

Court of Appeals, State of Michigan

ORDER

Matthew M McNutt v Melissa L McNutt

Docket No. 337701

LC No. 05-035949-DM

Mark J. Cavanagh
Presiding Judge

Henry William Saad

Colleen A. O'Brien
Judges

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

The Court orders that the motion for peremptory reversal pursuant to MCR 7.211(C)(4) is GRANTED. The trial court improperly delegated the decision whether to grant defendant expanded or additional parenting time to the children's therapist Robert Martin. A circuit court may not appoint third parties to perform judicial functions such as deciding the ultimate outcomes of motions before it. *Oakland Prosecutor v Beckwith*, 242 Mich App 579, 582-583; 619 NW2d 172 (2000); *Carson Fisher Potts & Hyman v Hyman*, 220 Mich App 116, 120-122; 559 NW2d 54 (1996). Furthermore, the trial court erred by failing to address whether the modification was in the best interests of the child. MCL 722.27a(1); MCL 722.27(1)(c).

The circuit court's March 14, 2017 order granting defendant's motion for unsupervised parenting time is VACATED, and the cause REMANDED to the circuit court to decide defendant's motion for expanded and increased parenting time. In making its decision the trial court must determine whether the ordered change would alter the established custodial environment then apply the appropriate burden of proof according to either MCL 722.27a(1) or MCL 722.27(1)(c). *Lieberman v Orr*, __ Mich App __; __ NW2d __ (Docket no. 333816, 3/7/2017).

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



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

APR 03 2017

Date


Chief Clerk