

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TERRY BEARD,

Plaintiff/Counter-Defendant-  
Appellee,

v

PATRICIA STANKIEWICZ, f/k/a PATRICIA  
BEARD,

Defendant/Counter-Plaintiff-  
Appellant.

UNPUBLISHED  
July 22, 2014

No. 319638  
Bay Circuit Court  
LC No. 04-007110-DM

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Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

In this custody dispute, defendant/counter-plaintiff Patricia Stankiewicz (defendant) appeals by right a December 4, 2013, trial court order granting plaintiff/counter-defendant Terry Beard's (plaintiff's) motion to change custody of the parties' 14-year-old daughter, SB. In the order, the trial court awarded plaintiff physical custody of SB and awarded both parties full joint legal custody of both SB and, CB, the parties' 10-year-old son. Prior to the order, defendant had physical custody of SB and the parties shared legal custody of the children with respect to medical and educational decisions only. For the reasons set forth in this opinion, we affirm in part, reverse in part, and remand for further proceedings.

**I. FACTS AND PROCEDURAL HISTORY**

The parties were divorced on January 13, 2005. At the time of the divorce, the parties had two minor children, SB (d/o/b July 2, 1999) and CB (d/o/b January 16, 2003). Defendant mother was awarded physical custody of the children and the parties shared joint legal custody of the children. Plaintiff father had parenting time with the children.

Following the judgment of divorce, the parties filed numerous motions regarding parenting time and custody. On June 11, 2007, the trial court limited the joint legal custody arrangement to education and medical issues, with defendant retaining sole discretion on all others. Plaintiff's parenting time was modified several times, with the last order being entered on March 7, 2011, which provided plaintiff with 100 overnights per year with alternate weekends.

On August 2, 2012, plaintiff moved to change custody of SB, requesting that the court award him physical custody and full shared legal custody of SB. Plaintiff alleged that SB's relationship with defendant had become "strained," and that SB and defendant constantly fought. Plaintiff also alleged that defendant brought SB to visit her boyfriend who was incarcerated at the Saginaw County Jail. The issue was referred to the Friend of the Court (FOC).

On January 25, 2013, the FOC issued a report recommending that plaintiff's motion be denied. The FOC concluded that plaintiff failed to show by clear and convincing evidence that a change of custody was in SB's best interests. However, the FOC noted that an "objective, professional assessment of [SB] and Mother's relationship" could provide the "requisite clear and convincing evidence." The FOC noted that defendant's parenting style is likely to "engender conflict with a strong willed teenager as looks to be the case here . . . the status quo is likely to bring ongoing, if not escalating, conflict . . . This will not be a good situation for all involved—most especially [SB]." The FOC recommended that SB undergo an assessment to determine if counseling services would be appropriate.

On April 15, 2013, the trial court ordered the parties to maintain the status quo with respect to custody and ordered SB to undergo a psychological assessment with Michelle Hugo, a licensed Child and Family Therapist at Bay Psychological Associates, P.C. Following the assessment, the trial court held a two day evidentiary hearing on October 24, 2013 and November 8, 2013, to resolve the custody issue.

At the hearing, Hugo testified as an expert in child and family counseling. Hugo met with SB on three occasions. Hugo testified that SB was "pretty distressed" "very fearful, worried, and anxious" and was "under a fair amount of pressure." Hugo explained that defendant was the source of SB's stress and she diagnosed SB with post traumatic stress disorder (PTSD). Hugo testified that SB "seemed very scared of her mother," even though defendant was not in the waiting room during the meeting. Hugo testified that, before the initial assessment, defendant called Hugo's office and threatened the office not to do the assessment; defendant stated that plaintiff did not have the authority to bring SB for an assessment. After reviewing the court order, Hugo proceeded with the assessment.

Hugo testified that SB informed her that defendant's boyfriend previously hit her and stated that defendant refused to allow her to talk with plaintiff on her birthday. Hugo testified that SB was struggling at school and SB indicated that defendant did not help her with homework. SB felt that she was in the middle of her parents' conflict. SB's parents refused to communicate with each other and instead used her as a go-between.

Hugo testified that SB's contact with defendant should be suspended and that a change of custody was appropriate. Hugo was of the opinion that SB should attend weekly counseling sessions and that continued contact between defendant and SB would be "extremely detrimental" to SB's psychological development and well-being. SB was in "great distress" and was having "much more" difficulties than "typical" conflicts between a teenager and her mother. Hugo testified that SB presented with what appeared as "borderline abuse," that needed to be monitored, but did not rise to the level necessitating a report to the Department of Human Services (DHS). Hugo interviewed both parents and testified that plaintiff appeared to be "meek

and mild,” and did not appear to be alienating SB from defendant. Defendant, in contrast, “minimized” SB’s difficulties and did not believe that SB needed counseling.

On cross-examination, Hugo admitted that she did not review files from a previous counselor that SB attended. Hugo explained that she wanted to commence the assessment without bias and form her own opinion. Hugo agreed that she did not review the court file or SB’s academic records before arriving at her conclusions.

Plaintiff testified that he moved to change custody because the conflicts between SB and defendant “were escalating again.” Plaintiff described several incidents involving conflicts between SB and defendant including once incident where defendant called police to force SB to leave plaintiff’s home and return to defendant’s house. In addition to the conflicts with defendant, SB was doing very poorly in school, having received nearly all “D” grades on her latest report card. SB was depressed and had lost self-esteem over the past year. SB also expressed her preference to plaintiff regarding custody.

Plaintiff testified that he felt that it would be in SB’s best interests if he had physical custody and he offered testimony about his home life and the environment that he provided for SB. Plaintiff lived with his current wife Tracey Beard, whom he married in 2007. He and Tracey lived in a home with Tracey’s 18-year-old daughter Abree. Plaintiff was part-owner of a trucking company that employed 16 people. Plaintiff testified that he is usually done with work at 4:30 p.m., but sometimes gets calls at random hours of the day. Plaintiff testified that SB has an “excellent” relationship with Tracey and Abree, who lived at home while working and attending school.

Plaintiff testified that he was involved in his children’s lives. Plaintiff stated that he attended SB’s recent parent-teacher conferences and kept track of her progress at school through the Internet. He stated that he could help SB with homework and he could drive her to and from school. Plaintiff testified that he thought SB was involved in too many extra-curricular activities and he would limit the activities to one-per-year. Plaintiff testified that both the children were on Tracey’s health insurance plan and he always paid his child support on time.

Plaintiff testified that defendant did not facilitate the children’s relationship with him. He explained that defendant refused to communicate with him and instead communicated with him through the children. Plaintiff gave SB a cellular telephone so that she could call him when she wanted, but he stated that defendant refused to allow SB to use the phone. Plaintiff testified that he did not prevent SB or CB from calling and talking to defendant during his parenting time.

With respect to the children’s extra-curricular activities, plaintiff testified that he attended CB’s baseball and football games, but sometimes he missed the baseball games. He did not go to CB’s parent-teacher conferences. Plaintiff attended some of SB’s cheerleading events. Plaintiff agreed that defendant took the kids to most of their extra-curricular events because she had them the majority of the time. Plaintiff stated that he did not attend church regularly, but he had no problem with defendant raising the kids in the Catholic Church. Plaintiff agreed that he brought SB to counseling without consulting defendant.

Following plaintiff's testimony, the court concluded that plaintiff established by a preponderance of the evidence that there was proper cause or a change of circumstances. The court placed emphasis on Hugo's testimony and noted that it spoke with SB on camera and concluded that "the threshold has been met," and indicated it would consider the best interest factors in deciding whether to change custody.

Defendant testified that she resided at a residence in Linwood with the two children where she lived since 1996. Defendant disputed that she delayed bringing SB for an assessment with Hugo and explained that she brought SB immediately after learning about the court order. She stated that Hugo told her she was a "great mom" during the meeting she had with Hugo. Defendant informed Hugo that plaintiff did not have authority to bring SB for counseling because plaintiff did not have full legal custody of SB. Defendant informed Hugo that SB did not have any problems "out of the ordinary," and she described SB as a "typical 14-year-old" who "gets mad at her [mom]." Defendant explained that a lot of the conflicts between her and SB were caused by the cell phone that plaintiff gave to SB. Defendant explained that she did not approve of giving the phone to SB, and she continually had to take the cell phone away from SB to get her to do homework. Defendant testified that SB's problems at school were related to SB's stubbornness and defendant thought that some of the problems were intentionally created. Defendant stated that SB needed to learn how to be disciplined and study and defendant tried to help her with homework.

Defendant acknowledged that Jim McCarty, her boyfriend of three years, was a convicted felon and she did not dispute that McCarty had up to eight prior felony convictions. Defendant stated that none of the felonies were for violent offenses and instead involved breaking and entering, home invasion, and working as an unlicensed contractor. Defendant testified that McCarty and CB got along "great" and McCarty was actively involved in CB's life. McCarty previously lived with defendant and in 2012, defendant, a veterinary technician, paid over \$10,000 in fees, costs and restitution for McCarty. Defendant acknowledged that she went to visit McCarty on one occasion at the jail and left the kids in the car in a parking lot nearby.

Defendant testified that plaintiff was not actively involved in the children's lives. She stated that plaintiff did not attend many of the kid's after-school activities or parent-teacher conferences and he did not call CB on his birthday. Defendant denied that she alienated the children from plaintiff. She explained that she always encouraged plaintiff to be involved in the children's lives and stated that plaintiff was free to call her on any of her three phone lines.

Defendant testified that she worked as a veterinarian technician and was able to provide for the children. She did not have medical insurance, but enrolled the children in Medicaid during the time that they were without insurance. She testified that she was better able to provide love, affection, and discipline for the kids. In contrast, defendant did not think that plaintiff provided a disciplined environment for the children. For example, defendant testified that SB posted inappropriate photographs and lied about her age on Facebook while she was staying with plaintiff. Defendant explained that she was more involved in the lives of her children. She attended church and participated in youth ministry with the children.

Susan Stankiewicz, SB's maternal aunt, testified that she was actively involved in SB's life. Susan testified that SB and defendant were having normal "mother/daughter" conflicts, but

she agreed that defendant's relationship with McCarty may have negatively affected the mother-daughter relationship. Susan testified that it would not be good to split SB and CB up. Susan had not seen plaintiff at many of the children's extracurricular events.

After the close of proofs, the trial court applied the best interest factors and granted plaintiff's motion to change custody. The court awarded physical custody of SB to plaintiff and ordered both parties to share joint legal custody of SB. The court ordered SB to attend counseling and also ordered both parties to attend co-parent counseling. The court summarized the reasons for its decision as follows:

The reasons for my decision are that I do put good . . . serious and significant credibility in Miss Hugo's testimony, that [SB] is currently in crisis, and that things have gotten so bad between her mother and her that there does need to be a change in circumstances . . . We could disagree as to why that may have happened, but the fact is I do think that [SB] needs to have a change of scenery, a change of custody at this point.

The court entered a written order on December 4, 2013, wherein the court memorialized its holding and also ordered that both parties were to share full joint legal custody of CB. This appeal ensued.

## II. STANDARD OF REVIEW

Defendant raises several arguments related to the trial court's custody order. "We affirm a custody order unless the trial court's findings of fact were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Kessler v Kessler*, 295 Mich App 54, 58-59; 811 NW2d 39 (2011) (quotation and citation omitted). "Under the great weight of the evidence standard, this Court defers to the trial court's findings of fact unless the trial court's findings "clearly preponderate in the opposite direction." *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009) (citations and quotations omitted).

## III. ANALYSIS

Defendant first argues that the trial court erred in holding an evidentiary hearing to determine whether plaintiff met his initial burden to prove that there was proper cause or a change of circumstances under the Child Custody Act (CCA), MCL 722.21 *et seq.*

"A trial court may only consider a change of custody if the movant establishes proper cause or a change in circumstances." *Shann v Shann*, 293 Mich App 302, 305-306; 809 NW2d 435 (2011).

To establish proper cause, the moving party must establish by a preponderance of the evidence an appropriate ground that would justify the trial court's taking action. Appropriate grounds should include at least one of the 12 statutory best-interest factors and must concern matters that have or could have a significant effect on the child's life. [*Mitchell v Mitchell*, 296 Mich App 513, 517; 823 NW2d 153 (2012) (citations omitted).]

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[T]o 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 . . . [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. [*Vodvarka v Grasmeyer*, 259 Mich App 499, 513–514; 675 NW2d 847 (2003) (emphasis in original).]

