# STATE OF MICHIGAN

# COURT OF APPEALS

JOEL ERIC JACOB,

Plaintiff-Appellant,

v

LAUREN BETH JACOB,

Defendant-Appellee,

and

THE MINOR CHILD,

Appellee.

UNPUBLISHED
March 3, 2020

Nos. 344580; 344598; 344654; 344809; 344894; 347014; 350162
Oakland Circuit Court
LC No. 2012-793255-DM

Before: GLEICHER, P.J., and GADOLA and LETICA, JJ.

PER CURIAM.

In this child custody dispute, we consider seven orders issued by the circuit court. The first six relate to parenting time. The circuit court suspended plaintiff father's right to visit his daughter in January 2018, without conducting an evidentiary hearing. Five subsequent orders reinforced this ruling, despite that no hearings were held. One-and-a-half years later, the court finally convened an evidentiary hearing. The court granted defendant mother sole legal and physical custody of the parties' now 15-year-old daughter, and effectively terminated plaintiff father's parenting time.

In addition to violating Father's statutory and due process rights to a timely hearing, the circuit court changed the child's physical and legal custody without a showing of proper cause or a change of circumstances and after applying an incorrect burden of proof. Accordingly, we vacate all of the parenting-time orders, as well as the order awarding Mother sole legal and physical custody of the child. We remand for the reinstatement of Father's parenting time, which must be accomplished with the assistance of a reunification specialist selected from outside the court in accordance with the child's best interests and consistent with the accompanying order.

Additionally, we reverse the circuit court's order denying Father's motion to remove the lawyer-guardian ad litem (L-GAL), remand for an evidentiary hearing regarding the L-GAL's fees, and we further order the immediate reassignment of this case to a different judge. Our order is to have immediate effect. MCR 7.215(F)(2).

## I. UNDERLYING LEGAL PRINCIPLES

Before delving into the facts of this case, we set forth the legal principles guiding our review.

Fit parents enjoy a constitutional right to raise their children and to actively participate in their upbringing. *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009). This right may be withdrawn only when clear and convincing *record* evidence demonstrates that parenting time "would endanger the child's physical, mental, or emotional health." MCL 722.27a(3) (emphasis added). Because the liberty interests at stake when a court seeks to limit or deny parenting time or custody are powerful, "to satisfy constitutional due process standards, the state must provide the parents with fundamentally fair procedures." *Id*. (cleaned up).[1] As our Supreme Court acknowledged in *Hunter*, which also arose from a child custody dispute, "where the parental interest is most in jeopardy, due process concerns are most heightened." *Id*. at 269.

Our Legislature has enacted a statutory framework designed to protect parents' due process rights in custody disputes. One such procedure, MCL 722.27(1)(c), empowers a circuit court to "modify or amend" previous judgments or orders conditioned on a showing of proper cause or changed circumstances. Our Supreme Court has described as "critical" that courts "carefully and fully comply with the requirements of MCL 722.27(1)(c) before entering an order that alters a child's established custodial environment." *Daly v Ward*, 501 Mich 897, 898; 901 NW2d 897 (2017). In *Daly*, the Supreme Court emphasized that a child's established custodial environment should not be changed absent "clear and convincing evidence" that doing so "is in the best interests of the child." *Id*. The Supreme Court highlighted that "[t]his heightened evidentiary burden for altering a child's established custodial environment recognizes the commonsense proposition that a child benefits from the permanence and stability of an established custodial environment, and therefore that such an environment should not lightly be altered." *Id*. Although a circuit court may enter an order upsetting a child's established custodial environment ex parte, it may not do so "without first making the findings required by MCL 722.27(1)(c)." *Id*.

The Supreme Court issued its order in *Daly* in 2017. But the rule *Daly* reiterates is of long standing. This Court emphasized two decades ago that "it is improper for a trial judge to decide the issue of custody on the pleadings and the report of the friend of the court when no

[1] This opinion uses the parenthetical "cleaned up" to improve readability without altering the substance of the quotation. The parenthetical indicates that nonsubstantive clutter such as brackets, alterations, internal quotation marks, and unimportant citations have been omitted from the quotation. See Metzler, *Cleaning Up Quotations*, 18 J App Pract & Process 143 (2017).

evidentiary hearing was held." *Schlender v Schlender*, 235 Mich App 230, 233; 596 NW2d 643 (1999). "A hearing is required before custody can be changed on even a temporary basis." *Id*.

The circuit court suspended Father's parenting time on January 10, 2018, without holding or even scheduling an evidentiary hearing. The court reached its decision by considering only unsubstantiated allegations made in a motion filed by the L-GAL, and an off-the-record conversation with a referee. The court's failure to conduct a timely evidentiary hearing violated MCL 722.27(1)(c) and deprived Father of due process of law. And even were we to fully credit the allegations set forth in the L-GAL's petition, they did not satisfy the threshold grounds for consideration of a custodial change. The five custody orders that followed suffer from the same intrinsic legal defects: they were issued without an evidentiary hearing, and the allegations before the court did not justify depriving Father of parenting time. Therefore, all six orders must be vacated. The seventh and final order strips Father of legal and physical custody and affords him only a bare minimum of parenting time. The evidence gathered during the belated evidentiary hearing does not substantiate a satisfactory legal basis for this custodial realignment, and is infected with several other errors. We vacate it for those reasons.

## II. FACTUAL BACKGROUND

Mother and Father have five children. Their 2013 judgment of divorce provided for joint legal and physical custody of the three then-minor children. Only one child, MAJ, remains a minor today. MAJ has resided with her mother since the divorce. Before the court suspended Father's parenting time, he visited with MAJ on Sunday evenings, and had overnights with her on Tuesdays and every other Friday. The other children, now adults, attend school or are gainfully employed outside of Michigan.

Father owns a successful business and is active in his synagogue. He has no history of psychiatric illness. Father frequently travels nationally and internationally for business purposes, and because he is involved in several charitable endeavors related to eradicating world hunger. He has taken his children on a number of international trips. A planned visit to Italy was the catalyst for the events leading to the suspension of his parenting time.

