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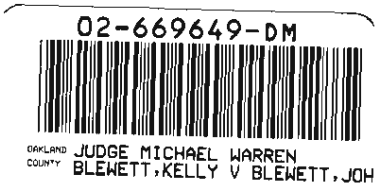

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY

KELLY ANN BLEWETT
Plaintiff,

V

Case No. 02-669649-DM

JOHN J. BLEWETT
Defendant

At a session of said court, held in

County of Oakland, State of Michigan

June 29, 2004.

PRESENT: HON. MICHAEL WARREN

OPINION & ORDER DENYING DEFENDANT'S MOTION FOR CHANGE IN CUSTODY[1]

John Blewett, the Defendant, has petitioned for a change of custody for his two minor children, Samantha (the natural child of the parties, age 7), and Daniel (the adopted child of the parties, age 5). In particular, the Defendant claims that his former wife, Kelly Campbell, the Plaintiff, has engaged in a pattern of conduct that is causing his children to be alienated from him, thereby warranting a change of custody. Although this matter originated as an emergency motion for an immediate change of custody, because the Defendant's motion was unsupported by appropriate authority or an offer of proof warranting an

[1] An Opinion and Order was read into the record on June 28, 2004 which is materially in conformity with this Opinion and Order; this Opinion and Order hereby supersedes for all purposes the oral opinion and order.

immediate change of custody, this Court determined that an evidentiary hearing was necessary before any such change of custody could be granted. The Court also denied the Plaintiff's motion to summarily find in favor of the Plaintiff without conducting the evidentiary hearing.

Over the course of the last several months, the Defendant has presented a dozen witnesses over a score of trial days, most of whom have testified for hours in an attempt to prove that a change in custody is warranted. At least a dozen exhibits also have been introduced. Before the Court is the Plaintiff's Motion for Involuntary Dismissal pursuant to MCR 2.504(B).

I

"Providing a stable environment for children, which is free of unwarranted custody changes (and hearings), is a paramount purpose of the Child Custody Act . . . ." *Vodvarka v Grasmeyer*, 259 Mich App 499, 511 (2003). See also *Baker v Baker*, 411 Mich 567, 576-577 (1981) ("In adopting § 7(c) of the act, the Legislature intended to minimize the prospect of unwarranted and disruptive change of custody orders and to erect a barrier against removal of the child from 'an established custodial environment', except in the most compelling cases"). Under the Child Custody Act, this Court may not review a petition to change or modify custody unless the petitioner has demonstrated proper cause or a change of circumstances justifying the change in custody. MCL 722.27(1)(c). The Court of Appeals has explained:

> MCL 722.27(1)(c) evinces the Legislature's intent to condition a trial court's reconsideration of the statutory best interest factors on a determination by the court that the party seeking the change has demonstrated either proper cause

> shown or a change of circumstances. It therefore follows as a corollary that where the party seeking to change custody has not carried the initial burden of establishing either proper cause or change of circumstances, the trial court is not authorized by statute to revisit an otherwise valid prior custody decision and engage in a reconsideration of the statutory best interest factors. [*Rossow v Aranda,* 206 Mich App 456, 458 (1994).]

Thus, "if the movant does not establish proper cause or change in circumstances, then the court is precluded from holding a child custody hearing . . ." *Vodvarka , supra* at 508. See also *Rossow, supra* at 458; *Dehring v Dehring,* 220 Mich App 163, 165 (1996). "These initial steps to changing custody - finding a 'change of circumstances or proper cause' and not changing an 'established custodial environment' without clear and convincing evidence - are intended to 'erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders.'" *Vodvarka, supra* at 509, quoting *Heid v AAASulewski (After Remand),* 209 Mich App 587, 593 (1995).

Accordingly, the moving party must, by a preponderance of the evidence, prove that either proper cause or a change of circumstances exists before reviewing whether an established custodial environment exists and examining whether the proposed change in custody would in the best interests of the child. *Vodvarka, supra* at 509.

To show proper cause justifying an evidentiary hearing, the moving party must show "one or more appropriate grounds that have or could have a significant impact on the child's life such that a reevaluation of the child's custodial situation should be undertaken." *Id.* at 511. While "[t]here is no hard or fast rule" in examining whether proper cause exists, the Court should examine

the best interests of the child, including the 12 factors set forth in MCL 722.23(a)-(l). *Id.* Of course, "not just *any* fact relevant to the twelve factors constitute sufficient cause. Rather, the grounds presented must be 'legally sufficient,' *i.e.*, they must be of such magnitude to have a significant impact on the child's well-being such that revisiting the custody order would be proper." *Id.* at 512.[2] Generally, such an analysis will not examine facts that have occurred prior to the entry of the last custody order. *Id.* at 513-514. This is so because "a party would be hard-pressed to come to court after a custody order was entered and argue that an event of which they were aware (or could have been aware of) prior to the entry of the order is thereafter significant enough to revisit the order." *Id.* at 515. However, when a party is procedurally deprived from having the opportunity to inform the court of facts existing at the time of the prior order, an examination of such facts is proper. *Id.* at 515-516 (finding that an order that was entered by the trial court without the defendant's signature and without a hearing permitted the defendant to revisit the prior facts).

To show a change of circumstances justifying an evidentiary hearing, the moving party must show "since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* impact on the child's well-being, have materially changed." *Vodvarka, supra* at 513 (emphasis in original). "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

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[2] The Court of appeals summarized:

> In summary, to establish 'proper cause' necessary to revisit a custody order, a movant must prove by a preponderance of the evidence the existence of an appropriate ground for legal action to be taken by the trial court. The appropriate ground(s) should be relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant impact on the child's well-being. When a movant has demonstrated such proper cause, the trial court can then engage in a reevaluation of the statutory best interests. [*Vodvarka, supra* at 6.]

normal life changes (both good or 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 impact on the child." *Id.* at 513-514. Such a determination should be based on the facts of the particular case, "being gauged by the statutory best interest factors." *Id.* When making this determination, the Court must only consider facts that occurred "*after* entry of the last custody order." *Id.* (emphasis in original).

For example, a proposed change of the residence of a child does not rise to the level of a change of circumstances or proper cause justifying an evidentiary hearing. *Dehring, supra* at 165-166.

In the instant case, the Defendant has alleged that the Plaintiff is alienating Samantha and Daniel from the Defendant by fabricating (purposefully or subconsciously) incidents of sexual abuse perpetrated by the Defendant and others resulting in the unjustified disruption of the parenting relationship. The Defendant has also raised a concern that the Plaintiff was coaching her children to make false accusations. An unpublished, nonbinding opinion of the Court of Appeals has held that "[a] fresh accusation of sexual abuse, whether false or valid, marks a significant change in circumstances and provides proper cause to reevaluate a child's custodial situation." *Cornell v Cornell,* Unpublished opinion of the Court of Appeals, decided June 1, 2004 (Docket No. 251107), p 2. Similarly, the same Court of Appeals panel has found that allegations that a party has "implanted and fostered irrational fears in her children" that results in the children refusing to visit with the other party, is sufficient to warrant re-evaluation of the custodial environment. *Id.* at 1. Accordingly, this Court previously ruled on the record based on the allegations in the motion and Petitioner's offer of proof that the Petitioner had shown proper cause or a change of circumstances justifying an evidentiary hearing in the instant matter.

II

A second threshold issue to be addressed by the Court is that prior to scheduling an evidentiary hearing for a post-judgment request to change custody, this 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." MCR 3.210(C)(8). Thus, when there is no dispute regarding factual issues material to the Court's decision, an evidentiary hearing need not be granted. *Bielawski v Bielawski*, 137 Mich App 587, 592-593 (1984) ("We do not believe in every instance that a trial court is required to conduct an evidentiary hearing in considering a motion to remove a child from the jurisdiction of the court . . . . In this instance, we do not believe that there were any meaningful contested factual questions that would require a hearing").

In the instant case, the material facts relating to the change of circumstances, proper cause, and the custody of the children are hotly contested. As such, the Petition has met the standards articulated in MCR 3.210(C)(8), and an evidentiary hearing was granted on (1) whether there exists a change of circumstances or proper cause, and (2) the proposed change in the established custodial environment.

III

Before the Court on the Plaintiff's Motion is whether the Defendant has met the first evidentiary threshold of proving by a preponderance of the evidence that there is proper cause or was a change of circumstances. The Defendant's witnesses included, but were not limited to, the parties, neighbors,

police officers, psychotherapists, child protective service workers, forensic interviewers, and others. As noted above, a dozen exhibits were also introduced into evidence. In light of over 20 days of testimony and the numerous exhibits, the Court makes the following general findings regarding the credibility and demeanor of some of the witnesses this Court has found critical to its determination of this Motion:

- Stated simply, the Defendant's testimony was less than credible on most points. His answers were evasive, Clintonesque, superficial, cursory, and hardly enlightening. His demeanor nearly almost always undermined his credibility. His testimony, therefore, is accorded light weight.
- The Plaintiff's testimony, on the other hand, was generally very credible. Her answers were forthright, authentic, and genuine. Her demeanor generally enhanced her credibility. Her testimony, therefore, is accorded great weight.
- Ann Wiersma's testimony, although generally credible, was not particularly relevant. In fact, she conceded that her custody findings nearly two years ago are irrelevant to this Court's custody evaluation. By her own admission, she was unaware of the alleged alienating behavior of the Plaintiff, and could give no credible or informed opinion regarding the veracity of the Defendant's theory of the case. To the contrary, she suggested that she would need to conduct an entirely new evaluation of the parties to come to any reasonable conclusions regarding the current status of the parties. Her testimony, therefore, is discounted and accorded no weight.
- All but fatal to the Defendant's theory of the case was the testimony of Ms. Amy Allen. The Court finds very credible Allen's testimony that Samantha had not been coached or rehearsed to answer the

interview questions at the interview that she conducted. Allen's testimony that the Plaintiff had acted appropriately by not asking Samantha additional questions, even when requested by Samantha to do so, is also very credible and carries much weight. Although Allen testified that it was her impression that there was some possibility that Samantha had acted and made statements to please her mother, and that the Plaintiff had continued to express serious concerns regarding sexual abuse by the Defendant following an investigation that concluded to the contrary, this testimony was not based on her personal interactions with Samantha – as Samantha was not interviewed by Allen following the June interview; accordingly, this portion of Allen's testimony is accorded little weight.

- Dr. Smith's testimony, which was credible, failed to bolster the Defendant's case and supports Allen's conclusion that there was no coaching.
- Crippling and absolutely fatal to the Defendant's case was the testimony of Ms. Cassandra McDonald. McDonald's testimony that, in her opinion, the children were coached or otherwise manipulated by the Plaintiff was less than credible. McDonald's conclusions on this issue were based on curt statements by the children and McDonald's analysis, while genuine, was superficial. However, McDonald's testimony was very credible when she testified that the circumstances justifying the filing of a Child Protective Services (CPS) petition against the Plaintiff were remedied by this Court's December, 2003 and February 23, 2004 orders and the Plaintiff's forthright cooperation with CPS during the CPS investigation. McDonald, who wholeheartedly embraced the Defendant's worldview and theory of the case, has reversed

> course entirely and closed her own investigation because there no longer exist circumstances to support CPS intervention. McDonald's testimony in this regard allays any remnant concerns of inappropriate behavior raised by the Defendant or Allen's testimony and in the report of Tawnee Barrera. In fact, during oral argument on this Motion, Defendant's counsel even acknowledged the effectiveness of the Court's orders in addressing in part the Defendant's concerns.

In light of the foregoing observations and findings, this Court has determined that a lengthy recitation of the over 20 days of testimony before it is unnecessary. Nor are extended findings of fact.

Simply put, the Defendant has failed to meet his burden that there is proper cause or change of circumstances warranting an examination of whether there should be a change in the established custodial environment. As set forth by the binding precedent of *Vodvarka, supra* at 508, unless the moving party can prove by a preponderance of the evidence that there is proper cause or change of circumstances, this Court should not engage in a determination regarding whether there is an established custodial environment and whether a change of custody is in the best interests of the children. The gravaman of the Defendant's motion is that the Plaintiff, either purposefully or unintentionally, has engaged in a pattern of conduct to undermine the Defendant's relationship with the children. Stated another way, the Defendant asserts that the Plaintiff is alienating his children from him. To the contrary, this Court finds that under the totality of the circumstances, that the Plaintiff did not intentionally or unintentionally act to undermine the Defendant's relationship with the children. In particular, the Court finds that Samantha has without prompting repeatedly told the Plaintiff that she has been a victim of sexual abuse by the Defendant,

Robert Schlick, and her cousin Bobby. Samantha is clearly a troubled child who has made very troubling disclosures. Daniel also has without prompting disclosed incidents of discipline by the Defendant that appear to be inappropriate. The Plaintiff has reasonably reacted to each of these situations by contacting appropriate authorities, lawyers, therapists, parenting counselors, and others. The Plaintiff has acted reasonably on behalf of her children's best interests in light of the serious nature of the disclosures. Although the Plaintiff has struggled with accepting determinations by these objective third parties that the Defendant has not sexually abused Samantha, she now accepts those determinations and has undergone counseling in connection with many matters relating to her fixation on these allegations.

The Defendant and the Plaintiff clearly have a strained relationship. The Plaintiff has, at times, exhibited high sensitivity to certain matters that might be viewed less seriously by others. On the other hand, none of the matters that led to the CPS investigations were fabrications made from whole cloth. Each allegation involved a cornerstone of truth. Although the investigations have not been substantiated, each was sufficient to cause alarm in uninterested third parties to decide that additional investigation was warranted. These professionals were not mindless marionettes that the Plaintiff has manipulated – they were serious individuals who complied with very prophylactic ethical and legal duties to investigate child abuse and neglect.

Nor has the Defendant shown by a preponderance of the evidence that the Plaintiff passively has interpreted her world in such a way as to cause her to pursue unwarranted charges of child abuse and neglect and to make her children profess the same. Certainly the Plaintiff has become increasingly sensitive to allegations of sexual abuse and over-zealous discipline. While the Plaintiff is often overly dependent on others when faced with difficulties, her perceptions

nevertheless are not so impaired, and her dependency is not so complete, that her conduct is beyond the normal range of a mother deeply concerned about the welfare of her children. Although the Lawyer-Gurdian Ad Litem forcefully argues that it is the effect on the children, not the Plaintiff's state of mind, that is relevant to this Court's determination, there is no credible evidence that the Plaintiff has instilled fear and distrust of the Defendant in the children. Nor has the Defendant provided any significant credible evidence that the Plaintiff has undermined, hindered, or degraded the Defendant's relationship with the children. In fact, all relevant evidence regarding the Defendant's relationship and bonds with his children is quite to the contrary. The Defendant has failed to prove by a preponderance of the evidence that there is proper cause or a change in circumstances justifying further proceedings on this petition.

IV

Because this Court has ruled that there was no proper cause or change of circumstances proven by a preponderance of the evidence, the Court need not address the issue of whether the proposed change in the established custodial environment would be in the children's best interests. MCL 722.27(1)(c); *Rossow, supra* at 458; *Vodvarka, supra* at 508.

ORDER

In light of the foregoing Opinion, the Court hereby:

1) DENIES the Defendant's motion for Change in Custody;
2) MAINTAINS the Interim Order dated 2/23/04;
3) ORDERS that John Neuman continue to act as parenting time coordinator;

4) RETAINS the Lawyer-Guardian Ad Litem's services in connection with the Interim Order dated 2/23/04 and parenting time coordination;
5) MAINTAINS the Interim Parenting Time Order dated March 17, 2004 (this ruling is made without prejudice, and may be challenged on proper grounds by motion by either party); and
6) Holds in abeyance any determination of attorney fees and costs pending motion and briefing.

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HON. MICHAEL WARREN,
Circuit Court Judge