Defendant contends that the trial court erred in holding an evidentiary hearing to determine if there was proper cause or a change in circumstances because plaintiff failed to allege facts to establish this threshold in his motion. Defendant’s argument lacks merit.

Contrary to plaintiff’s argument, this Court has not held that a trial court *cannot* hold an evidentiary hearing to determine the threshold question of whether there is proper cause or a change in circumstances. MCR 3.210(C)(8) provides that a court has discretion to hold an evidentiary hearing when deciding a motion to change custody:

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. [Emphasis added.]

Consistent with the court rule, in *Vodvarka*, 259 Mich App at 512, this Court held that a trial court is not *required* to hold an evidentiary hearing to resolve the initial threshold question in a motion to change custody when facts are undisputed or when the court can accept as true facts alleged in the motion. However, the *Vodvarka* Court did not hold that a trial court *cannot* hold a hearing to resolve the threshold inquiry under the CCA. See *id.*

Here, there were disputed issues of fact in plaintiff’s motion. Plaintiff alleged that the relationship between defendant and SB had become strained and that SB and defendant were constantly fighting. Plaintiff alleged that the strained relationship resulted in police being called on one occasion. Plaintiff also alleged that defendant took SB to a jail to visit her boyfriend. Additionally, after plaintiff filed a motion, the FOC issued a report indicating that a psychological evaluation of SB could constitute “clear and convincing” evidence to support plaintiff’s motion. Thereafter, pursuant to court order, Hugo performed an evaluation of SB. Plaintiff offered Hugo’s testimony in support of his motion. Hugo’s testimony was disputed by defendant. Thus, the trial court had discretion to hold a hearing to determine whether Hugo’s testimony and other offers of proof constituted proper cause or a change in circumstances. MCR 3.210(C)(8); *Vodvarka*, 259 Mich App at 512.

Defendant cites *Corporan*, 282 Mich App at 603-604, to argue that if a moving party “does not demonstrate proper cause or change of circumstances on the face of the motion, the trial court may not hold a child custody hearing.” However, contrary to defendant’s argument,

the *Corporan* Court did not hold that a trial court is precluded from holding an evidentiary hearing. Instead, in that case, there was no dispute that the plaintiff had financial difficulties and the child was experiencing academic difficulties. *Id.* at 608-609. This Court affirmed the trial court's holding that, under the circumstances, an evidentiary hearing was not necessary. *Id.* Thus, *Corporan* supports the proposition that a trial court has discretion in determining whether a hearing is necessary to determine whether there is proper cause or changed circumstances. In this case, the trial court decided to hold a hearing and it did not abuse its discretion in doing so.

Defendant also appears to argue that the April 15, 2013, stipulated order to maintain the status quo resolved plaintiff's motion and therefore the trial court should not have addressed it at the hearing. However, the stipulated order did not resolve plaintiff's motion. Instead, it maintained the status quo until Hugo completed the professional evaluation of SB. Plaintiff's motion to change custody was still pending when the court addressed it on October 24, 2013. Thus, the motion was properly before the court.

Moreover, the trial court's finding that plaintiff established proper cause or a change in circumstances was not against the great weight of the evidence because the finding did not "clearly preponderate in the opposite direction." *Corporan*, 282 Mich App at 605. Here, Hugo testified that SB appeared "very scared" of defendant and testified that continued contact between defendant and SB would be "extremely detrimental" to SB's psychological development and well-being. Hugo explained that SB was in "great distress," and was experiencing conflicts with defendant that were "much more" than "typical" conflicts between a teenager and a parent. Hugo testified that SB suffered from "borderline abuse," and she diagnosed SB with PTSD. In addition, SB was performing very poorly at school and SB stated that defendant's boyfriend physically hit her. At the time the trial court entered the last custody order, there was no evidence showing that the conflict between defendant and SB was "extremely detrimental" to SB's development and well-being. Furthermore, plaintiff's testimony showed that there was constant strife between defendant and SB and the trial court could have inferred that this was adversely impacting SB's performance at school and her overall development and wellbeing. Additionally, the trial court interviewed SB on camera and took SB's preference into consideration in reaching its conclusion.

In sum, the trial court did not err in holding an evidentiary hearing or in finding that there was proper cause or changed circumstances.

Next, defendant argues that the trial court committed clear legal error when it failed to determine whether there was an established custodial environment with either of the parties before it applied the best interest factors and changed custody.

MCL 722.27 governs the modification of a child custody order and it provides in relevant part as follows:

(c) [] The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that

environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

“[A] trial court is required to determine whether there is an established custodial environment with one or both parents before making *any* custody determination.” *Kessler*, 295 Mich App at 61-62 (emphasis in original). “Accordingly, a party who seeks to change an established custodial environment of a child is required to show by clear and convincing evidence that the change is in the child’s best interests.” *Id.*

In this case, the trial court did not make any determination regarding whether there was an established custodial environment with either or both of the parties. Instead, the court applied the best interest factors and determined that a change of custody was in SB’s best interests. By failing to first make a finding regarding the established custodial environment before applying the best interest factors, the trial court clearly erred as a matter of law. *Id.*

Furthermore, the error was not harmless. “The failure to determine whether there is an established custodial environment is not harmless because the trial court’s determination regarding whether an established custodial environment exists determines the proper burden of proof in regard to the best interests of the children.” *Id.* at 62. The trial court did not articulate the applicable burden of proof in making its findings or in its written order. In the written order, the trial court merely stated that plaintiff “satisfied the requisite burden of proof,” but the court did not indicate what that burden of proof was. Plaintiff argues that the trial court implicitly applied the clear and convincing standard, however, we will not make assumptions regarding what burden of proof the trial court applied, nor will we conduct de novo review to determine whether both parents had an established custodial environment. See *Fletcher v Fletcher*, 447 Mich 871, 882; 526 NW2d 889 (1994) (“review of custody orders is not de novo.”).

Because the trial court clearly erred in failing to make findings regarding a custodial environment and erred in failing to articulate the applicable burden of proof, we reverse that portion of the trial court’s order changing physical and legal custody of SB and remand for further proceedings.

On remand, the trial court must determine whether an established custodial environment existed with plaintiff, defendant, or both parties before it determines the custody arrangement that serves the best interests of the children. . . . After making its determination regarding the existence of an established custodial environment and evaluating the best-interest factors, the trial court shall determine whether either party has met its burden and fashion its award of custody accordingly. [*Kessler*, 295 Mich App at 63.]

Additionally, the trial court “should consider up-to-date information” and “any other changes in circumstances arising since the trial court’s original custody order.” *Fletcher*, 447 Mich at 889.

Next, plaintiff argues that the trial court erred in changing the legal custody of CB.

At the time plaintiff moved to change custody of SB, defendant had legal custody of both children except for medical and educational decisions. In plaintiff's motion to change custody, he did not move to change the legal custody arrangement with respect to CB. In making its ruling on the record, the trial court indicated that it would "restore full joint legal custody to both parties . . . so that both of you have . . . joint legal custody, over [SB]." There was apparent confusion over this aspect of the court's ruling when plaintiff's counsel and the trial court discussed the issue as follows:

*Plaintiff's Counsel.* And the change of the full legal custody, that is, that both parents shall have full legal custody, is that with both children, your Honor?

*Trial Court.* Yes. I didn't make a change with regard to [CB]. I'm sorry.

In its written order, the court clearly ordered plaintiff and defendant to share full legal custody of both children. In doing so, the trial court clearly erred. First, the trial court did not determine whether (1) there was proper cause or changed circumstances, (2) whether there was an established custodial environment, and (3) whether the change was in CB's best interests by applying the best interest factors and the proper burden of proof. See *Vodvarka*, 259 Mich App at 499; *Kessler*, 295 Mich App at 61-62. Second, the trial court changed legal custody of CB without providing defendant notice and an opportunity to be heard. As this Court has previously explained,

Although the [trial] court had the authority to change legal custody . . . we do not believe that it could do so without giving defendant notice and an opportunity to be heard. The court in effect deprived defendant of the opportunity to be heard. Had defendant had notice that the court was considering awarding sole legal custody to plaintiff, she might have presented further proofs or made different tactical decisions. [*Mann v Mann*, 190 Mich App 526, 538-539; 476 NW2d 439 (1991).]

