

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER ANN SHURYAN,
Plaintiff-Appellee,

UNPUBLISHED
January 15, 2015

v

ERIC RYAN SHURYAN,
Defendant-Appellant.

No. 322491
Washtenaw Circuit Court
LC No. 08-000229-DM

Before: TALBOT, C.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

In this child custody dispute, defendant Eric Shuryan appeals by right the trial court's order terminating the ex parte order limiting plaintiff Jennifer Shuryan to supervised parenting time with the minor child and enforcing the existing parenting time order originally entered with the parties' 2008 judgment of divorce. Because we conclude there were no errors warranting relief, we affirm.

In July 2008, the trial court entered an order granting a consent judgment of divorce to the parties. The trial court ordered joint legal and physical custody of the minor child. The trial court awarded Eric Shuryan parenting time with the minor child every Tuesday from 4:00 p.m. until Thursday at 1:00 p.m. and every Saturday from 4:00 p.m. until Sunday at 8:00 p.m. The trial court awarded Jennifer Shuryan parenting time with the minor child every Thursday from 1:00 p.m. until Saturday at 4:00 p.m. and from every Sunday at 8:00 p.m. until Tuesday at 4:00 p.m.

In January 2014, the Department of Human Services investigated Jennifer Shuryan after allegations were made against her fitness to parent. Later that same month, Eric Shuryan moved the trial court for an order requiring that Jennifer Shuryan's parenting times be supervised. The trial court entered an ex parte order granting the motion on January 27, 2014. The trial court ordered that she receive one supervised parenting time with the minor child every other week. In February 2014, the Department completed its investigation and found that there was insufficient evidence to substantiate the allegations against Jennifer Shuryan.

In May 2014, Jennifer Shuryan moved to dismiss the ex parte order limiting her parenting time. She also asked the trial court for an order “normalizing parenting time and re-establishing equal parenting time for” her and for an order modifying her child support obligations.

The trial court held a hearing on Jennifer Shuryan’s motions in June 2014. The trial court noted that it entered the ex parte order of January 2014 while the Department investigated the validity of the allegations against Jennifer Shuryan. Because the Department resolved its investigation and found that the allegations were unsubstantiated, the trial court determined that there were no longer grounds for maintaining the ex parte order limiting Jennifer Shuryan’s parenting time. Later that month, the trial court entered an order terminating the ex parte order of January 2014. The trial court referred Jennifer Shuryan’s remaining issues regarding “normalizing parenting time and re-establishing equal parenting time for” her and regarding child support to the Friend of the Court (FOC) for investigation and recommendations. The trial court also ordered that “[i]nterim parenting time until further order of the court following referral to the Friend of the Court will be pursuant to parenting time orders in the Consent Judgment of Divorce entered July 18, 2008.”

On appeal, Eric Shuryan argues the trial court erred when it entered the June 2014 order to the extent that it ordered the parties to follow the original order governing parenting time until the FOC completed its investigation. Specifically, he maintains that over the course of time the custodial environment changed such that the trial court’s order effectively modified custody without making the proper findings. This Court must affirm the trial court’s orders and judgments involving parenting time unless the trial court made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue. MCL 722.28; *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005). A trial court commits clear legal error when it improperly selects, interprets, or applies the law. *Id.*

Eric Shuryan argues that the undisputed evidence showed that, by the parties’ agreement, the minor child had been living exclusively with him for the last five years.¹ Given the circumstances, he maintains, the trial court’s order of June 2014, which required them to follow the original parenting time order from the 2008 consent judgment of divorce, effectively changed custody without an evidentiary hearing, without addressing the minor child’s established custodial environment, and without considering the best-interest factors regarding parenting time. Eric Shuryan further argues that, because the order modified the minor child’s established custodial environment, the trial court erred in entering the order without finding by clear and convincing evidence that changing the minor child’s established custodial environment was in the child’s best interests.

¹ We note that the limited evidence in the record did not conclusively show that the minor child lived exclusively with Eric Shuryan over the past five years. Further, any additional evidence since discovered or presented, such as the FOC’s report and recommendations, should be considered by the trial court in the first instance after a proper motion for modification of custody or parenting time.

Before modifying or amending an order or judgment concerning custody, the trial court had to address whether proper cause or a change of circumstances exists, whether an established custodial environment exists, and the best interests of the child. MCL 722.27(1)(c); *Pierron v Pierron*, 282 Mich App 222, 244-245; 765 NW2d 345 (2009). The trial court must also hold an evidentiary hearing before modifying a custody judgment or order under MCL 722.27(1)(c), even if on a temporary basis. *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005).² With its June order, the trial court recognized that the relevant governing order was the parenting time provided in the judgment of divorce and that the grounds in support of its ex parte order were unsubstantiated and that it could not validly alter the original custody determination by means of an ex parte order. The trial court's order of June 2014 requiring the parties to abide by the original parenting time order did not modify or amend any prior order governing custody—it simply enforced the 2008 judgment. Accordingly, the trial court was not required to hold an evidentiary hearing, address whether proper cause or a change of circumstances existed, address whether an established custodial environment existed, or address the best interests of the minor child. *Pierron*, 282 Mich App at 244-245; *Grew*, 265 Mich App at 336.

Before this Court, Eric Shuryan notes that the FOC has completed its investigation and has recommended changes. Although we do not consider this additional evidence, it would not alter the fact that the trial court properly dismissed its ex parte order and required the parties to follow the governing custody order. The trial court is in the best position to assess any new evidence after giving the parties a full and fair opportunity to present their positions at a hearing and, after considering the whole record, to determine whether and to what extent any change is in the child's best interests.

Eric Shuryan also requests that, on remand, we assign this case to a different judge. After carefully considering the record, we conclude that he has not established grounds for assigning this case to a different judge. See *Bayati v Bayati*, 264 Mich App 595, 602-603; 691 NW2d 812 (2004).

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly

² The rules that apply to changes of custody also generally apply to changes in parenting time where the change in parenting time would alter a child's established custodial environment. See *Shade v Wright*, 291 Mich App 17, 28-31; 805 NW2d 1 (2010).