

Court of Appeals, State of Michigan

ORDER

Jasmine Erica Moskalik v Gino Joseph Franzone Jr

Jane M. Beckering
Presiding Judge

Docket No. 322121

Jane E. Markey

LC No. 2009-007278-DC

Douglas B. Shapiro
Judges

The Court orders that the motion for immediate consideration of the motion for peremptory reversal is GRANTED.

The Court orders that the motion for peremptory reversal pursuant to MCR 7.211(C)(4) is GRANTED for the reason that the circuit court's finding that there was no change in circumstances was clearly erroneous. Furthermore, the circuit court committed clear legal error when it used the question of whether the change was temporary or permanent as the criteria in determining whether there had been a change in circumstances. The proper question is whether "since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a significant effect on the child's well-being, have materially changed." *Vodvarka v Grasmeyer*, 259 Mich App 499, 513, 675 NW2d 847 (2003). The last custody order in May 2010 gave plaintiff primary physical custody in Michigan. In September 2012, plaintiff gave defendant permission to take the minor child to Massachusetts, which he did. Defendant and the minor child have been living there ever since. That constitutes a material change in the custody conditions since the previous custody order that have or could have a significant effect on the child's well-being. The court's error is so manifest that an immediate reversal of the order appealed from should be granted without formal argument or submission.

The court's May 27, 2014 order is VACATED except for that part of the order that denied plaintiff's motion to show cause. The cause is REMANDED for further hearings at which the court shall determine whether an established custodial environment exists and shall then apply the appropriate burden of proof to its assessment of the best interest factors set forth in MCL 722.23. *LaFleche v Ybarra*, 242 Mich App 692, 695-696; 619 NW2d 738 (2000).

In light of our vacating of the circuit court's order, the motion for stay is DENIED as moot. The motion to waive the requirements of MCR 7.209(A)(3) is GRANTED.

We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 27 2014

Date

Chief Clerk