STATE OF MICHIGAN

COURT OF APPEALS

TERESA PETROSKY, Plaintiff-Appellee,	UNPUBLISHED April 19, 2005
v	No. 258321 Monroe Circuit Court Family Division
SCOTT GAY, Defendant-Appellant.	LC No. 02-014361-DS

Before: Saad, P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right an order granting plaintiff's motion for summary disposition in this child custody case. We affirm.

A friend of the court referee hearing was held on the defendant's motion to change custody on November 24, 2003, and the referee submitted a recommended order. Because neither party objected to the recommended order, it became a final order on December 17, 2003, through operation of Monroe Circuit Court Administrative Order 2000-03. AO 2000-03 provides that all recommended orders from the Monroe Circuit Court referee will automatically become orders of the court if a written objection, notice of hearing, and praecipe are not timely filed (within twenty-one days of the date of mailing). Defendant did not appeal the December 17, 2003, order, but filed a second motion to change custody in the trial court. Through this motion, defendant reiterated the allegations from the previous motion and claimed that the December 17, 2003, order was invalid. The trial court granted plaintiff's motion for summary disposition on September 16, 2004, on the ground that defendant failed to file a written objection to the referee's recommended order.

Defendant argues that the trial court erred by entering the December 17, 2003, final order without making an independent determination regarding the best interests of the child. He also argues that the referee failed to provide in the recommended order written notice of the right to a judicial hearing. These issues are not properly before us on appeal, as the issues deal with the December 17, 2003, order. Defendant has only appealed the trial court's September 16, 2004, order granting plaintiff's motion for summary disposition. Therefore, this issue is not properly before us, as our review is limited to issues involving the order appealed from and not an earlier order that was never appealed. See MCR 7.203(A)(1).

Even if these issues were properly before us on appeal, they are without merit. The office of the friend of the court is a statutorily created entity that is headed by the "friend of the court," a statutorily created position. See MCL 552.503(1), (3) and (4); MCL 552.523. Although the friend of the court has many statutory functions to perform, see, generally, MCL 552.505, the function relevant to this case is the referee system. Pursuant to MCL 552.507(1), the chief circuit judge may appoint either the friend of the court or a licensed attorney to serve as a referee. *Id*. Referees are given significant duties, some of which include the ability to decide motions (except those involving spousal support), hold evidentiary hearings on contested issues, and make findings of fact, recommendations, and proposed orders. MCL 552.507(2)(a)-(f). Once a recommendation and proposed order are issued, they are submitted to the parties and the circuit court. The court will adopt the order unless either party, within twenty-one days, objects to the recommendation and requests a hearing de novo on the issues. MCL 552.507(4) and (5); MCR 3.215(E).

MCL 552.507(5) contains a provision requiring the court to conduct a hearing de novo on any matter that was the subject of a referee hearing, but only if the parties make such a request or the court does so on its own motion:

> The court shall hold a de novo hearing on any matter that has been the subject of a referee hearing, upon the written request of either party or upon motion of the court. The request of a party shall be made within 21 days after the recommendation of the referee is made available to that party under subsection (4), except that a request for a de novo hearing concerning an order of income withholding shall be made within 14 days after the recommendation of the referee is made available to the party under subsection (4).

See *MacIntyre v MacIntyre*, 264 Mich App 690, 697; 692 NW2d 411 (2005) (noting that the Friend of the Court Act specifically indicates that a de novo hearing is required upon request). Thus, unless the court conducts a hearing de novo on its own motion (which did not occur in this case), the only avenue for the court to hold such a hearing is if the parties make a request for such a hearing. See *Cochrane v Brown*, 234 Mich App 129, 131-134; 592 NW2d 123 (1999). The Legislature, therefore, placed in the hands of the parties themselves the option of having a friend of the court referee decision reviewed by a circuit court.

Likewise, the court rule governing domestic-relations referees, MCR 3.215, contains procedures and specifications for referee hearings, including the procedure for circuit court review of those hearings. Specifically, as with the statute, MCR 3.215(E)(3) grants a party discretion to seek judicial review of any matter that was the subject of a referee hearing. That rule specifically provides that a party may obtain a judicial hearing on any matter that was the subject of a referee hearing by filing a written objection and a notice of hearing within twenty-one days of the referee's recommendation. Only after the submission of a written request by a party must the court hold a hearing within twenty-one days after the written objection is filed. MCR 3.215(E)(3) and (F). Thus, both the statute and the court rule grant the parties discretion to seek review of a friend of the court referee determination in the circuit court. *Id*. Hence, when a proper request is submitted, the circuit court must make an independent decision on the issues presented, and cannot simply adopt a recommendation without independent analysis and perhaps the taking of additional testimony and evidence. No such request was made in this case.

Defendant asserts that the friend of the court failed to give him written notice of his right to request a judicial hearing. MCR 3.215(D)(2) provides:

> A referee must provide the parties with notice of the right to request a judicial hearing, by giving
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> (a) oral notice during the hearing; and
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> (b) written notice in the recommendation for an order.

There is no dispute that the referee gave defendant oral notice of his right to request a judicial hearing.[1] Indeed, defendant does not assert that he did not have notice of his right to request a judicial hearing. Rather, defendant argues that the referee's failure to provide written notice in the recommended order as provided in MCR 3.215(D)(2)(b) renders the final order unenforceable.

On its face, the "Referee Report and Recommended Order" did not provide written notice of the right to request a judicial hearing. However, along with the referee report and recommended order the referee provided a copy of Monroe Circuit Court AO 2000-03, which reads in pertinent part:

> IT IS ORDERED that pursuant to MCLA 552.507(5) and MCR 3.215(E) all recommended Orders made by a Monroe County Circuit Court Referee shall be deemed approved Orders of the Court without further action of the Court, and have the same effect and authority as any other Order entered by this Circuit IF NO WRITTEN OBJECTION, NOTICE OF HEARING AND PRAECIPE IS FILED by either party, or their respective counsel, with the Clerk of Circuit Court (copy to the Friend of the Court). The party filing the objection, notice of hearing and Praecipe MUST do so within FOURTEEN (14) DAYS of the date of mailing of the Referee Report and Recommended order to the parties or their respective counsel if it concerns an Income Withholding Order, or TWENTY-ONE (21) DAYS of the date if it concerns any other matter.

Although the text of Monroe Circuit Court AO 2000-03 order does not affirmatively state that the parties have a right to request a judicial hearing, the notice does inform the parties that

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[1] The referred stated:

> [I]f either of you disagree with my recommendation, you each have 21 days to object and get a brand new hearing in front of the Judge, Okay?
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> * * *
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> Like I said, you each have 21 days to object to take it in front of a Judge, clean up your case and go from there and see what happens.

the referee's recommended order "shall be deemed approved Orders of this Court" . . . "if no written objection . . . is filed" within twenty-one days of the date of mailing of the referee report and recommended order. The administrative order also states that "the party who requests a judicial hearing must serve the objection and notice of hearing on the opposing counsel . . ." This writing was sufficient to provide written notice of the right to file objections to the recommended order and to the right to "further action by the court" in the form of a judicial hearing.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski