

STATE OF MICHIGAN
COURT OF APPEALS

DONALD WETZEL and GLORIA WETZEL,

Plaintiffs-Appellees,

v

JEFFREY BROOKS,

Defendant-Appellant.

UNPUBLISHED

March 13, 2003

No. 243500

Eaton Circuit Court

LC No. 02-000795-CK

Before: Donofrio, P.J., and Saad and Owens, JJ.

PER CURIAM.

Defendant, father of the two minor children in issue, appeals as of right the trial court's custody order which granted the children's maternal grandparents, Donald and Gloria Wetzel, full custody of their two minor grandchildren. After the divorce between Mr. Brooks and the children's mother, Mr. Brooks moved to Colorado and then, after the mother's death, initially permitted plaintiffs to have custody of the minor children. However, Mr. Brooks changed his mind and petitioned the trial court for custody.

Defendant argues that the trial court violated his constitutional due process rights when it conducted a broad unrecorded in-camera interview with the children. This Court reviews constitutional issues de novo. *Kampf v Kampf*, 237 Mich App 377, 381; 603 NW2d 295 (1999). This Court will not reverse a trial court's decision based on an unpreserved constitutional issue unless the trial court committed plain error that violated substantial rights. *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 606; 603 NW2d 824 (1999). The record clearly shows that defendant expressly waived the trial court's announced broad, in-camera interview of the minor children by agreeing to the scope of the interview before it began. "[A] party is not entitled to relief based on an issue that the party's attorney concluded was proper at trial." *Hilgendorf v St John Hosp*, 245 Mich App 670, 696; 630 NW2d 356 (2001). Clearly, defendant waived any objection to the trial court's wide-ranging interview of the minor children.

Furthermore, defendant failed to object to the trial court's refusal to record the interview and, therefore, he forfeits this issue. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 64-65, n 4; 642 NW2d 663 (2002). To avoid forfeiture, a defendant must show that the trial court committed plain error that affected substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). Defendant's only authority for the recording requirement is the vacated portion of our decision in *Molloy v Molloy*, 247 Mich App 348; 637 NW2d 803

(2001), aff'd in part, vacated in part, and remanded 466 Mich 852 (2002). Clearly, the trial court did not commit plain error.

Defendant also says incorrectly that the trial court lacked subject matter jurisdiction to entertain the child custody dispute. It is well settled that circuit courts possess subject matter jurisdiction over custody disputes, where, as here, the natural father petitioned the court to make a custody determination. *Bowie v Arder*, 441 Mich 23, 39-40; 490 NW2d 568 (1992). Our review of the record shows that defendant's 2002 custody petition, filed as part of his 1997 divorce action, initiated a new custody dispute. MCL 552.17. Therefore, defendant, by initiating the custody petition, enabled the circuit court to exercise its continuing jurisdiction over the children. MCL 552.17a.

Similarly, defendant further claims that plaintiffs lacked standing to initiate their separate complaint and their counter-petition. While defendant waived the standing issue, MCR 2.111(F)(2), we again note that defendant, who has standing under MCL 552.17, filed a petition for custody in the trial court. Faced with a custody dispute, the trial court was required to order custody in accord with the children's best interest. MCL 722.27.

Affirmed.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Donald S. Owens