*l*) Any other factor considered by the court to be relevant to a particular child custody dispute.

In this case, the trial court held that defendant's motion for a change in parenting time or custody would result in a change of the established custodial environment of the children. Therefore, the trial court was required to consider *all* of the best-interest factors. *Pierron*, 486 Mich at 92-93. However, the trial court specifically declined to assess factors (g), (j), and (k) after determining that they were "otherwise irrelevant" to the trial court's holding. The trial court is only permitted to state that a factor is irrelevant if the motion *would not* change the established custodial environment, *id*. at 93, and, as stated, the trial court concluded that it *would* change the established custodial environment. Therefore, the trial court erred when it did not make explicit findings regarding each of the best-interest factors despite determining that defendant's motion would change the established custodial environment. *Shade*, 291 Mich App at 31-32.

By failing to consider and weigh all the statutory factors, the trial court committed clear legal error.[1] As a result, this Court declines to address plaintiff's other arguments concerning other aspects of the trial court's best-interest findings.

For the reasons stated above, we vacate the order granting physical custody to defendant and remand this case to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Randy J. Wallace
/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin

[1] We are mindful of the fact that there are occasions in which a certain factor may not appear to be relevant in a given case; however, pursuant to *Pierron*, if the proposed change would result in a change in custody, then such factors must nonetheless be considered by the trial court because, again, *all* of the best interest factors must be considered in such situations, *Pierron*, 486 Mich at 92-93.