

Court of Appeals, State of Michigan

ORDER

Rashelle Rae Kowalewski v Charlie Alvin Kowalewski

Docket No. 308131

LC No. 11-048427-DM

Douglas B. Shapiro
Presiding Judge

Jane E. Markey

Jane M. Beckering
Judges

The motion for immediate consideration is GRANTED.

The trial judge acted without legal authority to the extent that she issued an ex parte order determining and changing custody in the absence of a showing that irreparable harm would result from the delay required to effect notice. MCR 3.207(B)(1). The judge further acted without legal authority when she determined and changed custody without the agreement or acquiescence of the parties, or alternatively, without notice and without first conducting a timely evidentiary hearing and making findings of fact pursuant to MCL 722.23 and MCL 722.27. MCR 3.207(C)(2); MCL 722.27(c); *Harvey v Harvey*, 470 Mich 186; 680 NW2d 835 (2004); *Kessler v Kessler*, ___ Mich App ___, ___ NW2d ___ (2011); *Grew v Knox*, 265 Mich App 333; 694 NW2d 272 (2005); *Mann v Mann*, 190 Mich App 526; 476 NW2d 439 (1991); *Pluta v Pluta*, 165 Mich App 55; 418 NW2d 400 (1987). Were it not for the fact that a full evidentiary hearing on all matters contested in these divorce proceedings, including custody, is scheduled to begin on Monday, January 30, 2012, and the fact that at that hearing, the trial court's temporary custody order will be irrelevant, *Hayes v Hayes*, 209 Mich App 385, 388; 532 NW2d 190 (1995), we would peremptorily reverse the judge's custody decision, vacate the temporary order, and remand for an evidentiary hearing. But in light of the imminence of the pending trial, we do not conclude that the order requires immediate appellate review. *Mann*, 190 Mich App at 533. Consequently, the Court orders that the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.



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

JAN 26 2012

Date


Chief Clerk