In this case, the trial court changed legal custody of CB on its own accord. Plaintiff's motion did not include a request to change the legal custody of CB and defendant was not given notice that legal custody of CB was at issue during the evidentiary hearing. The court therefore clearly erred in modifying custody with respect to CB. We therefore reverse that portion of the trial court's order awarding both parties full joint legal custody of CB. *Id.*

Finally, defendant argues that the trial court erred in finding in favor of plaintiff with respect to the statutory best interest factors (d), (e) and (f).

"Generally, a trial court determines the best interests of the child by weighing the twelve statutory factors outlined in MCL 722.23." *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Factors (d), (e) and (f) provide as follows:

(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. [MCL 722.23.]

The trial court made the following findings with respect to these factors:

The length of time that the children have lived in a stable satisfactory environment [factor (d)] . . . [plaintiff] has been married for some years to his current wife.

Mrs. Stankiewicz, I do have to find fault that you have allowed your relationship with Mr. McCarty, in my judgment, to interfere with the stability of your relationship with your children. He is certainly a person of questionable character from what I understand in the proofs of this case. It appears to me that he has taken on an active role, at least to some extent, as a father figure or a disciplinarian. This is a very sensitive area with any children . . . It just doesn't bode well. And he is also a person I think that you have to be careful about. I don't think it's proper to visit a person in jail who's that new to the situation, with your kids in the car outside. I think that that is an unstable environment, and I think that- - I find that that factor favors [plaintiff.]

And he is sort of a s—along the same lines [factor (e)] . . . some of my comments that I just made would probably be more appropriate under Factor E. I find that favors the father.

The moral fitness of the parties involved [factor (f)] . . . I do think this slightly favors . . . [plaintiff] because of the comments I have made about Mr. McCarty.

Defendant argues that the trial court erred in weighing these factors in favor of plaintiff. Defendant contends that McCarty had not lived at defendant's residence for the past eight months and there was no evidence to suggest that her relationship with McCarty had a detrimental effect on SB. Defendant's argument lacks merit.

There was evidence that would have allowed the trial court to conclude that defendant's involvement with McCarty had a detrimental impact on SB and that McCarty's presence did not provide for a stable environment. Evidence showed that McCarty had an extensive criminal record with multiple felony convictions including convictions for home invasion and breaking and entering. McCarty's record showed that he could not conform his life to the law and he had recently been featured on a local news website showing that he was wanted for a criminal offense. Despite McCarty's repeated involvement in crime, defendant allowed McCarty to have a significant presence in the children's lives and potentially serve as a role-model to the children. McCarty lived at defendant's residence before he went back to jail. Defendant drove him to and from work-release, sometimes with SB in the car. In addition, in 2012, defendant paid over \$10,000 on behalf of McCarty for his various fines, costs, and restitution related to his criminal activity. Defendant acknowledged that she took the children to visit McCarty at the county jail and left the children in the car. SB informed her counselor that defendant's "boyfriend" physically hit her on one occasion. SB's maternal aunt also agreed that defendant's relationship with McCarty may have had an adverse impact on defendant's relationship with SB.

In contrast, plaintiff was in a stable relationship with his wife Tracey, with whom he had been married for several years. Tracey had a stable job at DHS and she provided health insurance for SB and CB. Tracey had a good relationship with SB and CB.

On this record, the trial court could have concluded that McCarty was a destabilizing and negative influence on the children. McCarty set a poor example for the children by living a life of crime. McCarty's poor choices hurt defendant and the children financially as defendant paid over \$10,000 in 2012 alone to remedy McCarty's criminal activities. In short, we cannot conclude that the trial court's factual findings with respect to factors (d) (e) and (f) clearly preponderate in the opposite direction. *Corporon*, 282 Mich App at 605.

#### IV. CONCLUSION

In sum, the trial court did not err in holding a hearing and determining that there was proper cause or a change in circumstances. The trial court clearly erred in failing to determine whether there was an established custodial environment before applying the best interest factors and the court also erred in failing to articulate and apply the proper burden of proof. In addition, the trial court clearly erred in changing the legal custody of CB. Finally, the trial court's factual findings with respect to best interest factors (d) (e) and (f) were not against the great weight of the evidence.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Neither party having fully prevailed, neither may tax costs. MCR 7.219(A). We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Stephen L. Borrello