Before the divorce judgment was finalized, Mother and Father stipulated that Colleen V. Ronayne would serve as the L-GAL for the three minor children, and the court entered an order to that effect. The consent judgment of divorce, dated May 22, 2013, defined Ronayne's role as follows:

> A. The parties shall meet with Colleen V. Ronayne regarding the civil holidays and religious holidays pending a ruling from the Court regarding the agreement of the parties about the Jewish holiday schedule.
>
> B. The parents will cooperate regarding camp and extracurricular activities; conflicts will be mediated by Colleen V. Ronayne.
>
> C. The parties will meet with Colleen V. Ronayne to decide on a schedule regarding school breaks, children's birthdays, parents' birthdays, mother's day and father's day.

* * *

E. Passports of minor children shall be held by Colleen V. Ronayne.

F. Vacation time will be mediated by Colleen V. Ronayne and each party reserves the right to bring this issue before the Court.

* * *

[H.]12. That the minor children's pediatrician . . . will be the pediatrician that specifically makes recommendations for the healthcare of the minor children. The [L-GAL], Colleen V. Ronayne, [the pediatrician], and the parents will work conjointly to address any health issues of the minor children.

In 2015, the circuit court entered an order stating in relevant part: "GAL shall continue to hold the passports for two of the minor children. GAL shall provide passports to [Father] upon request a maximum of 7 days prior to travel and [Father] shall return passport within 5 days after return."

In December 2017, Father proposed a trip to Italy with his children. All except one of the adult children planned to accompany Father on the trip. Mother and Father exchanged emails about MAJ's willingness to join her siblings on the planned journey. Mother requested a copy of the flight and hotel information and advised Father that MAJ would agree to go only if her older sister, AJ, also went "so she has her older sister to share a hotel room with." A few days later, Ronayne's assistant emailed Father that if AJ decided not to go, MAJ would not go either. The email continued, "Colleen [Ronayne] wants a copy of the full itinerary also, and [Father's] agreement that he will not deviate from the plan or the itinerary."

Father sent information regarding the flight and planned itinerary to Mother and requested that Ronayne provide him with MAJ's passport. Ronayne then became more deeply involved in the parties' discussion of the trip, notifying Father that she insisted on "proof that [MAJ] is on the same flights" as her older sister. Father's attorney reminded Ronayne of the 2015 order requiring her to release the passports on request, at least seven days before travel. When Ronayne did not respond, Father filed an emergency motion to compel Ronayne to release MAJ's passport. The circuit court ordered Ronayne to release the passport on receipt of a copy of MAJ's airline ticket. The order continued: "The itinerary reflected on said ticket shall be adhered to unless otherwise agreed by Plaintiff/father and Defendant/mother."

The trip was supposed to start early on December 24, 2017, with a flight to New York and a connecting flight to Rome. The night before the scheduled departure, Father later testified, he developed symptoms of food poisoning. A year and a half after these events, Father explained that when he became ill during the early morning hours of December 24, he decided to create a back-up vacation plan in case he did not feel capable of taking an international flight. He purchased tickets for himself and his children to Fort Lauderdale, Florida, where his mother resided. Father called his physician from the car on the way to the airport for advice regarding which of the two trips to take. The doctor recommended against international travel.

In the terminal at the Detroit airport, Father advised the children that he did not feel up to the trip to Italy and proposed that they go to Florida. AJ insisted that she wanted to go to Italy, and called Mother. Father also called Mother. Mother called Ronayne. According to Father, his daughters were concerned that they would have to "re-pack" for Florida.

Ronayne advised MAJ to leave her father's presence and go into a bathroom so that she and MAJ could talk privately. After MAJ left the family group, Father could not find MAJ. He and the other children looked for her throughout the airport. Father then called the airport police, who located MAJ in a bathroom. The trip to Florida was cancelled.

Based on the events at the airport, Ronayne filed an emergency motion to suspend Father's parenting time. The motion contains numerous allegations reflecting Ronayne's personal involvement in the airport events. We include a sample of them here for two reasons. First, these allegations formed the basis for the circuit court's order suspending Father's parenting time. The court did not take testimony at the time; rather it relied on Ronayne's account of what had occurred. Second, the allegations are riddled with hearsay, speculation, and accusations that ultimately proved unfounded. Ronayne alleged in the motion:

> 11. Once Plaintiff Father and the parties' four children arrived at the airport, the entire situation blew up. Based on my investigation and belief, Plaintiff Father advised that the trip to Italy was off as he did not feel well and did not want to be in an airplane for an extensive period. None of the children, and in particular [MAJ] knew, or agreed to this change of destination before arriving at the airport.
>
> 12. At one point, Plaintiff Father allegedly advised the three older Jacob children that they could go on to Italy, but he and [MAJ] were going to Florida.
>
> 13. At approximately 10:45 a.m. on December 24th, the GAL received frantic phone calls from Defendant Mother as she was receiving frantic phone calls from [MAJ]. As the GAL was driving an automobile, the GAL pulled off to the side of the road to attempt to address and resolve the situation.
>
> 14. When the GAL first spoke to the minor child, [MAJ], she was panic stricken, hyperventilating and sobbing. She was concerned that she was being taken alone on a trip with her father. She was also very distressed at the way Plaintiff Father was treating her siblings, who were helping [MAJ] to try to calm down.
>
> 15. While still at the airport, the minor child, [MAJ] told the GAL that she does not want to go anywhere alone with Plaintiff Father and does not want to go to Florida. Apparently, all the children had packed with Italy in mind and had no warm weather clothing for Florida. [MAJ] advises that her older siblings were trying to help her, but their father was threatening to take away their phones, among other things.

16. Based upon information and belief, Plaintiff Father, in retaliation to some of the older children, cancelled their credit cards and cell phones.

17. According to my conversations with Defendant Mother, she at no time knew or approved of a change of travel plans until after she received a phone call from [MAJ], after [MAJ] arrived at the airport, in direct violation of the Court Order. It should be noted that Plaintiff Father picked up [MAJ] from Defendant Mother's residence the morning of Christmas Eve, at 9:00 a.m. December 24, 2017. Interestingly, the Plaintiff Father sent Defendant Mother an email at 10:55 a.m. (while he and the children were already at the airport) with the new itinerary for the airline ticket for [MAJ] to Fort Lauderdale, Florida. No other tickets, were provided, especially for [AJ]. In an email to Defendant Mother Plaintiff Father states that on the way to the airport his doctor said he should not travel overseas. However, it can be seen from this forwarded email, that Plaintiff Father bought this ticket to Florida at 4:12 a.m. on December 24, 2017, five hours before he picked [MAJ] up from Defendant Mother (see attached, marked Exhibit 3). But at no time did he tell Defendant Mother or the children of this. However, just some hours later, Plaintiff Father informed Defendant Mother that he was travelling to Rome with his son, [M], on December 25, 2017 . . . .

