If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

MARY ELIZABETH MCCLELLAN, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED October 20, 2026 2:30 PM
v	No. 380230 Muskegon Circuit Court
BRODY JOSEPH MCCLELLAN, Defendant/Counterplaintiff-Appellant.	LC No. 2023-002788-DM

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

In this postjudgment custody case, defendant/counterplaintiff sought a change in legal custody and parenting time for the parties' three minor children. A hearing was conducted before a family court referee. After the hearing, the referee issued findings and recommended denying the motion. Defendant filed a timely objection to the referee's findings and recommendation, which the trial court denied without holding a hearing de novo. Because the trial court committed clear legal error by resolving defendant's objection on the basis of the record without giving defendant the opportunity to present evidence at a live hearing, we vacate the trial court's March 5, 2026 order denying defendant's objection to the referee recommendation and remand the matter for the trial court to hold the de novo hearing required by MCR 3.215(F).

I. BASIC FACTS AND PROCEEDINGS

The parties married in 2009 and separated in 2023; they had three children, all minors at the time the parties dissolved their marriage by a consent judgment of divorce in 2024. The consent judgment of divorce gave the parties joint physical and legal custody and gave defendant parenting time during the school year from Monday after school until Tuesday morning drop-off, every Tuesday after school, every other weekend from Friday after school until Tuesday drop-off, and any other time by mutual agreement, with adjustments for days when there was no school.

Relative to the instant appeal, the parties agreed to mediate defendant's parenting time one year from entry of the judgment of divorce to determine whether defendant's alternating weekend parenting time (i.e., after school Friday until 7:00 p.m. Tuesday) should be extended to include Tuesday overnight "to establish wholly equal parenting time for the parties with the children . . . ."

The parties agreed to "make this determination by evaluating the children's best interests and whether there have been any CPS [Children's Protective Service] substantiations or any other objectively provable incidents of child abuse." The consent judgment of divorce stated that the parties' intention was "to move to this 5-2-2-5 wholly equal parenting time schedule so long as the parties agree, and it is determined to be in the best interests of the children." If the parties could not resolve the matter through mediation, then either party could take steps to address the matter in the circuit court.

When the parties mediated the matter in November 2025 and did not reach agreement, defendant moved the trial court for modification of custody and a change in parenting time. After defendant filed this motion, he filed numerous other motions[1] and noticed them for hearing on January 6, 2026. After trying unsuccessfully to reach an agreement with defendant to adjourn the hearing, plaintiff's attorney moved ex parte to adjourn the motions and reschedule the hearing, explaining that she was scheduled for a two-day trial at the same time as the motion hearing and could not reschedule the trial. The trial court denied plaintiff's request for ex parte relief but later entered an order adjourning the hearing on the motions until February 23.

A referee heard defendant's motion to change custody and modify parenting time on February 10. Several months before the hearing, defendant served on plaintiff requests for admission. When plaintiff did not respond, each matter to which a request was made was deemed admitted under MCR 2.312(B)(1). At the referee hearing, defendant relied on these deemed admissions to establish proper cause or a change in circumstances to revisit the governing custody arrangements. After the hearing, the referee informed defendant that he would have 21 days after receipt of the referee's recommendation to object and, if he filed a timely objection, then he would "either go before a hearing in front of the Judge or she will issue a written decision."

In written findings, the referee found that, even assuming that certain matters could be treated as admitted for evidentiary purposes, the deemed admissions and other alleged discovery violations failed to rise to the level of establishing proper cause or a change of circumstances of such magnitude that the children's custodial environment or well-being had been materially affected so as to permit the trial court to proceed with a custody review under MCL 722.27(1)(c) and *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003).

The referee acknowledged defendant's testimony that he believed that plaintiff made unfounded allegations that resulted in two CPS investigations of him but found that there was no evidence that the children were affected by the allegations; they were not removed from either parent's care, parenting time was not restricted, and the children's established custodial environment did not change as a result of the investigations. The referee acknowledged defendant's testimony that the oldest child's school performance was declining and his behavioral issues were increasing but noted that the child was at an age when normal life changes and changes

[1] These motions included the following: Motion for the Muskegon County Friend of the Court to Show Cause for Failure to Comply with Support Orders Entered in this Case; Motion Regarding Federal Tax Credit Implications of Health Insurance Misrepresentation, Reimbursement, and Request for Evidentiary Hearing; Moton to Strike Scandalous and Impertinent Material from Plaintiff's Response; and Emergency Motion for Relief from 7/23/2025 Ex Parte Order.

in attitude were expected and that the circumstances that defendant described did not constitute a change of such magnitude that they significantly affected the children's well-being, as contemplated by *Vodvarka*. Noting that both parties testified that they were employed and maintained stable housing, the referee found no evidence suggesting that either party's ability to provide care had materially changed since entry of the consent judgment of divorce. Lastly, the referee acknowledged defendant's allegations about "communication, conflict, unilateral decision-making, ex parte filings, and litigation conduct," finding that these allegations reflected parental conflict and litigation behavior and did not constitute proper cause or a material change in the children's circumstances. The referee found that defendant presented no evidence to suggest that a modification of parenting time would improve the children's well-being. On the basis of these findings, the referee recommended denial of defendant's motion to modify custody and parenting time.

Defendant filed a timely objection to the referee's findings and recommendation, which the trial court promptly denied. Defendant moved for reconsideration, attaching to his motion a second set of requests for admission that were deemed admitted under MCR 2.312(B)(1) after the referee hearing. The trial court denied defendant's motion for reconsideration. Defendant now appeals.

