

STATE OF MICHIGAN
COURT OF APPEALS

SUZANNE P. STEVENSON-HOWARD,
Plaintiff/Counter-Defendant,

UNPUBLISHED
February 23, 2016

v

TAFARI K. STEVENSON-HOWARD,
Defendant/Counter-Plaintiff-
Appellant,

and

DANIEL GAMBLE and MARSHA GAMBLE,
Petitioners-Appellees.

No. 329349
Washtenaw Circuit Court
LC No. 11-002549-DM

Before: O'CONNELL, P.J., and OWENS and BECKERING, JJ.

PER CURIAM.

Defendant/counter-plaintiff, Tafari K. Stevenson-Howard (defendant), appeals as of right the September 1, 2015 order entered by the trial court suspending his parenting time with the minor children. Because the trial court failed to hold an evidentiary hearing and relied on a lawyer-guardian ad litem report that the parties did not stipulate to admit into evidence, we vacate that portion of the September 1, 2015 order affecting defendant's parenting time and remand this case to the trial court for further proceedings not inconsistent with this opinion.¹

¹ Although they filed no motion to dismiss, petitioners argue that this Court does not have jurisdiction to hear this appeal because the September 1, 2015 order is not a final order appealable by right. The trial court's ruling arguably affects custody in light of *In re Anjoski*, 283 Mich App 41, 58 n 8; 770 NW2d 1 (2009). We would nevertheless exercise our discretion and treat defendant's claim of appeal as an application for leave to appeal and grant leave. See *Wardell v Hincka*, 297 Mich App 127, 133 n 1; 822 NW2d 278 (2012).

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On September 6, 2012, the trial court entered a judgment of divorce, ending defendant's marriage to plaintiff/counter-defendant, Suzanne P. Stevenson-Howard (plaintiff). Plaintiff was awarded sole legal and physical custody of the minor children, and defendant was granted supervised parenting time every other week. It is undisputed that defendant stopped his visits with the minor children as of February, 2013, although the parties have differing explanations for why this happened.

On February 21, 2015, plaintiff passed away. After her death, plaintiff's parents, Daniel and Marsha Gamble (petitioners), filed a petition for full guardianship of the minor children. On April 21, 2015, the trial court appointed petitioners as temporary guardians of the minor children. On May 14, 2015, defendant moved the trial court for a change of custody. The trial court later appointed a lawyer-guardian ad litem for the children.

On August 12, 2015, Debra Keehn, the minor children's lawyer-guardian ad litem, filed her report and recommendation. Keehn concluded that transferring custody of the minor children to defendant would be "detrimental to their emotional well-being" and that requiring the minor children to participate in any parenting time with defendant, including supervised parenting time, risked retraumatizing them at a time when they were still grieving their mother's death.

On August 18, 2015, the trial court held a hearing regarding the parties' motions. After hearing unsworn comments from Keehn, reiterating the findings and conclusions from her report, and defendant's arguments, the trial court suspended defendant's parenting time. In reaching its decision, the trial court relied on the September 6, 2012 judgment of divorce restricting defendant's parenting time, a May 28, 2013 Alabama dependency order², the fact that defendant had not seen the children for approximately two-and-a-half years, and Keehn's report and recommendation. In its September 1, 2015 order, the trial court held that "[t]here shall be no parenting time for the Defendant with the minor children at this time, unless initiated by the minor children or at their request." The order also scheduled a "review hearing" for November 17, 2015, and stayed the guardianship proceedings pending the resolution of "this proceeding." Defendant filed a claim of appeal with regard to the September 1, 2015 order.

II. ANALYSIS

Defendant argues on appeal that the trial court erred by failing to find proper cause before examining his parenting time, violated his due process rights to parent his children, failed to foster his relationship with his children, and failed to conduct a best-interest evidentiary hearing for each child before determining whether to suspend his parenting time. Because the trial court

² From 2002 until 2013, defendant served as the guardian of his half-sister. On May 28, 2013, the district court of Jefferson County, Alabama, entered an order removing defendant's half-sister from his care and providing that any future contact between him and his half-sister be supervised.

failed to conduct an evidentiary hearing before suspending defendant's parenting time, we agree that its September 1, 2015 order must be vacated with respect to defendant's parenting time, rendering moot the other issues.

"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." MCL 722.27a(1). "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." MCL 722.27a(3). Thus, before a trial court may enter an order suspending parenting time, an evidentiary hearing must be held and the trial court must find by clear and convincing evidence that the continuation of parenting time would endanger the child's physical, mental, or emotional health. *Rozek v Rozek*, 203 Mich App 193, 194-195; 511 NW2d 693 (1993). "Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Shade v Wright*, 291 Mich App 17, 20-21; 805 NW2d 1 (2010) (citation omitted).

Here, the trial court found that continuing defendant's parenting time would result in emotional harm to the minor children. See MCL 722.27a(3) (discussing standards for denying parenting time). However, the trial court entered its order without holding an evidentiary hearing and making its findings based on clear and convincing evidence, which was clear legal error. *Rozek*, 203 Mich App at 194-195. The trial court additionally erred in relying on Keehn's report and recommendation as evidence. While MCL 722.24(3) provides that a child's lawyer-guardian ad litem may file a written report and recommendation, a trial court "shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission." There is no indication that the parties stipulated to the admission of Keehn's report and recommendation as evidence. Instead, defendant expressly voiced an objection to several of Keehn's conclusions at the August 18, 2015 hearing. Therefore, the trial court committed clear legal error in relying on Keehn's report as evidence and in failing to hold an evidentiary hearing. *Shade*, 291 Mich App at 20-21 (review is for clear legal error). We vacate that part of the September 1, 2015 order that suspends defendant's parenting-time and remand to the trial court for the proper procedure to be followed. On remand, the trial court should consider up-to-date information and changes in circumstances arising since the September 1, 2015 order. *Kessler v Kessler*, 295 Mich App 54, 63; 811 NW2d 39 (2011).³

³ We note from the Register of Actions that a hearing was held in this case in November 2015. We gather from the trial court's September 1, 2015 order that it was to be a "review hearing." If the parenting-time issue was revisited at that hearing, and if the errors noted above were rectified at that hearing, it could render moot the issues defendant raises on this appeal. However, we have no access to any information about that hearing, and no appeal was filed following that hearing. Thus, we limit our ruling to the record before us and to the order at issue.

We vacate the parenting-time order and remand to the trial court. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Donald S. Owens

/s/ Jane M. Beckering