

STATE OF MICHIGAN
COURT OF APPEALS

TERRY L. FESLER,

Plaintiff-Appellant,

v

NANCY L. RICE,

Defendant-Appellee.

UNPUBLISHED

August 28, 2001

No. 228625

Cass Circuit Court

Family Court Division

LC No. 94-000222-DP

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Plaintiff father appeals as of right from an order dismissing his motion to change custody of the parties' minor child, Miranda Kathleen Rice (born 11/15/88), for lack of prosecution and ordering his supervised visitation with the child. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's appeal raises six issues, five of which have been ordered stricken by this Court. In his remaining issue, plaintiff argues without citation to authority that the trial court abused its discretion in dismissing his motion for change of custody when, during a de novo hearing on the motion, plaintiff failed to return to the courtroom following a recess at the time ordered by the trial judge. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim. *In re Webb H Coe Marital and Residuary Trusts*, 233 Mich App 525, 537; 593 NW2d 190 (1999). We conclude, therefore, that the issue is waived on appeal. *Id.*

Even if the claim were properly before this Court, we are satisfied that the trial court did not abuse its discretion in dismissing the motion. At the de novo hearing, the burden was on plaintiff as the moving party to present evidence that a change in custody would be in Miranda's best interest. *Mann v Mann*, 190 Mich App 526, 535; 476 NW2d 439 (1991). The judge in this case was justified in exercising her inherent power to control the proceedings by dismissing plaintiff's motion for nonprosecution when he failed to return to the courtroom and resume his

* Circuit judge, sitting on the Court of Appeals by assignment.

case as ordered. See *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639; 607 NW2d 100 (1999); *Banta v Serban*, 370 Mich 367, 368; 121 NW2d 854 (1963).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel