STATE OF MICHIGAN

COURT OF APPEALS

SAMUEL J. CLARK,

Plaintiff-Appellee,

v

LAURA (CLARK) WILSON,

Defendant-Appellant.

UNPUBLISHED
September 8, 1998

No. 208123
Ionia Circuit Court
LC No. 94-016345 DM

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right the order dismissing her petition for de novo review of a referee's order changing child custody. We affirm.

The parties were divorced pursuant to a judgment entered January 5, 1996. The judgment provided for joint physical and legal custody of the parties' two minor children. Plaintiff moved for a change of custody, and a referee hearing was held on August 15, 1997. The referee recommended that physical custody be granted solely to plaintiff. A recommended order dated August 15, 1997 (hereinafter the "August 15 order") was signed by the circuit court and mailed to the parties on August 20, 1997. The order stated that it "was subject to de novo review before the Circuit Court Judge by filing [a] Request for De novo Review and scheduling a hearing on same within 21 days of the date" of the order. Defendant's objection to the recommended order and request for a de novo hearing was filed on September 2, 1997. A notice of hearing was prepared by defendant on September 24, 1997 indicating that a hearing on the matter was scheduled for November 14, 1997. Subsequently, plaintiff moved to dismiss the de novo hearing due to defendant's failure to obtain timely review. The court granted plaintiff's motion, finding that defendant had failed to comply with the requirements for obtaining de novo review set forth in the August 15 order.

Defendant argues that because the scheduling requirement found in the August 15 order is not mentioned in the statute that deals with de novo review of referee hearings, the circuit court's granting of plaintiff's motion was in error. While it is true that MCL 552.507(5); MSA 25.176(7)(5) does not include such a requirement, this fact is not dispositive given the language of MCR 3.215. MCR

3.215(F)(1) provides that "[t]he judicial hearing must be held within 21 days after the written objection is filed, unless the time is extended by the court for good cause." The hearing in this matter was initially scheduled for November 14, 1997, which is in excess of the 21 day limit. Defendant has failed to establish that the extended time was either sanctioned by the circuit court, or that she had good cause for not satisfying the 21 day requirement. Furthermore, MCR 3.215(E)(3) provides that "[a] party may obtain a judicial hearing" on a referee's disposal of a child custody dispute "by filing . . . a written objection and *notice of hearing* within 21 days after the referee's recommendation for an order is served on the attorney's for the parties, or the parties if they are not represented by counsel." (Emphasis added.). The notice of hearing in this matter was dated September 24, 1997, also well in excess of the 21 day time limit.

A statutory rule of practice not in conflict with the Michigan Court Rules is no longer effective once it has been "superseded by rules adopted by the Supreme Court." MCR 1.104. See also *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 722; 575 NW2d 68 (1997). "In determining whether there is a real conflict between a statute and a court rule, both should be read according to their plain meaning." *Id.* Because we find that a conflict does exist between MCL 552.507(5); MSA 25.176(7)(5), the court rule supersedes the statutory provision. *McDougall v Eliuk*, 218 Mich App 501, 506; 554 NW2d 56 (1996). Accordingly, we conclude that the circuit court did not err in dismissing defendant's petition. *Constantini v Constantini*, 171 Mich App 466; 460 NW2d 748 (1988).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Myron H. Wahls
/s/ Mark J. Cavanagh