

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

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LARY WAYNE HOLLAND,

Plaintiff-Appellant,

v

ANNALISE BETHANY MCMENAMIN,

Defendant-Appellee.

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UNPUBLISHED

August 19, 2004

No. 252579

Mason Circuit Court

LC No. 00-000009-DP

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting temporary custody of a child to defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case involves a custody dispute that is pending in multiple venues. The parties, who never married, are the parents of a son (DOB 5-20-99) and a daughter (DOB 8-1-00). The parties ceased residing together, and became involved in a custody dispute. Defendant filed a custody action in the Family Division of the Kent Circuit Court.<sup>1</sup> Plaintiff's father, with whom the parties' children resided for a time, filed a custody action in the Family Division of the Alcona Circuit Court. Plaintiff filed a motion for an ex-parte order for change of custody in the Mason Circuit Court. In the motion, which pertained to the parties' son only,<sup>2</sup> plaintiff sought sole physical and joint legal custody of the child.

The trial court held a hearing and took the matter under advisement pending a conversation with the judge presiding over the matter pending in the Family Division of the Kent Circuit Court. The trial court entered a temporary custody order granting the parties joint legal and physical custody of their son, granting primary physical custody of the child to defendant, and granting plaintiff parenting time. The trial court specified that its jurisdiction was temporary

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<sup>1</sup> *McMenamin v Holland*, Kent Circuit Court Docket No. 03-09173-DC.

<sup>2</sup> Previously, the trial court had entered a consent order of filiation finding that Holland was the biological father of the child, and granting the parties joint legal and physical custody of the child. The parties do not contend that a similar order was entered with respect to their daughter.

and would continue only until further notice, given that a contemporaneous proceeding was pending in Kent County.

A child custody dispute is to be resolved in the best interests of the child. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). To determine the best interests of the child, a trial court must consider the factors set out in MCL 722.23(a)-(l), and must explicitly state its findings and conclusions concerning each factor. *Foskett v Foskett*, 247 Mich App 1, 9; 634 NW2d 363 (2001). A custody award may be modified on a showing of proper cause or change of circumstances which establishes that the modification is in the child's best interests. *Id.* at 5. If a modification of custody would change the established custodial environment of the child, the moving party must show by clear and convincing evidence that the change is in the child's best interests. *Phillips v Jordan*, 241 Mich App 17, 22; 614 NW2d 183 (2000). Whether an established custodial environment exists is a question of fact that the trial court must address before it determines the child's best interests. *Mogle v Scriver*, 241 Mich App 192, 197; 614 NW2d 696 (2000). Three standards of review apply in custody cases. MCL 722.28. A trial court's findings of fact are reviewed under the great weight of the evidence standard. A trial court's discretionary rulings, including custody decisions, are reviewed for an abuse of discretion. Questions of law are reviewed for clear legal error. *Phillips*, *supra* at 20.

Plaintiff argues that the trial court erred and abused its discretion by ordering a change of custody without holding a full evidentiary hearing to determine whether an established custodial environment existed for the parties' son, and without applying the best interest factors. We disagree and affirm. Generally, a trial court cannot order a change of custody without first holding an evidentiary hearing to determine if a change would be in the child's best interests. *Mann v Mann*, 190 Mich App 526, 531-533; 476 NW2d 439 (1991). However, in some situations an immediate change of custody is necessary to protect the best interests of a child, and in those situations a change can be made pending an evidentiary hearing regarding a permanent change of custody. *Id.* at 533. The trial court recognized that the issue of its jurisdiction was unsettled and subject to change, given that actions were pending in other courts. This case presented a situation in which entry of a temporary custody order was appropriate. The trial court recognized the reality of the situation, i.e., that the parties' son was in defendant's custody, as was his sister, and sought to maintain the status quo until the jurisdictional issues could be resolved and an evidentiary hearing could be held in the appropriate venue. Plaintiff is entitled to no relief.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Jessica R. Cooper  
/s/ Kirsten Frank Kelly