

STATE OF MICHIGAN
COURT OF APPEALS

MITCHELL LEWIS ROAT,

Plaintiff/Counterdefendant-Appellee,

v

MARGARET ROSE ROAT,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED

March 17, 2020

No. 350299

Presque Isle Circuit Court
Family Division

LC No. 15-084083-DM

Before: BOONSTRA, P.J., and RIORDAN and REDFORD, JJ.

PER CURIAM.

Defendant-mother appeals by right the trial court's order granting to plaintiff-father sole legal and physical custody of their two minor children, SR and BR. For the reasons set forth in this opinion, we vacate the trial court's order awarding custody and parenting time, and remand this matter to the trial court for further proceedings consistent with this opinion.

I. FACTS & PROCEDURAL HISTORY

The parties married in 2012 and separated in August 2015, at which point their two minor children, SR (then 5 years old) and BR (then ten months old), resided with defendant in Colorado while plaintiff remained in Michigan. In January 2017, the parties obtained a consent judgment of divorce granting joint legal custody and primary physical custody to defendant. Thereafter, numerous parenting-time disputes arose. In December 2017, defendant moved with the children to Nebraska without the trial court's permission, prompting motions from plaintiff and the Friend of the Court (FOC) office.

In May 2018, the parties obtained a consent order regarding custody, parenting time, and child support, which changed the parenting-time dynamics but kept the custody arrangement in place. Plaintiff exercised his parenting time pursuant to the order, and had SR from May 25, 2018, to July 7, 2018, and during the Thanksgiving holiday school break. Plaintiff also had BR from April 2, 2018, to July 7, 2018, and from September 18, 2018, through the Thanksgiving break.

The parties deviated from the order during the Christmas holiday break. According to the order, the children should have spent the first half of the Christmas break with defendant, and the

second half with plaintiff. Plaintiff's parenting time with the children began on December 29, 2018, but instead of returning the children to defendant on January 5, 2019, the parties agreed that the children would remain with plaintiff so that SR could attend school in Michigan.

Pursuant to the order, defendant had parenting time with both children during spring break, and accordingly, she picked up the children on March 23, 2019. However, instead of returning the children at the end of the week, per the parties' prior agreement, defendant kept the children and enrolled SR in school in Nebraska where she finished the school year. Plaintiff had parenting time from May 25, 2019, until the time of the hearing in June 2019.

Plaintiff filed a motion to change custody and alleged that the continued disagreements over parenting time, defendant's interference with plaintiff's parenting time, and defendant's mental health issues constituted a change in circumstances sufficient to warrant a change of custody. Following an evidentiary hearing, the trial court found that (1) there was no established custodial environment with either party, (2) there was proper cause or change in circumstances, and (3) a change of custody was in the children's best interests. During the final hearing, the trial court referred the case to the FOC for a recommendation on custody and parenting time.

The next day, the FOC issued a report indicating that it had reviewed the trial court's ruling on each of the best-interest factors, and recommended that plaintiff receive sole legal and primary physical custody. Furthermore, the FOC recommended that defendant receive parenting time for half of Christmas break, every other spring break, and four weeks during the summer. Parenting time was to be exercised at the house of defendant's parents or at another approved location. That same day, the trial court entered an order adopting the FOC's recommendation. This appeal followed.

II. STANDARDS OF REVIEW

We must affirm all custody orders 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. MCL 722.28; *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008).

III. ANALYSIS

Defendant argues that remand is required because the trial court improperly entered the FOC's recommendation immediately after its submission to the court, and as a result, defendant was not given a meaningful opportunity to object. We agree.

MCR 3.210(C)(6), provides that "[i]f a report has been submitted by the friend of the court, the court must give the parties an opportunity to review the report and to file objections before a [custody] decision is entered." The trial court's same-day adoption of the FOC's recommendation denied the parties any meaningful opportunity to object before the trial court entered the order regarding custody and parenting time. In doing so, the trial court failed to comply with the court rules. An error by the trial court in a ruling or order is not a ground for granting a new hearing or disturbing an order unless refusal to take action appears to be inconsistent with substantial justice. MCR 2.613(A). We conclude that this case presents such circumstances, and that remand is required. Accordingly, we need not consider defendant's remaining arguments regarding the trial

court's factual findings and conclusions. Nor do we need to consider defendant's claim that she suffered a deprivation of her constitutional right to due process. However, this does not preclude the parties from raising those issues, or any other issues, before the trial court on remand.

IV. CONCLUSION

We vacate the trial court's order awarding custody and parenting time, and remand this matter to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra

/s/ Michael J. Riordan

/s/ James Robert Redford