

# Court of Appeals, State of Michigan

## ORDER

Jacqueline Harris v Mark T Harris

Docket No. 299222

LC No. 00-009198-DM

Cynthia Diane Stephens  
Presiding Judge

Kurtis T. Wilder

Kirsten Frank Kelly  
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the May 19, 2010, order of the Wayne Circuit Court referring this matter to the Family Mediation and Counseling Unit (FEMC) hereby is REVERSED. In *Harris v Harris*, unpublished order of the Court of Appeals (Docket No 297272, issued 04/06/10), this Court specifically directed the circuit court to articulate on remand "the specific circumstances, if any, that are material to the best interests of the children and that have changed." On remand, a lower court is to strictly comply with the appellate court's mandate. *Rodriguez v General Motors (On Remand)*, 204 Mich App 509, 514; 516 NW2d 105 (1994). Where this Court has instructed the trial court to make specific findings of fact, the trial court is bound by that instruction. *Detroit Power Screwdriver Co v Ladney (After Remand)*, 39 Mich App 629, 631; 197 NW2d 857 (1972). The trial court's order reflects that, instead of articulating specific circumstances, the court based its referral to FEMC only on plaintiff's allegations; the court should have, but did not, articulate specific circumstances that are material to the children's best interests and that have changed. See *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003); *Foskett v Foskett*, 247 Mich App 1, 4-5; 634 NW2d 363 (2001). In light of the totality of the circumstances, the case is to be assigned to a different judge upon remand. See *Feaheny v Caldwell*, 175 Mich App 291, 309-310; 437 NW2d 358 (1989).

On remand, the newly assigned judge may reconsider plaintiff's motion. The Court notes, however, based on the materials provided to this Court, the current record does not reflect any significant change in circumstances that are material to the best interests of the children. Plaintiff's failure to file an answer in this Court leaves her allegations unsupported and defendant has filed documentation that contradicts several of those allegations. Where the trial court did not hold a hearing and merely relied on plaintiff's allegations, several of which have been rebutted, the record does not support a referral to FEMC.

A copy of this order also shall be provided to Wayne County Circuit Court Judge Maria Oxholm.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAR 07 2011

Date

  
Chief Clerk