18. While I was still on the phone with [MAJ], she continued to be hysterical and so I advised Defendant Mother to get in her car and begin driving to the airport.

19. I asked [MAJ] to walk away from her family as the background conversations and [MAJ's] emotional state made it difficult to have a conversation with [MAJ]. After [MAJ] walked away, she would again become hysterical and say that her father was coming after her. I asked her to go into the nearest women's bathroom, so I could attempt to calm her down and determine what was happening. Immediately upon getting into the bathroom, [MAJ] calmed down and was able to talk to me. She indicated that she was fearful that her father would forcibly put her on the plane. [MAJ] reported her father tried to physically grab her, causing her to become more alarmed. I called one of the older children in an attempt to see what was occurring. I explained that the Judge indicated that [MAJ] could opt out of the trip at any time, and that [MAJ] was telling me she did not want to go. I was asked if it was her decision to make, and I responded affirmatively.

On January 3, 2018, Ronayne filed a motion seeking the suspension of Father's parenting time. The motion hearing began on a sour note. The court observed that one of MAJ's adult

brothers was in the courtroom, ordered him to leave ("He can step outside.") and chastised Father for "bringing" the young man to the courthouse ("Why would you do that?").[2]

Based on the allegations in Ronayne's motion and an off-the-record conversation with an unidentified "referee," the circuit court suspended Father's parenting time:

> *The Court*. . . . Not happy about this whole situation. . . . At this point, unless you're pulling really something wild out of your hat, I'm inclined to adopt every recommendation that this - - I've talked to the referee before this. I'm so concerned with what happened at the airport, . . . totally avoidable.
>
> And you spent a great deal of time here trying to manage, make sure this happened for these children. And I don't know what happened to Dad or why he decided he needs to cause this literal chaos in this case but - - You've got a few minutes, but my mind's pretty much made up. And I know that sounds terrible, but I read every single word of this. All right? From both sides.

In response to Father's counsel's request for an evidentiary hearing the court replied, "[B]ecause of what I've done and the work that I did before this hearing, I don't even need to have oral arguments. I can rule on the motions alone."

In addition to suspending parenting time, the circuit court ordered Father "into individual counseling," and referred the matter to a Friend of the Court (FOC) referee for a parenting recommendation. The order did not specifically prohibit Father from initiating or having contact with MAJ.

Father began counseling with Dr. Larry Friedberg, a psychologist, and saw him at least four times between February 9 and March 27, 2018. Two sessions were in person and two were conducted by telephone. Each was an hour in length. In April, Father filed a motion requesting reunification parenting time with MAJ. Father's motion averred that the L-GAL had taken no steps to facilitate contact between himself and MAJ. It included an affidavit signed by Dr. Friedberg averring in relevant part:

> I see no reason, at this point in time, why [MAJ] would be in danger, or at risk, physical or emotional, with her father. Rather, my opinion is that [Father] is a normal individual, although the family situation is highly abnormal, requiring psychological intervention by a specialist in family therapy and reunification

[2] The circuit court did not identify a legal basis for ejecting the young man from the court room. Court rooms are public spaces and may not be closed to the public except for good cause. See MCL 600.1420 ("The sittings of every court within this state shall be public except that a court may, for good cause shown, exclude from the courtroom other witnesses in the case when they are not testifying and may, in actions involving scandal or immorality, exclude all minors from the courtroom unless the minor is a party or witness."). The young man was not scheduled to testify, as no hearing was contemplated for that day or any date in the foreseeable future.

Dr. Friedberg expressed concern that MAJ and Father had no contact, and that being alienated from Father was contrary to MAJ's best interests.

The circuit court entertained argument on Father's motion, but took no evidence. The court expressed its displeasure that Father had conducted two counseling session by telephone, opining that it was not good enough, declaring that "three times in three months, now it's going on four months, is not sufficient," and ruling that "he has not participated in counseling." Father's counsel again requested an evidentiary hearing; the court again denied the request. The court then ruled that Father had violated its prior order by sending a couple of emails to MAJ. Father's counsel pointed out that the order did not bar contact; the court responded that counsel should have "assumed" that it did. "So, I find his judgment to be poor," the court summarized, "which is why I would like to have him in counseling." Dr. Friedberg's affidavit that Father did not need counseling was unpersuasive, the court ruled.[3]

In June 2018, Ronayne requested that the circuit court enter an order preventing Father from attending MAJ's middle school graduation. Father had sent Mother an e-mail informing her that he planned to attend the graduation ceremony with a "security detail," as he was being considered for an ambassadorship to the World Food Program. Ronayne alleged that this would be "alarming to the graduates and attendees." On the morning of the graduation, the court held a hearing on this and several other motions. Once again, the court rejected Father's counsel's request that it take testimony, and instead relied on Ronayne's allegations regarding what Ronayne characterized as Father's "pretty alarmist craziness . . . the only purpose of which is to make everyone nervous." As the argument proceeded the parties' counsels offered differing explanations for Father's e-mail. The court then ordered counsel into her chambers, and no further record was created. Following the in-chambers conference the court ordered Father to pay Ronayne $22,748.48 in overdue fees for her L-GAL services and continued: "[Father], upon his request for reinstatement of parenting time, shall submit to a psychiatric evaluation[.]" The order denied Father's request to remove Ronayne, prohibited Father from attending the graduation, and continued: "[Father's] contact with [MAJ] by phone, FaceTime, text or email is temporarily suspended until further order of the court . . . ." The order allowed MAJ to contact Father in writing and permitted Father to respond by text or email.

Twelve days later, the circuit court sua sponte entered an order requiring Father to undergo a psychiatric examination with a psychiatrist selected by the court, whose report would be provided only to the court. The order states:

> The court appoints Dr. James Bow of the University Psychiatric Center to perform a Psychiatric examination of father. The parties and attorneys shall work with Dr. Bow to coordinate a time and date for the examination as soon as is practical for his schedule. Dr. Bow shall submit his report to the court and, unless

[3] The court also faulted Father for not meeting with the FOC as it investigated the issue of parenting time. Father had rescheduled an initial meeting date with the FOC, but then missed the rescheduled meeting because notice of the rescheduled meeting was sent to an incorrect address.

> otherwise ordered, not disclose the contents to any third party, party to this case, or any attorney representing a party to the case.

After Father filed a motion seeking a stay of the this order the court rescinded it, but its next order provided that the requirement for a psychiatric examination with Dr. Bow would be reinstated if Father sought any parenting time. Father claimed an appeal from this order.

Finally, in May 2019, the court conducted an evidentiary hearing on the issues of custody and parenting time. Three witnesses testified—Father, Mother, and Dr. Friedberg. Father recounted in detail the events of December 24, 2017. He also explained why he believed that a security detail would have accompanied him to his daughter's graduation. He was extensively cross-examined on those subjects, and regarding a series of emails he sent to various other people (but not MAJ) after the circuit court suspended his parenting time. The emails contained derogatory and derisive comments regarding the circuit court judge, AJ, Ronayne, and Mother.

Dr. Friedberg testified that Father did not suffer from a symptomatic psychological or personality disorder, and did not require psychotherapy. Rather, in Dr. Friedberg's view, Father was grappling with alienation from MAJ. Dr. Friedberg opined that the best interests of a child should always prevail, and "children need to have a relationship with their parents." In Dr. Friedberg's words, "[m]isdeeds by their parents do not . . . negate that interest."

Ultimately the circuit court decided that it would "wholly disregard" Dr. Friedberg's testimony because Father had provided Dr. Friedberg with a report of a custody evaluation prepared years earlier by a psychologist who allegedly found that Father did not have a mental disorder. The circuit court struck Dr. Friedberg's testimony as a sanction for Father having shown Dr. Friedberg the report.[4]

Mother testified that MAJ feels "unsafe" around Father, and that Father poses a threat to her because "he always lies." In her view, MAJ is "happier" without him, would not benefit from therapy, and "doesn't have any issues." Mother also expressed her belief that Father intended to "kidnap" MAJ and take her to Israel when he changed the travel arrangements in December 2017.

On July 19, 2019, the court issued a written opinion and order awarding Mother sole legal and physical custody of MAJ. The court concluded that Father's "bizarre behavior, embarrassment of [M]other to numerous individuals via email, and evasive testimony" all amounted to proper cause for a modification of physical and legal custody. The court noted that Father's actions in (1) unilaterally changing the travel itinerary for the trip to Italy in December 2017, and (2) sending e-mails with "bizarre statements," both of which violated the orders of the

[4] According to information in the record, the custody evaluation report prepared in 2015 had been provided to the parties, their counsel, and Ronayne. An order stated, in relevant part, that the report "shall be returned to counsel and no other copies shall be retained or disseminated by the parties. [The report] is not to be submitted or attached to any future pleadings without order of the court."

court, represented more than normal life changes and therefore constituted a change in circumstances.

Addressing the applicable burdens of proof, the court stated that because Mother was seeking to obtain sole legal custody, but had been exercising de facto sole physical and legal custody since January 2018, Father's relationship with MAJ was "non-existent[,]" and an established custodial environment existed with Mother alone. Accordingly, Mother was required to prove by an evidentiary preponderance that "maintaining the de facto sole legal and physical custody situation" served MAJ's best interests. In contrast, because Mother had de facto sole legal custody since January 2018, Father's request to continue joint legal custody would alter MAJ's established custodial environment; therefore, Father was held to a clear and convincing evidence standard.

After weighing the best-interest factors, the court concluded that Father did not meet his burden of establishing, by any standard, entitlement to MAJ's legal or physical custody. On the other hand, the court opined that Mother had satisfied her burden, under both preponderance and clear-and-convincing-evidence standards, "to maintain the status quo with respect to physical custody and her exercise of de facto sole legal custody." The court concluded that MAJ's best interests would be served by vesting sole legal and physical custody in Mother.

Turning to parenting time, the court applied a preponderance of the evidence standard and ultimately modified parenting time to allow Father to contact MAJ with a single e-mail, once a week, with a simultaneous copy to Mother. Father may also send a birthday or religious holiday card. The court ordered Father to engage in individual therapy at least twice a month, with a therapist to be selected by the parties. The order forbids Father from treating with Dr. Friedberg or "with any other mental health professional with whom he has previously treated."[5] The court also ordered Father to have a psychological evaluation within 28 days, and to undergo a psychiatric evaluation if requested by his new therapist. MAJ, too, was ordered into therapy with a medical professional approved by the parties; Father was prohibited from having access to her records. With respect to potential reunification, the circuit court ordered:

> Provided that [Father] complies with all aspects of this order, he may petition the court to consider reunification or therapeutic parenting time no sooner than six months from this order's date.
>
> In advance of the motion hearing, should [F]ather request one, he should present evidence—to the court, the L[-]GAL, and opposing counsel—regarding the specific scope of his reunification or therapeutic proposals and the rationale for his proposed plan.

[5] We have concerns about the propriety of this order. Generally, parents involved in custody disputes maintain their right to consult and obtain treatment from their own physicians and any physician of choice. We also question how the court could enforce this order.

> MAJ's mental health professional . . . will have input as to the initiating and frequency of sessions.

Father now appeals this final order by right, and the preceding orders by leave.

## III. PHYSICAL AND LEGAL CUSTODY AND PARENTING TIME

Father first contends that the circuit court erred by suspending his parenting time in January 2018, and continuing the suspension in subsequent orders. We agree that the circuit court improperly suspended Father's parenting time in the first instance, and repeatedly perpetuated this error. Because neither proper cause nor a change of circumstances were demonstrated, the court erred by reaffirming the elimination of parenting time in the July order.

### A. THE LEGAL FRAMEWORK

The Child Custody Act (CCA), MCL 722.21 *et seq.*, promotes the best interests of the child by ensuring a stable environment free of unnecessary and disruptive custodial modifications. *Lieberman v Orr*, 319 Mich App 68, 78; 900 NW2d 130 (2017). "Constant changes in a child's physical custody can wreak havoc on the child's stability, as can other orders that may significantly affect the child's best interests." *Id.* To that end, the CCA limits a court's power to modify previous judgments or orders regarding custody and parenting time. *Id.* at 78-79. MCL 722.27 provides, in pertinent part:

> (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:
>
> * * *
>
> (c) Subject to subsection (3), *modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances* until the child reaches 18 years of age and, subject to . . . MCL 552.605b, until the child reaches 19 years and 6 months of age. *The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child*. . . . [Emphasis added.]

"Physical custody refers to a child's living arrangements." *Lieberman*, 319 Mich App at 79. Of significance here, a substantial modification of parenting time may alter a child's established custodial environment even if parenting time was less than equal. *Id.* at 89-90; see also *Rains v Rains*, 301 Mich App 313, 333; 836 NW2d 709 (2013).

MCL 722.27a governs parenting time, and provides, in pertinent part:

> (1) Parenting time shall be granted in accordance with the best interests of the child. *It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents.* Except as otherwise

> provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time.
>
> (2) If the parents of a child agree on parenting time terms, the court shall order the parenting time terms unless the court determines on the record by clear and convincing evidence that the parenting time terms are not in the best interests of the child.
>
> (3) *A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health*. [Emphasis added.]

The meaning of this legislative declaration cannot be emphasized strongly enough. Children have the best chance to grow into healthy adults when they have relationships with *both* parents. Depriving a child of a parent, and a parent of a child, is a drastic measure that should be undertaken only under dire circumstances, and consistent with the procedures set forth in the CCA.

Before modifying a custody order, a court must first consider whether the moving party has demonstrated by a preponderance of the evidence a change of circumstances or proper cause. *Vodvarka v Grasmeyer*, 259 Mich App 499, 509; 675 NW2d 847 (2003). This requirement is "intended to erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders." *Id*. (cleaned up). In *McRoberts v Ferguson*, 322 Mich App 125, 131-132; 910 NW2d 721 (2017), this Court elaborated:

> Proper cause means one or more appropriate grounds that have or could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken. In order to establish a change of circumstances, a movant must prove that, 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. To constitute a change of circumstances under MCL 722.27(1)(c), the evidence must demonstrate something more than the normal life changes (both good and bad) that occur during the life of a child, and there must be at least some evidence that the material changes have had or will almost certainly have an effect on the child. [Cleaned up.]

In assessing "proper cause," the criteria outlined in the statutory best-interest factors "should be relied on by a circuit court in deciding if a particular fact raised by a party is a 'proper' or 'appropriate' ground to revisit custody orders." *Vodvarka*, 259 Mich App at 512. "Change of circumstances," should also "be[] gauged by the statutory best interest factors." *Id*. at 514.

The next steps in considering a motion for a custodial or parenting time change require the court to consider the child's established custodial environment. MCL 722.27(1)(c) provides, in pertinent part:

> The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

An established custodial environment for a child "may exist in more than one home," and it may be established "as a result of a temporary custody order, in violation of a custody order, or in the absence of a custody order." *Marik v Marik*, 325 Mich App 353, 361; 925 NW2d 885 (2018). The existence of an established custodial environment is a question of fact for the circuit court. *Pennington v Pennington*, ___ Mich App ___; ___ NW2d ___ (Docket No. 348090, 2019), slip op at 8.

Whether an established custodial environment exists is a pivotal question, because it determines the applicable standard of proof. If a modification in parenting time would alter the child's established custodial environment, the party seeking the modification must present clear and convincing evidence that a modification would serve the child's best interests. *Shade v Wright*, 291 Mich App 17, 23; 805 NW2d 1 (2010). If the proposed modification will not alter the child's established custodial environment, the movant need only establish by a preponderance of the evidence that the change is in the child's best interests. *Id*.

While "normal life changes" for a child would not meet the threshold to warrant modification of physical or legal custody, "such changes may be sufficient for a court to consider modification of a parenting-time order unless the requested change would alter the established custodial environment." *Lieberman*, 319 Mich App at 83. If a modification of parenting time would disrupt the child's established custodial environment, then the *Vodvarka* framework must be followed. *Id*. However, if the child's established custodial environment would remain unchanged, the party seeking modification of parenting time need only "prove by a preponderance of the evidence that the change is in the best interests of the child." *Luna v Regnier*, 326 Mich App 173, 180 n 5; 930 NW2d 410 (2018).

Once the circuit court finds proper cause or a change of circumstances, and assigns the moving party the proper burden of proof, the court must consider the best interests of the child:

> Both the statutory best interest factors in the [CCA], MCL 722.23, and the factors listed in the parenting time statute, MCL 722.27a([7]), are relevant to parenting time decisions. *Custody decisions require findings under all of the best interest factors, but parenting time decisions may be made with findings on only the contested issues*. [*Shade*, 291 Mich App at 31-32 (emphasis added).]

If modification of either physical or legal custody is sought and a change would alter to whom the child turns "for guidance, discipline, the necessities of life, and parental comfort and support," the moving party is required to put forth *clear and convincing* evidence that the

modification is in the child's best interests. *Pennington*, ___ Mich App at ___, slip op at 9. If the proposed modification would not impact the child's established custodial environment, the burden rests with the party seeking the change to establish by a preponderance of the evidence that the change is in the child's best interests. *Griffin v Griffin*, 323 Mich App 110, 119; 916 NW2d 292 (2018).

## B. STANDARDS OF REVIEW

A circuit court's custody order must be affirmed on appeal unless the circuit court's factual findings are against the great weight of the evidence, the court's decision amounted to a palpable abuse of discretion, or the court clearly erred in its application of the law on a major issue. *Lieberman*, 319 Mich App at 77. Further:

> "The great weight of the evidence standard applies to all findings of fact. A trial court's findings regarding the existence of an established custodial environment and regarding each custody factor should be affirmed unless the evidence clearly preponderates in the opposite direction. An abuse of discretion standard applies to the trial court's discretionary rulings such as custody decisions. Questions of law are reviewed for clear legal error. A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law." [*Id*., quoting *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009).]

"[T]his Court should defer to the circuit court's determination of credibility," and "may not substitute its judgment on questions of fact unless the facts clearly preponderate in the opposite direction." *Moote v Moote*, ___ Mich App ___; ___ NW2d ___ (Docket No. 346527, 2019) (cleaned up); slip op at 2-3.

## C. APPLICATION: 2018-2019 PARENTING TIME ORDERS

The circuit court clearly erred by suspending Father's parenting time in January 2018, and continuing that suspension through July 2019. The events precipitating the elimination of Father's parenting time were confined to a few hours. Assuming that Father improperly altered the travel plans and violated a court order by failing to obtain Mother's consent before doing so, his actions did not support a finding of proper cause.

The airport events were at the core of the court's parenting-time rulings. The only record *evidence* of the airport events was supplied by Father. His testimony describes an unpleasant and somewhat chaotic scene, exacerbated by Ronayne's intervention and her instruction that MAJ go into a bathroom without informing her father or her siblings of where she was going. Understandably, MAJ was distressed and upset that morning. In retrospect, perhaps Father should have simply cancelled the vacation plans altogether. But Father's last-minute decision to try to salvage a vacation for his family, even if ill-advised and poorly executed, does not give rise to proper cause for a reevaluation of either parenting time or custody. Better communication with Mother was warranted, and Father indisputably violated the order that he adhere to the agreed-upon itinerary unless Mother agreed to a change. Nevertheless, this was a single episode on a single morning, in which no one was harmed and no lasting damage done. It is not the sort

of life-affecting, "significant" ground for custodial reevaluation contemplated in MCL 722.27(1)(c), and does not amount to proper cause for consideration of a custodial change.

Furthermore, even were we to find that either proper cause or a change of circumstances existed, the evidence eventually presented to the court did not come close to establishing—by any evidentiary standard—that continued parenting time with Father would endanger MAJ's physical, mental, or emotional health. See *Rozek v Rozek*, 203 Mich App 193, 194; 511 NW2d 693 (1993). No evidence was presented that he ever harmed MAJ or any of his other children. No evidence suggested that MAJ had actually suffered an emotional injury as a result of the airport events; indeed, according to Mother, MAJ had not received any counseling or therapy, and would not benefit from any. While his e-mails following the revocation of his parenting time were nasty, offensive and puerile, their content did not establish grounds to deprive Father of his right to visit MAJ, because no evidence was presented that she ever read them.

Moreover, we are troubled by the court's order conditioning a resumption of parenting time on a visit to a psychiatrist named by the court, with the report sealed from review by Father or his counsel. At the time the court entered this order, the only pertinent "evidence" of record relevant to Father's psychological condition consisted of Dr. Friedberg's affidavit attesting that Father was *not* in need of psychiatric treatment. We acknowledge that a parent's mental health may be relevant in a custody dispute, and that a single affidavit on the subject is not necessarily dispositive of the issue. But a court may not order a parent seeking resumption of his custodial rights to undergo a medical examination—including a psychiatric examination—in the absence of good cause. See MCR 2.311; MRE 706. Good cause for ordering a psychiatric examination was absent in this case. No record evidence supported that Father was psychologically unfit to parent his daughter, or mentally ill. Further, we are aware of no legal authority that would permit the court to keep the report secret. To the contrary, MRE 706(a) provides that a court-appointed expert "shall advise the parties of the witness' findings, if any[.]" Accordingly, we vacate the orders conditioning parenting time on a psychiatric evaluation.

Although the circuit court characterized its decisions throughout the proceedings as merely suspending Father's parenting time, the court also prohibited him from having any *contact* with MAJ. These orders had the legal effect of modifying not only Father's parenting time, but also his joint physical custody of MAJ. As this Court observed in *Lieberman*, 319 Mich App at 77 n 4, how the parties and the circuit court characterize an issue concerning custody or parenting time is not dispositive. Rather, this Court will examine whether the proposed changes would result in a modification of parenting time or custody. *Id.* at 77 n 4, 85 n 7.[6]

[6] The circuit court's first order suspending Father's parenting time did not preclude Father from having any *contact* with MAJ. Rather the initial parenting time order provided in relevant part: "Plaintiff's parenting time is hereby suspended." The term "parenting time" usually implies *physical* presence with the child. Without more specificity, an order suspending parenting time does not necessarily preclude a parent from contacting a child.

Before the circuit court entered its January 12, 2018 order, Father and Mother shared joint physical custody of MAJ. According to the schedule, MAJ spent approximately 78 overnights with Father each year. The January 2018 order terminating parenting time altered MAJ's established custodial environment with Father. Additionally, during the more than 18 months in which Father's parenting time was suspended, at no point did the circuit court determine whether (1) proper cause or a change of circumstances had arisen to warrant revisiting the issues of parenting time and physical custody as established in the consent judgment of divorce, (2) an established custodial environment existed for MAJ with Father and whether any potential modifications to parenting time or physical custody would disrupt that established custodial environment, and (3) the evidence supported a finding that any proposed modification was in MAJ's best interests. The court also erred by referring the matter to the FOC before determining, as a threshold matter, whether proper cause or a change of circumstances existed. *Bowling v McCarrick*, 318 Mich App 568, 571-572; 899 NW2d 808 (2016).

We readily acknowledge that in determining the existence of proper cause or a change of circumstances, the circuit court is not necessarily required to conduct an evidentiary hearing. See *Marik*, 325 Mich App at 363, 370. However, if a circuit court's decision to modify *parenting time* will alter a child's *custody*, even on a temporary basis, a hearing to determine the child's best interests must be conducted. *Yachcik v Yachcik*, 319 Mich App 24, 51; 900 NW2d 113 (2017); see also *Johnson v Johnson*, ___ Mich App ___; ___ NW2d ___ (Docket Nos. 345803, 345955, 2019); slip op at 10; *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005) (both cases recognizing that even in cases in which custody will be altered only on a temporary basis, an evidentiary hearing must be conducted). Accordingly, because the circuit court's decision to suspend Father's parenting time had the effect of actually modifying the award of joint physical custody in the consent judgment of divorce, a hearing was required.

We vacate the circuit court's January 12, 2018 order, as well as the subsequent orders of April 12, 2018, and June 13, 2018, continuing the suspension of parenting time. We remand this case to the circuit court, which shall reinstate Father's parenting time and commence reunification parenting time between Father and MAJ under the supervision of a qualified mental health professional selected by the circuit court, in consultation with MAJ's therapist, and consistent with our order.

## D. APPLICATION: 2019 CUSTODY ORDER

The circuit court also clearly erred by modifying (1) the parties' legal and physical custody of MAJ, and (2) Father's parenting time with MAJ.

First, the circuit court erroneously determined as a matter of law that proper cause or a change of circumstances existed to warrant a modification of MAJ's physical and legal custody. MCL 722.27(1)(c). The court concluded that Father's "bizarre behavior," including his e-mails and his evidentiary hearing testimony (characterized by the court as "disingenuous and not credible"), amounted to proper cause and a change of circumstances to warrant reconsideration of the prior custody order. The circuit court elaborated:

> [F]ather's unilateral decision to take the children to Florida—in defiance of a court order of which he had actual knowledge—in addition to his numerous

> disturbing emails containing bizarre statements, fall far outside the normal life changes occurring during [MAJ's] life and demonstrates "something more than the normal life changes" given [F]ather's flagrant disregard of court orders. Further, [F]ather's animosity toward [M]other, [the] L[-]GAL, [M]other's attorney, and those not acquiescing to his requests call into serious question his ability to co-parent or behave as an adult. Thus, [F]ather's actions demonstrate, by a preponderance of the evidence, that the court should review joint physical and legal custody.

Father's abrupt change of the travel plans, his multiple e-mails making derogatory comments about Mother and others involved in the lower court proceedings, his "disregard" of court orders and his animosity toward Mother are supported in the record. The preliminary question, however, is whether those facts establish "proper cause" as contemplated by MCL 722.27(1)(c). Proper cause flows from grounds for revisiting a prior custody order that are relevant to one of the 12 statutory best-interest factors, and are "*of such a magnitude to have a significant effect on the child's well-being*." *Vodvarka*, 259 Mich App at 512 (emphasis added). Likewise, to establish a change of circumstances, there must be a showing that the circumstances surrounding MAJ's custody had materially changed since the consent judgment of divorce was entered on May 22, 2013, and that such circumstances "have or could have a *significant* effect" on MAJ's well-being. *Id*. at 513 (emphasis in original).

No evidence supports that Father's behavior at the airport or the e-mails (all of which were sent to people other than MAJ) "significantly" impacted MAJ and her well-being. While MAJ was distressed that morning by the last-minute change in travel plans, the evidence does not demonstrate that the airport event had *any* effect on MAJ's emotional well-being after that day, let alone a *significant* effect. See *id*. at 512-513.

Moreover, Mother's testimony that Father is routinely unpredictable, and that he lies to MAJ and is deceitful, does not support a different result. No evidence was presented that Father had ever behaved in a manner that might pose a threat to MAJ's safety or seriously affect her emotional and mental well-being. That Father once told MAJ that they were going to a car dealership and then changed his mind and took her to a bat mitzvah party does not alter our assessment. Parents sometimes make spur-of-the-moment, mundane scheduling decisions that cause momentary upset, but do no damage in the long run. And while Father's violation and disregard of court orders are troubling and merited sanction, withholding parenting time was inappropriate. Father's behavior was potentially contemptuous. Had such a finding been made and a penalty applied, we would be hard pressed to disagree. No authority supports that withholding parenting time offers an appropriate substitute for a contempt citation. Accordingly, the circuit court erred as a matter of law by concluding that proper cause or a change of circumstances existed to warrant revisiting MAJ's physical and legal custody. We vacate the

July 19, 2019 opinion and order to the extent that it modified MAJ's legal and physical custody as set forth in the parties' consent judgment of divorce.[7]

### E. THE CIRCUIT COURT'S JULY 19, 2019 ORDER CONCERNING PARENTING TIME

The July 2019 order also precluded Father from having any parenting time with MAJ. Notably, the circuit court employed an incorrect burden of proof, holding that because Father sought to reunify with MAJ and MAJ had an established custodial environment with Mother, Father had the burden of establishing, by a preponderance of the evidence, that a resumption of parenting time would be in MAJ's best interests.

The circuit court was obligated to first decide whether proper cause or a change of circumstances had been established, next to consider the existence of an established custodial environment, and then to consider MAJ's best interests according to either the *Vodvarka* or *Shade* legal framework. See *Lieberman*, 319 Mich App at 81, 83-84.

Because Father was not seeking to modify parenting time as established by the consent judgment of divorce but rather to resume parenting time after the circuit court improperly suspended it, he should not have had to bear any burden of proof. This fundamental error compels us to vacate the circuit court's July 19, 2019 opinion and order to the extent that it modified Father's parenting time. As indicated earlier, we remand this case to the circuit court, which shall reinstate Father's parenting time in accordance with our order. On remand, the circuit court's erroneous suspension of Father's parenting time from January 2018 to July 2019 should not influence a future determination with respect to MAJ's established custodial environment arising from the parties' May 22, 2013 consent judgment of divorce.

## IV. THE L-GAL

Father next argues that the circuit court erred by denying his motions to remove the L-GAL and by ordering him to pay the L-GAL $22,748.48 in fees. Our review is for an abuse of discretion. See *In re Toth*, 227 Mich App 548, 557; 577 NW2d 111 (1998).

### A. CONTINUED APPOINTMENT OF L-GAL

The appointment of an L-GAL in a custody proceeding is governed by MCL 722.24, which provides, in pertinent part

> (1) In all actions involving dispute of a minor child's custody, the court shall declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act.

[7] Given our disposition of this issue, it is unnecessary to address Father's arguments challenging the circuit court's findings with respect to an established custodial environment and the statutory best-interest factors.

(2) If, at any time in the proceeding, the court determines that the child's best interests are inadequately represented, the court may appoint a [L-GAL] to represent the child. A [L-GAL] represents the child and has powers and duties in relation to that representation as set forth in . . . MCL 712A.17d. All provisions of . . . MCL 712A.17d, apply to a [L-GAL] appointed under this act.

(3) In a proceeding in which a [L-GAL] represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

MCL 712A.17d provides, in pertinent part:

(1) A [L-GAL's] duty is to the child, and not the court. The [L-GAL's] powers and duties include at least all of the following:

(a) The obligations of the attorney-client privilege.

(b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.

* * *

(g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.

(h) To attend all hearings and substitute representation for the child only with court approval.

(i) To make a determination regarding the child's best interests and advocate for those best interests according to the [L-GAL's] understanding of those best interests, regardless of whether the [L-GAL's] determination reflects the child's wishes. The child's wishes are relevant to the [L-GAL's] determination of the child's best interests, and the [L-GAL] shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the [L-GAL] shall inform the court as to the child's wishes and preferences.

Ronayne became involved in this case when the parties stipulated to her appointment as the L-GAL for the three children who were minors at the time. Subsequently, in the judgment of divorce, the parties identified her duties. Those duties included meeting with the parents to discuss the allocation of parenting time over holidays, school breaks, and birthdays; the logistics of the children's camp and extracurricular activity attendance; and the schedule for vacation time. The parties' stipulation defines Ronayne's role as parenting-time *facilitator* or *coordinator*. Her job was to help the parties reach agreements without the need for trips to the

courthouse. The stipulated order of appointment obliged Ronayne to work *with* Mother and Father to achieve a meeting of the minds.

Since then, Ronayne's involvement has far exceeded those agreed-upon boundaries. For example, Ronayne withheld MAJ's passport despite a timely request from Father to produce it. Ronayne's conduct was inconsistent with the order then in effect. More globally, Ronayne has firmly and repeatedly asserted that MAJ is opposed to any parenting time with Father. An L-GAL is expected to advocate as an attorney for a child's best interests. Those interests include parenting time with both parents.

Furthermore, the evidence establishes that Ronayne became *personally* enmeshed in MAJ's relationship with Father, has encouraged MAJ to discontinue that relationship, and has actively advocated in favor of maintaining MAJ's complete separation from her father. Ronayne also played a personal role in the airport events when she advised MAJ to hide in a bathroom, necessitating police involvement. The parties engaged Ronayne to *assist in resolving* parenting-time disputes, not to inflame them.

Ronayne's stated antipathy toward Father will not permit her to participate productively in the reunification we have ordered. Accordingly, her removal is warranted. On remand, the circuit court may revisit whether MAJ currently requires the services of an L-GAL.

B. JUNE 13, 2018 ORDER COMPELLING FATHER TO PAY $22,748.48 IN L-GAL FEES

With respect to payment of the L-GAL's fees, MCL 722.24(4) provides, in pertinent part

> *After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of the [L-GAL] against 1 or more of the parties involved in the proceedings* or against the money allocated from marriage license fees for family counseling services under . . . MCL 551.103. A [L-GAL] appointed under this section shall not be paid a fee unless the court first receives and approves the fee. [Emphasis added.]

Father raised objections to Ronayne's fees on several occasions between January 2018 and July 2019. He challenged both the factual bases for the fees and their amount. There is no record of the resolution of his challenges as the circuit court discussed this issue in chambers and off the record. As a general matter, attorney fees must be reasonable, see, e.g., *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 281-282; 884 NW2d 257 (2016). An L-GAL's fees also must be "reasonable." MCR 33.204(D); MCL 722.24(4). Further, an L-GAL "shall not be paid a fee unless the court first receives and approves the fee." MCL 722.24(4). We vacate the L-GAL fee award. If Father renews his motion and adequately supports it, the court must conduct an evidentiary hearing and determine a reasonable attorney fee.[8]

[8] The circuit court conducted several critical conversations in chambers, and failed to make a record of them. Doing so resulted in an inadequate record for this Court's meaningful review. See *In re Khalil Trust (On Reconsideration)*, 328 Mich App 151, 170; 936 NW2d 694 (2019).

## V. JUDICIAL BIAS

Finally, Father argues that, on remand, this case should be reassigned to another judge because the assigned circuit court judge is biased against him.

MCR 2.003(C)(1)(a) allows for disqualification of a judge who "is biased or prejudiced for or against a party or attorney." Subsection (1)(b) warrants disqualification when "[t]he judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, [556 US 868]; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct." Due process entitles a party to have an unbiased judge hear and decide a case. *Kern v Kern-Koskela*, 320 Mich App 212, 231; 905 NW2d 453 (2017).

The circuit court's determination that Father lacks all credibility and its order that Father undergo a psychiatric examination despite the absence of record evidence of good cause for such an evaluation, persuade us that the risk of actual bias is too high to be tolerable in the case. The circuit judge repeatedly expressed deep-seated, negative opinions about Father and his character, and we do not reasonably expect that the judge could easily put those views out of her mind on remand. Even if the judge could view the case afresh with a clear mind, reassignment would be required to preserve the appearance of justice and impartiality on the part of the bench.

## VI. CONCLUSION

In Docket No. 344580, we vacate the circuit court's January 12, 2018 order to the extent that it suspends Father's parenting time. In Docket No. 344598, we vacate the circuit court's June 13, 2018 order to the extent that it continues the suspension of Father's parenting time, prevents Father from maintaining contact with MAJ, continues Ronayne's appointment as L-GAL, and directs Father to pay $22,748.48 in fees to the L-GAL, and remand for an evidentiary hearing regarding Ronayne's fees contingent on Father filing a new motion in this regard. In Docket No. 344809, we vacate in part the circuit court's April 12, 2018 order to the extent that it denied Father's motion for reunification parenting time with MAJ. In Docket No. 350162, we vacate the circuit court's July 19, 2019 opinion and order to the extent that it awards Mother sole legal and physical custody of MAJ and continues the suspension of Father's parenting time. In Docket No. 347014, we reverse the circuit court's June 27, 2018 order (1) denying Father's motion to remove the L-GAL, and (2) denying an evidentiary hearing regarding the L-GAL's fees. In Docket Nos. 344654 and 344894, we vacate the circuit court's June 25 and July 25, 2018 orders because they maintain the incorrect suspension and modification of parenting time that originated from the circuit court's initial January 12, 2018 order. We remand this case to the circuit court for immediate assignment to a different judge and for the reinstatement of Father's parenting time with MAJ, to be conducted forthwith as reunification parenting time directed by a mental health professional selected by the circuit court from outside the court. The reunification specialist must consult with MAJ's therapist before making a recommendation,

which the circuit court must consider in light of the best-interest factors. We do not retain jurisdiction. This opinion has immediate effect pursuant to MCR 7.215(F)(2).

/s/ Elizabeth L. Gleicher
/s/ Michael F. Gadola

**Court of Appeals, State of Michigan**

# ORDER

Joel Eric Jacob v Lauren Beth Jacob

Docket Nos. 344580; 344598; 344654; 344809; 344894; 347014; 350162

LC No. 2012-793255-DM

Elizabeth L. Gleicher
Presiding Judge

Michael F. Gadola

Anica Letica
Judges

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Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We do not retain jurisdiction.

The opinion accompanying this order has immediate effect pursuant to MCR 7.215(F)(2).

Proceedings on remand shall commence within 7 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded.

As stated in the accompanying opinion, the clerk of the circuit court must reassign this matter to a different circuit court judge within 7 days.

Within 21 days, the circuit court must order reunification parenting time under the supervision of a qualified mental health professional selected by the court from outside the court, in consultation with the child's therapist.

Within 21 days, the circuit court must order removal of Colleen V. Ronayne as the lawyer-guardian ad litem. Within 21 days, if he so chooses, plaintiff may file a new motion to challenge the reasonableness of the outstanding fees owed to Ronayne; the circuit court must conduct an evidentiary hearing on any such motion. Within 35 days, the circuit court must conduct a hearing to determine if appointment of a new lawyer-guardian ad litem is required.

/s/ Elizabeth L. Gleicher

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

March 3, 2020
Date

Chief Clerk