STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA EILEEN SERVIS, Plaintiff-Appellant,	UNPUBLISHED July 17, 2014
v	No. 320208 Kent Circuit Court
THOMAS H. VAN PUTTEN, Defendant-Appellee.	LC No. 08-003902-DS

Before: FITZGERALD, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right the January 17, 2014, order granting defendant Thomas H. Van Putten's motion for change of custody in regard to their minor child; granting Van Putten child support; and addressing parenting time. We affirm.

Servis argues that Van Putten never clearly established facts that would show proper cause or a change of circumstances sufficient to warrant a change of custody. A child custody award may only be modified after there has been "proper cause shown or because of change of circumstances . . . ." MCL 722.27(1)(c). Thus, "the party seeking a change of custody must first establish proper cause or change of circumstances by a preponderance of evidence." *In re AP*, 283 Mich App 574, 600; 770 NW2d 403 (2009). This determination must be made before "the trial court can consider whether an established custodial environment exists (thus establishing the burden of proof) and conduct a review of the best interest factors." *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). A determination whether a change of circumstances or proper cause existed is a question of fact reviewed under the great weight of the evidence standard. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009).

To constitute proper cause meriting consideration of a custody change, there must be "one or more appropriate grounds that have or could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken." *Vodvarka*, 259 Mich App at 511. The proper cause determination is a factual determination that should be made case by case, and the trial court should rely on the 12 statutory best-interest factors under MCL 722.23 "in deciding if a particular fact . . . is a 'proper' or 'appropriate' ground to revisit child custody . . . ." *Id.* at 511-512. The grounds presented "must be of such magnitude to have a significant effect on the child's well-being." *Id.* at 512.

"Although the threshold consideration of whether there was proper cause or a change of circumstances might be fact-intensive, the court need not necessarily conduct an evidentiary hearing on the topic." *Corporan*, 282 Mich App at 605. The reason why an evidentiary hearing is not required to determine whether there was proper cause or a change of circumstances is because "[o]ften times, the facts alleged to constitute proper cause or a change of circumstances will be undisputed, or the court can accept as true the facts allegedly comprising proper cause or a change of circumstances, and then decide if they are legally sufficient to satisfy the standard." *Vodvarka*, 259 Mich App at 512.

Here, the trial court found that the fact that Servis had been convicted and sent to jail for domestic violence implicated MCL 722.23(k), which considers "[d]omestic violence, regardless of whether the violence was directed against or witnessed by the child." The fact that Servis was convicted of domestic violence was undisputed before the trial court, and an evidentiary hearing into that fact was unnecessary. *Vodvarka*, 259 Mich App at 512. The trial court properly relied on MCL 722.23(k) in determining that Servis' domestic violence was a proper ground to revisit child custody. *Vodvarka*, 259 Mich App at 511-512. The trial court's finding that there was proper cause to merit consideration of a custody change under MCL 722.23(k) was not against the great weight of evidence. MCL 722.28; *Vodvarka*, 259 Mich App at 511.

Servis also argues that the trial court erred when it failed to hold an evidentiary hearing before determining whether a change in custody was in the minor child's best interests and by relying solely on the Friend of the Court (FOC) recommendations regarding change of custody, parenting time, and child support. Whether a trial court erroneously failed to conduct an evidentiary hearing during a child-custody dispute is reviewed for clear legal error. *Harvey v Harvey*, 257 Mich App 278, 282-283, 291-292; 668 NW2d 187 (2003), aff'd on other grounds 470 Mich 186 (2004).

Under the Child Custody Act, MCL 722.21 *et seq.*, a trial court has jurisdiction over proceedings related to child custody, child support, and parenting time. *Harvey*, 257 Mich App at 291. However, under MCL 552.507(2), an FOC referee may hear almost all motions in a domestic relations case and may submit a recommended order regarding child custody, child support, and parenting time. MCL 552.507(4) provides that:

> The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. *The request of a party shall be made within 21 days after the recommendation of the referee is made available to that party*. [Emphasis added.]

MCR 3.215(E)(4) provides, in relevant part, that:

> A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing and that resulted in a statement of findings and a recommended order by *filing a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for the parties* . . . . [Emphasis added.]

MCR 3.215(E)(1)(c) provides in relevant part that "[i]f the recommendation is approved by the court and no written objection is filed with the court clerk within 21 days after service, the recommended order will become a final order." Thus, if no written objection to the referee recommendation is filed within 21 days after services, and the trial court approves the referee's recommended order, the recommended order will become a final order. *Rivette v Rose-Molina*, 278 Mich App 327, 329; 750 NW2d 603 (2008).

In this case, the FOC notice filed with the trial court on November 20, 2013, included a certificate of mailing that indicated that the FOC recommendation and proposed order was mailed to the parties on November 19, 2013. Servis did not file her objection to the FOC recommendations or proposed order until December 11, 2013, one day after her 21-day period to object to the FOC proposed order expired. MCR 1.108(1); MCR 2.107(3). Thus, Servis was not entitled to a de novo hearing conducted by the trial court under MCL 552.507(4) and MCR 3.215(E)(4). Further, the trial court's act of entering the FOC proposed order as a final order was consistent with MCR 3.215(E)(1)(c). *Rivette*, 278 Mich App at 329. The trial court did not commit clear legal error. *Harvey*, 257 Mich App at 282-283, 291-292.

Servis argues that because she has a severe form of rheumatoid arthritis, the trial court erred in relying on the FOC decision to impute an income of $20,857 to Servis, resulting in a monthly support order of $330. However, Servis provides no factual support for her assertion that she has rheumatoid arthritis. This issue is abandoned. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

Finally, Servis argues that the trial court violated her due process rights to the minor child when it failed to hold an evidentiary hearing regarding whether Van Putten established proper cause or a change of circumstances and when it decided not to hold a de novo hearing regarding the FOC recommendations and proposed opinion. As discussed above, the trial court was not required to hold those hearings, and Servis' due process arguments are meritless.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Douglas B. Shapiro