

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANDREW PERUN, JR.,

Plaintiff-Appellant,

v

CYNTHIA J. PATTERSON, a/k/a CYNTHIA J.  
PERUN,

Defendant-Appellee.

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UNPUBLISHED

June 29, 2004

No. 251306

Oakland Circuit Court

LC No. 2000-637587-TM

Before: Griffin, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

In an order dated October 24, 2001, the trial court changed custody of the parties' two minor children by awarding defendant sole legal and physical custody of the children. In January 2003, plaintiff filed a delayed application for leave to appeal that order, which this Court denied in February 2003, in Docket No. 246141, "for lack of merit in the grounds presented." In July 2003, plaintiff requested that the trial court schedule a trial on the issue of custody because there were unresolved issues arising from the October 24, 2001 order and his objections to that order. The court rejected his argument in an order dated September 22, 2003. Plaintiff now appeals as of right from the September 22, 2003 order. We affirm as modified.

Plaintiff raises several issues challenging the October 24, 2001 order. These issues are not properly before this Court. Plaintiff filed his claim of appeal from the trial court's September 22, 2003 order, which denied his request for a trial concerning custody. Pursuant to MCR 7.203(A)(1), this Court's jurisdiction over this postjudgment order affecting the custody of a minor, see MCR 7.202(7)(a)(iii), is "limited to the portion of the [September 22, 2003,] order with respect to which there is an appeal of right." Although an appeal by right was also available from the October 24, 2001 order after it was entered, the time for filing the appeal expired long before the instant appeal was filed.<sup>1</sup> Thus, because the October 2001 order was no longer appealable by right, this Court is without jurisdiction to consider issues pertaining to that order in the present appeal. MCR 7.203(A)(1).

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<sup>1</sup> Moreover, the issues presented from the October 24, 2001 order were raised and rejected in the prior appeal, Docket No. 246141.

Plaintiff also challenges the following emphasized portion of the trial court's September 22, 2003 order:

Plaintiff's Motion for his trial regarding joint legal and physical custody is denied for the reason that his Application For Leave to the Court Of Appeals was denied and for the reasons set forth in the record. *Therefore, the Plaintiff is left with the option of filing a motion to show a change of circumstances.* [Emphasis added.]

Plaintiff argues that the trial court's order reflects an incorrect interpretation of MCL 722.27(1)(c).<sup>2</sup>

Pursuant to MCL 722.27(1)(c), a trial court may "modify or amend its previous judgments or orders for proper cause shown or because of a change in circumstances . . . ." *Vodvarka v Grasmeyer*, 259 Mich App 499, 508; 675 NW2d 847 (2003). To the extent that the trial court's order suggests that only a change in circumstances, and not proper cause shown, would support a future motion to change custody, the order inaccurately reflects MCL 722.27(1)(c). Accordingly, the trial court's order is modified to conform with MCL 722.27(1)(c), to reflect that proper cause shown may also support a request to modify the trial court's previous custody orders. MCR 7.216(A)(1).

Plaintiff's next stated issue refers to the trial court's ruling that this Court's previous denial of plaintiff's application for leave to appeal in Docket No. 246141 precluded the trial court from awarding plaintiff a custody trial on the basis of plaintiff's issues pertaining to the October 2001 order. Plaintiff's stated issue refers to the trial court's ruling as being "presumably on the basis of the law of the case doctrine." But plaintiff does not discuss the doctrine. Instead, plaintiff's argument focuses on this Court's denial of defendant's motion to dismiss the present appeal. The thrust of plaintiff's argument seems to be that, in denying defendant's motion, this Court agreed with plaintiff that the trial court's application of the law of the case doctrine was erroneous. Thus, plaintiff asserts that his stated issue "has been resolved." Accordingly, plaintiff finds it unnecessary to brief the merits of his stated issue.

Plaintiff's position is based on the erroneous understanding that this Court previously "resolved" his stated issue concerning the trial court's application of the law of the case.

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<sup>2</sup> We note that plaintiff is responsible for including the language that he now challenges on appeal. At the hearing on July 31, 2003, the trial court explained that there was no pending motion for change of custody, recognized that plaintiff may want to file a motion for change of custody, and informed plaintiff that the court could not guarantee that the matter would be heard on October 2 and 3, 2003, when the court would consider issues involving child support and parenting time. The court did not discuss the threshold showing that plaintiff would need to make to prevail on a motion to change custody, nor did it mention "change of circumstances" or "proper cause." Nevertheless, the proposed order submitted by plaintiff included a reference to the need to show a change of circumstances. Indeed, the portion of the order that plaintiff challenges is identical to the language in the proposed order submitted by plaintiff.

Defendant's motion to dismiss challenged this Court's jurisdiction, asserted that plaintiff's appeal was not filed in conformance with the court rules, and that it was moot. Defendant argued in part that the issues that plaintiff intended to raise in the present appeal were "moot,"<sup>3</sup> because they had previously been considered by this Court when it ruled on plaintiff's application for leave to appeal in Docket No. 246141. This Court's order denying defendant's motion to dismiss does not reveal this Court's reasoning. But clearly this Court's denial of that motion did not "resolve[]" the merits of plaintiff's stated issue, and nothing in this Court's order reflects a determination by this Court that the trial court had erroneously applied the law of the case doctrine.

In light of plaintiff's failure to brief the merits of his stated issue, we deem it abandoned. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). As our Supreme Court has observed:

It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Finally, in light of our disposition, it is unnecessary to address plaintiff's claim that this case should be reassigned to a different judge in the event of a remand. If additional proceedings on the question of custody become necessary in the future, and plaintiff continues to believe that the trial judge should be disqualified, he may file an appropriate motion for disqualification pursuant to MCR 2.003.

Affirmed as modified.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Karen M. Fort Hood

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<sup>3</sup> Defendant's motion to dismiss was filed before plaintiff filed his appellant's brief.