

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE L. MASTERS,

Plaintiff-Appellee,

v

HOWARD SCOTT MASTERS,

Defendant-Appellant.

UNPUBLISHED

June 24, 2021

No. 355290

Wayne Circuit Court

Family Division

LC No. 17-115265-DM

Before: GLEICHER, P.J., and CAVANAGH and LETICA, JJ.

PER CURIAM.

When Howard and Christine Masters divorced, Howard agreed that Christine would have full custody of their daughter, FKM, while he pursued mental health treatment. Christine denied Howard court-ordered supervised parenting time and subsequently disappeared with the child. Howard filed a motion to change custody, to compel Christine to return FKM to Michigan, and to issue a bench warrant for Christine’s arrest. The circuit court failed to make necessary findings before resolving Howard’s change-of-custody motion. We vacate the court’s order and remand for further proceedings consistent with this opinion.

I. BACKGROUND

Christine and Howard Masters were divorced on April 4, 2018. Christine alleged that Howard faked having post-traumatic stress disorder and had been physically abusive. They entered a consent judgment of divorce, granting Christine sole physical custody of their young daughter, FKM. While Howard underwent “psychiatric and psychological treatment intended to allow him to achieve a level of emotional stability,” he would have visits supervised by Christine “at such frequent and regular times as the parties may hereafter agree.”

On June 11, 2019, Howard filed a motion to enforce the parenting-time provision in the divorce judgment. He claimed that Christine had only allowed him to visit FKM seven times since the judgment entered and did not allow him to speak to FKM on the phone. He further alleged that Christine falsely accused him of being involved with a veterans’ biker gang with criminal

affiliations whose members were stalking her. Howard denied Christine's characterization of the veterans' group and emphasized the progress he had made in therapy.

Christine retorted that Howard had been diagnosed as a narcissistic psychopath and she opined he was a pathological liar. After reciting a history of allegedly abusive and deceptive conduct, Christine expressed that Howard posed a threat to both her and their child. She requested that Howard undergo a new mental health evaluation before any parenting time was ordered.

In the fall of 2019, the circuit court ordered therapeutic, supervised parenting-time sessions at Growth Works. The court further ordered Christine to participate in a mental health evaluation. Six weeks later, Howard requested that the court conduct a show-cause hearing as Christine was not responding to Growth Works' attempts to schedule an intake appointment. Christine's counsel responded to the motion, but then moved to withdraw as counsel of record due to a breakdown in the attorney-client relationship.

The record is somewhat unclear, but it appears the circuit court held show-cause hearings on January 10, January 22, and June 12, 2020. And while the show-cause issue was pending, Howard moved to adjust his child-support obligations, and several hearings were held on that issue. Christine did not appear for any of these hearings. The trial court entered orders after the January 10 and January 22 hearings stating that a bench warrant may issue if Christine failed to appear, but only if Howard effectuated personal service first. Howard never achieved personal service as Christine had gone into hiding, and the court denied his motion for alternate service with no explanation.

On August 25, 2020, Howard moved to change custody, arguing that Christine's disappearance with FKM constituted a change of circumstances. A hearing was held on October 9, 2020. Lincoln Park Detective Patrick Culter spoke at the hearing, but was not placed under oath to testify. Detective Culter informed the court that Christine and FKM crossed into Canada in November 2019, the month the Growth Works program was scheduled to begin. Detective Culter uncovered evidence that plane tickets had been purchased in Christine's and FKM's names from Canada to New Zealand, New Zealand to California, and California to Illinois. However, neither mother nor child boarded those flights. Accordingly, the detective believed they were still in Canada. The detective further indicated that authorities *might* charge Christine with parental kidnapping.

At the close of the hearing, the court issued a bench warrant for Christine's arrest and to compel Christine to return FKM to Michigan. However, the court denied Howard's motion to change custody. The court ruled, "I'm not changing custody on a basis like this." Despite that the same circuit court judge had proceeded over this domestic relations matter from its onset and that the attorneys reminded the court at the hearing of Howard's mental health issues that led to the supervised parenting-time arrangement, the court inexplicably stated, "I have no information as to why . . . there's supervised parenting time that's in place." Instead, the court ruled that once Christine returned FKM to the state, "then there's going to have to be a determination" whether "it's in the child's best interest to be placed with dad." The court acknowledged that Christine "isn't doing much she's suppose [sic] to do," and its order to compel Christine's return likely would have little effect. The court concluded:

I have to go back to the order that was in place at the time when we started this whole process and what the order was supervised parenting time [sic]. And it wouldn't be in the child's best interest base[d] on what I have to change and give it to [Howard's] custody. I don't have the information I need in order to do that. I would not change custody of a child without having a full picture of what's going on.

What I do know is that [Christine] has not allowed [Howard] his parenting time. And I'm willing to act on that and move forward with that, enter the order that relates to parenting time and even the order - - I'm even willing to go so far based on Detective Culter's testimony to order a warrant to be issued for her to come into [sic] face the family court judge about the parenting time.

And so we can issue a warrant that says that, that for violation of the parenting time order and a order to return the child to the state of Michigan right away.

If you get charges against her and you get her there, then you may have grounds to move forward with a change of circumstances.

II. DISCUSSION

Three different standards govern our review of a circuit court's decision in a child-custody dispute. We review findings of fact to determine if they are against the great weight of the evidence, we review discretionary decisions for an abuse of discretion, and we review questions of law for clear error. A clear legal error occurs when the circuit court incorrectly chooses, interprets, or applies the law. [*Kubicki v Sharpe*, 306 Mich App 525, 538; 858 NW2d 57 (2014) (cleaned up).]

The court's first step with any motion to change custody is to determine whether the movant "established a change of circumstances or proper cause for a custodial change under MCL 722.27(1)(c)." *Id.* at 540, citing *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). MCL 722.27(1)(c) provides in relevant part:

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 change of circumstances is a material change since the entry of the last custody order in "the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being." *Vodvarka*, 259 Mich App at 513-514. The circuit court improperly deferred its duty to resolve whether a change of circumstances occurred. Contrary to the court's assessment, this decision could be made without Christine's presence. Christine's deliberate

absence with the child was a change in circumstances. Michigan law presumes that having a relationship with both parents is in a child's best interests, MCL 722.27a(1), and Christine prevented FKM from having any relationship with Howard. Indeed, the record supports that Christine has engaged in parental kidnapping. This was a change of circumstances, but the circuit court did not consider this possibility. This was error.

When the movant establishes a change in circumstances, the circuit court is required to take the next step: to determine whether the movant's requested change of custody would alter the child's established custodial environment. Clearly, FKM has an established custodial environment with Christine alone. Christine has sole physical custody of FKM and FKM has not even seen Howard since February 2019. Any alternate arrangement would amount to a change in FKM's established custodial environment. This means that Howard will be required to prove by clear and convincing evidence that any change in custody would be in FKM's best interests. A prompt hearing on the question of best interests is essential.

The court skipped resolving whether a change in circumstances occurred and whether Howard's suggested change in custody would alter FKM's established custodial environment, jumping right to expressing that it could not determine whether a change in custody would be in FKM's best interests absent Christine and the child. The court must start over and resolve all necessary disputes before rendering its judgment.

On remand, the court is directed to consider that Christine's flight with the child likely disrupted FKM's living and educational environments and hindered her ability to establish a meaningful parent-child relationship with her father, leading to instability in her life that could negatively affect her well-being. See MCL 722.23(j). And Christine's absence from the proceedings precludes Christine from introducing any evidence regarding FKM's best interests.

We vacate the circuit court order denying Howard's motion to change custody and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Anica Letica