

# Court of Appeals, State of Michigan

## ORDER

Rebecca Hart v Benjamin Boys

Docket No. 305527

LC No. 04-027659

Kurtis T. Wilder  
Presiding Judge

Christopher M. Murray

Karen M. Fort Hood  
Judges

---

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

The Court further orders that the delayed application is HELD IN ABEYANCE and the matter is REMANDED to the Lenawee County Circuit Court. Although this Court does not have the motion for a change of custody filed by defendant or the custody evaluation prepared by Patricia Muldary, plaintiff filed a copy of the transcript for a hearing conducted on August 26, 2010, which was referenced as a pretrial hearing on defendant's motion for change of custody. Despite repeatedly stating that it was not changing custody, the trial court effectively changed custody of the child by granting defendant "exclusive parenting time" and barring parenting time for plaintiff until she completed a clinical psychological evaluation. An evidentiary hearing is mandated before custody can be modified, even on a temporary basis. *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005); MCR 3.210(C). Furthermore, a trial court shall not modify or amend its previous judgments or orders or issue a new order unless there is clear and convincing evidence that it is in the best interests of the child. *Id.*, citing MCL 722.27(1)(c) and *Hawkins v Murphy*, 222 Mich App 664, 674; 565 NW2d 674 (1997).

Because plaintiff waited eleven months before filing her delayed application and defendant failed to file any response, the clerk's office inquired of the circuit court for an update of the proceedings. The circuit court forwarded a copy of an order entered on August 19, 2011, which indicates that the court has still not conducted an evidentiary hearing and leaves it to defendant to petition the court for an evidentiary hearing "if he so chooses" on his motion for custody. The circuit court shall provide this Court with an explanation as to whether this matter is proceeding to an evidentiary hearing on the motion for change of custody, and if it is not, to provide an explanation for its rulings. The circuit court shall comply with this directive within 21 days from the Clerk's certification of this order.

The Court retains jurisdiction.

A true copy entered and certified by Larry S. Royster, Chief Clerk, on



OCT 07 2011

Date

A handwritten signature in black ink, appearing to read 'Larry S. Royster', is written over a horizontal line. Below the line, the text 'Chief Clerk' is printed.

Chief Clerk