STATE OF MICHIGAN

COURT OF APPEALS

DEREK SHAW,

Plaintiff/Counterdefendant-Appellee,

v

ELIZABETH SHAW,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
December 10, 2020

No. 352851
Sanilac Circuit Court
Family Division
LC No. 14-035535-DM

Before: MURRAY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Defendant, appearing *in propria persona*, appeals as of right an order denying her motion for relief from judgment and denying her a declaratory judgment in the divorce proceedings. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant had two children during their marriage. The circuit court presiding over the divorce proceedings (the state court) granted the parties a divorce by consent judgment entered on September 12, 2014. The consent judgment granted the parties joint legal and physical custody of the couple's children. It established a "Custodial Time" schedule for the parties, with significant parenting time granted to defendant. On September 30, 2014, defendant filed a motion for full custody, arguing that plaintiff had abused one of the children. In response, plaintiff stated that defendant had made "multiple vexatious complaints" of abuse. Subsequently, a Michigan child-protective-proceedings (MCPP) case was initiated in the family division of the state court, LC No. 15-035887-NA, but it was transferred on March 24, 2015, to the Miami Tribe of Oklahoma District Court (the tribal court). It is not disputed that plaintiff is a Native American and a member of the Miami Tribe of Oklahoma and that the couple's children are "Indian" children for purposes of the Indian Child Welfare Act of 1978 (ICWA), 25 USC 1901 *et seq.*, see 25 USC 1903(4), and the Michigan Indian Family Preservation Act, MCL 712B.1 *et seq.*, see MCL 712B.3(k). The children, on March 24, 2015, were made wards of the tribal court.

Defendant attempted, many years later, to file a claim of appeal in this Court regarding the transfer of the MCPP case to the tribal court, but the appeal was dismissed by this Court as delineated in the following order:

> The claim of appeal is DISMISSED for lack of jurisdiction because it was not filed within 21 days of the March 24, 2015 order transferring jurisdiction of the case to the Miami Tribe of Oklahoma District Court. MCR 7.204(A)(1)(a). Although appellant claims that the appeal was timely filed from the Sanilac Circuit Court's February 27, 2020 order denying appellant's motion to rescind the transfer, appellant cannot claim an appeal of right from such an order. See MCR 3.993(A)(6). Dismissal is without prejudice to the filing of a late appeal under MCR 7.205(G), provided such a filing meets all requirements under the court rules and is not time-barred. [*Shaw v Shaw*, unpublished order of the Court of Appeals, entered April 30, 2020 (Docket No. 353213).][1]

In a letter dated October 6, 2015, the children's guardian ad litem (GAL) stated that the tribal court had "deferred jurisdiction" on ruling about where the children should attend school to the state court. Defendant wanted, among other things, to transfer the children to the Port Huron Michigamme School, and the GAL stated, "If the Sanilac County . . . Court sees fit to allow the children to transfer to the Michigamme Public School, I agree and the children agree as well." Plaintiff filed a document indicating that the tribal court had deferred jurisdiction to Sanilac County for only the single issue regarding a change of schools. The state court granted the change-of-schools motion.

Years later, in 2019 and 2020, defendant filed numerous motions in the state court, arguing, among other things, that the children had been unlawfully taken from her by the tribal court, that the order transferring the MCPP case to the tribal court was invalid, and that the custody arrangement in the consent judgment of divorce must be enforced. However, documents filed by defendant demonstrate that the tribal court suspended her visitations with the children in light of her behavior, stating that she was harassing counselors, causing public scenes in front of the children, and making no genuine effort to comply with her service plan. In fact, the tribal court approved plaintiff's request to move the children to Oregon in August 2019. The tribal court stated that it had allowed the state court to decide the years-earlier issue of a change of schools because

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[1] In a court transcript filed by defendant in Docket No. 353213, defendant's attorney, while the transfer ruling was being discussed, stated on the record that defendant *agreed* with the transfer to the tribal court. 25 USC 1911(b) states:

> In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

that court, at the time, was more familiar with the proceedings. The tribal court went on to explain, "Today, this [tribal] court is in the position to have the most information with regard to the family and whether a move is appropriate."

In ruling on the various motions filed by defendant, the state court opined that because a child-protective-proceedings case was pending, the authority of the state court to decide custody matters was suspended. The state court acknowledged that the tribal court had *granted* the state court the authority to decide a custody matter in October 2015, but it concluded that the tribal court was not divested of all jurisdiction over custody matters. The state court opined that defendant was requesting a modification of orders over which it, in presiding over the divorce case, did not have jurisdiction. From these rulings, defendant appeals.

II. STANDARD OF REVIEW

The resolution of this appeal involves determining whether the state court was correct in concluding that it lacked the authority to grant the various forms of relief requested by defendant. This is a question of law, and questions of law are reviewed de novo. *In re Fried*, 266 Mich App 535, 538; 702 NW2d 192 (2005).

III. ANALYSIS

Essentially, defendant contends that the consent judgment of divorce addressed child custody, and therefore, the state court erred in failing to rule on custody issues and in deferring to the decisions of the tribal court when defendant was not a respondent in that litigation. We disagree.

Defendant's attempt in the present appeal to challenge the order of transfer of the MCPP case to the tribal court is easily resolved. The state court was not involved in that decision and had no authority to vacate that order. The proper place to challenge that was in the MCPP court—i.e., in LC No. 15-035887-NA—or in the tribal court, to the extent defendant is challenging the acceptance of the transfer by the tribal court. As noted, defendant did file an untimely claim of appeal in this Court from a decision of the MCPP court, but this Court dismissed the appeal. Defendant's argument in the present case addressing the transfer order is without merit because the state court had no authority to void an order entered in a different case.[2] Her arguments that the order was not properly effectuated under the court rules are arguments to be directed to a different court.

Defendant's contention that the so-called "one-parent doctrine," as discussed in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), entitles her to appellate relief is also unavailing. Although defendant claims that she was a non-respondent in the tribal court and that the tribal court's decisions denying her custody of the children were unconstitutional under *In re Sanders*, it is not apparent that this allegation is true in light of the tribal court's statement that the children

[2] While issues of jurisdiction can be collaterally attacked, see *In re Ferranti*, 504 Mich 1, 22; 934 NW2d 610 (2019), the MCPP had jurisdiction to order the transfer, as set forth *infra*. Thereafter, as also set forth *infra*, the tribal court acquired jurisdiction over the child-protective proceedings.

had been "adjudicate[ed] . . . deprived as to their Mother." More importantly, however, it simply was not the state court's role to determine whether the one-parent doctrine had been improperly applied by the tribal court. The state court was not empowered to correct errors by the tribal court that occurred in the course of the child-protective proceedings once the tribal court acquired jurisdiction over those proceedings.

Defendant contends that the divorce proceedings must take precedence over the proceedings in the tribal court, but this is not correct. In *In re AP*, 283 Mich App 574, 593-594; 770 NW2d 403 (2009), this Court stated:

> [O]nce a juvenile court assumes jurisdiction over a child and the child becomes a ward of the court under the juvenile code, *the juvenile court's orders supersede all previous orders, including custody orders entered by another court*, even if inconsistent or contradictory. In other words, the previous custody orders affecting the minor become dormant, in a metaphoric sense, during the pendency of the juvenile proceedings, but when the juvenile court dismisses its jurisdiction over the child, all those previous custody orders continue to remain in full force and effect. . . . In addition, *the juvenile court's orders function to supersede, rather than modify or terminate, the custody orders while the juvenile matter is pending because the juvenile orders are entered pursuant to a distinct statutory scheme that takes precedence over the Child Custody Act*[, MCL 722.21 *et seq*].[3] We note that during the duration of the juvenile proceedings, while the parties subject to the custody order can move to modify the custody order, any modification would remain superseded by the juvenile court's orders. [Citations omitted; emphasis added.]

The *In re AP* Court cited *Krajewski v Krajewski*, 420 Mich 729, 734-735; 362 NW2d 230 (1984), in stating that orders in child-protective proceedings take precedence over orders under the Child Custody Act. *In re AP*, 283 Mich App at 594. In *Krajewski*, 420 Mich at 734-735, the Court stated:

> The observation in GCR 1963, 724.1(5) that "no waiver or transfer of jurisdiction is required for the full and valid exercise of jurisdiction of the subsequent court" evinces our conviction *that the children intended to be protected by the constitution and the Juvenile Code can best be served by a procedure which*, having provided for appropriate notice and opportunity for the prior court to exercise its responsibility under its jurisdiction to further the child's best interests, nonetheless *gives unrestricted freedom to the juvenile court to carry out its mandate*. [Emphasis added.]

The *Krajewski* Court also noted that the court rules in effect at the time allowed for the entry of an order by a subsequent court if such subsequent order was necessary for justice and the welfare of the child. *Id*. at 734. MCR 3.205(A) states, "If an order or judgment has provided for continuing

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[3] The Child Custody Act applies to custody matters arising out of divorce proceedings. *Sirovey v Campell*, 223 Mich App 59, 68; 565 NW2d 857 (1997).

jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court." MCR 3.205(C)(2) states, "A subsequent court must give due consideration to prior continuing orders of other courts, and may not enter orders contrary to or inconsistent with such orders, *except as provided by law*." (Emphasis added.) Accordingly, the operative language from *Krajewski* remains in effect in the present-day court rules; when the child-protective proceedings were commenced in Michigan, they took precedence over the divorce proceedings; and the MCPP court was, therefore, empowered to transfer the case to the tribal court, contrary to defendant's argument on appeal. *In re AP*, 283 Mich App at 593; MCR 3.205(A); see also *In re DaBaja*, 191 Mich App 281, 290; 477 NW2d 148 (1991) ("The probate court had the ability to exercise its jurisdiction over the minor child in this case, despite the Wayne Circuit Court's continuing jurisdiction over the child as a result of the prior divorce proceedings.").

In this case, the tribal court acquired jurisdiction after being petitioned to do so, stated that the transfer served the best interests of the children, stated that the children were thereby made wards of the tribal court, and stated that custody decisions would be made by the tribe's foster-care division. The MCPP court stated in the order of transfer that the Oklahoma Department of Human Services had custody of the children and that the tribe had the authority to place the children. When one reads *In re AP*, *Krajewski*, *In re DaBaja*, the Michigan Court Rules, 25 USC 1911(b), the order of transfer, and the order accepting transfer together, it is apparent that the state court properly concluded that it was not empowered to enter an order reinstating the custody provisions of the divorce judgment. The MCPP court took precedence, and it *transferred the custody issue to the tribal court*.

Defendant makes many misguided arguments that any orders of the tribal court were unenforceable because they were foreign judgments and that, therefore, the GAL, the tribe, the children's school, and police officers kidnapped the children. But this argument is not being raised before the proper court. It was not the state court presiding over the divorce proceedings that directed the enforcement of the tribal court's orders. Defendant takes issue with various actions by the judge presiding in the tribal court, but again, the state court overseeing the divorce proceedings was not empowered to correct alleged errors made by the tribal court. Defendant also complains about the sequence of proceedings in the MCPP case, but once again she is not directing these arguments at the proper court. Although the state court was, at times, involved in the MCPP proceedings, it was presiding over a different lower court case at those times; the present appeal encompasses its actions *in the divorce case*.

Defendant contends that the tribal court did not have jurisdiction over parenting-time issues because it had previously allowed those issues to be determined by the state court. As noted, however, the tribal court gave reasons for why, early in the case, it had allowed the state court to decide certain custody issues. Defendant contends that equal protection requires that plaintiff be subject to the authority of the state court for any school-change issue because defendant was subject to the state court's authority when she sought a change of schools. This argument is not developed, is not supported by any legal authorities, and is clearly without merit. As stated in *Ross v Stokely*, 258 Mich App 283, 296; 673 NW2d 413 (2003), "the essence of the equal protection clauses is that the government not treat persons differently on account of characteristics that do not justify such disparate treatment." Once again, the tribe *explained* why it had, early in the case,

deferred resolution of the school-change issue to the state court, but later decided to exercise its jurisdiction over custody issues.

Defendant also argues that various statutes and court rules do not allow for divorce cases to be transferred to tribal courts, but a divorce case was not, in fact, transferred to a tribal court. Finally, defendant appears to be arguing that because a court had once suspended plaintiff's parenting time, this suspension remains effective under principles of res judicata. This argument is patently without merit given the nature of child-protective proceedings, during which a court continually reassesses a parent's ability to care for his or her children.

In sum, the state court presiding over the divorce proceedings properly concluded that it did not have the authority to grant the relief requested by defendant because custody issues were in the hands of the courts presiding over the child-protective proceedings. Moreover, the additional issues raised or mentioned by defendant on appeal are either without merit or are being raised in the wrong case.

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens