Court of Appeals, State of Michigan

ORDER

Joseph Wlodyka v Abigail Marie Wlodyka

Docket No. 356214

LC No. 19-001074-DM

Jane M. Beckering
Presiding Judge

Jane E. Markey

James Robert Redford
Judges

Pursuant to MCR 7.205(E)(2), the September 29, 2020 order regarding custody and parenting time and the November 5, 2020 order regarding motion to rescind order are VACATED. The case is REMANDED to the trial court for an evidentiary hearing on plaintiff's verified motion to determine children's school district and for modification of custody, parenting time and support and defendant's verified motion to modify custody, parenting time, child support and for attorney's fees. The trial court committed legal error when it entered the September 29, 2020 order, which was consistent with the Friend of the Court's report and recommendation, on the basis that neither party had objected to the recommendation. The Child Custody Act imposes on the trial court a duty to ensure that the resolution of any custody dispute is in the best interests of the children. *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004). No statute or court rule provides any circumstances under which a trial court may be excused from this legislatively mandated duty when the Friend of the Court, upon order of the court, has conducted an investigation and provided a report and recommendation under MCL 552.505(1)(g). Even though the parties may have been warned that failure to object to the Friend of the Court's report and recommendation may result in the recommendation becoming the court's order, by entering an order consistent with that recommendation when neither party objected, the trial court without authority relieved itself of its legislatively mandated duties. Nothing in this order is intended to preclude the trial court from assigning the parties' motions to a referee.

This order is to have immediate effect. MCR 7.215(F)(2).

We do not retain jurisdiction.

Presiding Judge

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

March 15, 2021
Date

Chief Clerk