II. ANALYSIS

A. DE NOVO HEARING

Defendant contends that the trial court erred by denying his objection without conducting a meaningful de novo review. Defendant preserved this issue in a timely filed motion for reconsideration. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). On appeal, this Court must affirm all orders and judgments of the circuit court pertaining to a child custody dispute " 'unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.' " *Yachcik v Yachcik*, 319 Mich App 24, 31; 900 NW2d 113 (2017), quoting MCL 722.28. "An abuse of discretion, for purposes of a child custody determination, exists when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Barretta v Zhitkov*, 348 Mich App 539, 549; 19 NW3d 420 (2023) (quotation marks and citation omitted); see also *Moote v Moote*, 329 Mich App 474, 478 n 2; 942 NW2d 660 (2019) ("Although the 'outside the range of reasonable and principled outcomes' standard is now the 'default abuse of discretion standard,' child custody cases specifically retain the historic [*Spalding v Spalding*, 355 Mich 382, 384; 94 NW2d 810 (1959)] standard[,]" otherwise known as the "palpable" abuse of discretion standard.) (quotation marks and citation omitted).

The trial court committed legal error by failing to hold a de novo hearing on defendant's timely filed objections to the referee's recommendations. MCL 552.507(4) provides that a trial 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." A request is timely if "made within 21 days after the recommendation of the referee is made available to that party." MCL 552.507(4). The use of "shall" signifies a mandatory directive. *Ellison v Dep't of State*, 320 Mich App 169, 180; 906 NW2d 221 (2017). In addition, the applicable court rule states that a "judicial hearing must be held within 21 days after the written objection is filed, unless the time is

extended by the court for good cause" and that the trial court "must allow the parties to present live evidence at the judicial hearing." MCR 3.215(F). Given these express mandates, "the trial court is not permitted to decide the issue on the basis of the record alone." *McGregor v Jones*, 346 Mich App 97, 102; 11 NW3d 597 (2023).

However, that is what occurred here. The referee's explanation that if defendant timely objected to her recommendation that he would "*either* go before a hearing in front of the Judge *or* she will issue a written decision" was legally erroneous. (Emphasis added.) The reference in the trial court's order to MCR 3.210(C) is inaccurate as well. MCR 3.210(C) prohibits a court from entering an order resolving a contested custody matter "without first holding an evidentiary hearing." In this case, defendant's motion for a change in custody was submitted to a referee who took testimony and issued a recommendation. MCR 3.215 and MCL 552.507 provide the operative procedural framework for reviewing referee recommendations.[2] Both require a trial court to hold a de novo hearing during which the parties have the opportunity to present live testimony. That did not occur here.

Notably, defendant did not request a hearing de novo in the trial court; rather, he requested a de novo "review." A party can obtain a record-based review as one type of de novo hearing. MCL 552.507(6). As already indicated, however, MCR 3.215(F)(2) requires the trial court provide the parties with an opportunity to "present live evidence at the judicial hearing" which did not occur here. Moreover, this Court has recognized that trial courts are not permitted to resolve an objection to the referee's recommendation "on the basis of the record alone without providing the parties some opportunity to supplement that record at the hearing if they wish to do so." *McGregor*, 346 Mich App at 102. The trial court in the present case committed clear legal error by doing what it is not permitted to do: resolving an objection to the referee's recommendation "on the basis of the record alone without providing the parties some opportunity to supplement that record at the hearing if they wish to do so." *Id*. Therefore, we vacate the trial court's March 5, 2026 order denying defendant's objection to the referee recommendation and remand for the trial court to hold a de novo hearing pursuant to MCR 3.215(F).

B. ADJOURNED MOTION HEARING

Defendant also contends that the trial court's adjournment of the January 6 hearing on his various motions deprived him of a meaningful opportunity to present material evidence relevant to custody and parenting time at the referee hearing. We deem this issue abandoned.

MCR 2.503 governs the adjournment of motion hearings. Under MCR 2.503(B)(1), a request for an adjournment must be by motion or stipulation made in writing or orally in open court and is based on good cause. The trial court, in its discretion, may grant an adjournment to promote the cause of justice, and any order granting an adjournment must state the reason for the

[2] As noted, in addition to a timely written objection, MCR 3.215(E)(4) also requires the party to file a notice of hearing. It does not appear from the lower court record that defendant filed a notice of hearing. As plaintiff did not file a responsive brief, she has not made an issue of this procedural deficiency; therefore, we consider the deficiency waived. See *Cochrane v Brown*, 234 Mich App 129, 133 n 1; 592 NW2d 123 (1999).

adjournment. MCR 2.503(D)(1). We review for an abuse of discretion a trial court's decision to grant or deny an adjournment. *Charter Twp of Ypsilanti v Dahabra*, 338 Mich App 287, 292; 979 NW2d 725 (2021). An abuse of discretion in this context "occurs when the trial court's decision falls outside the range of reasonable and principled outcomes." *Id*.

Defendant does not argue that the trial court abused its discretion by granting the adjournment. Rather, defendant contends that adjourning the motion hearing until after the referee's hearing denied him a meaningful opportunity to present material evidence relevant to the referee's threshold decision regarding proper cause and a change in circumstances. Defendant does not identify what material evidence the adjournment prevented him from presenting at the referee hearing. Defendant "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . ." *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). Because defendant "failed to address the merits of this argument in a detailed manner, the argument is abandoned and need not be considered." *Barretta*, 348 Mich App at 550 n 13.

Because we find that the trial court clearly erred in not holding the de novo hearing required by law and court rule, we need not address defendant's remaining concerns alleging that the trial court erred by failing to make certain specific and detailed findings.

In conclusion, because the trial court committed clear legal error by resolving defendant's objection on the basis of the record without giving either party the opportunity to present live evidence, we vacate the trial court's March 5, 2026 order denying defendant's objection to the referee recommendation and remand the matter for the trial court to hold a de novo hearing pursuant to MCR 3.215(F).

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney