

STATE OF MICHIGAN
COURT OF APPEALS

KELLI JO THOMAN, f/k/a KELLI JO MEURER,

Plaintiff-Appellant,

v

STEVEN JOHN MEURER,

Defendant-Appellee.

UNPUBLISHED

December 13, 2005

No. 262746

Ottawa Circuit Court

LC No. 97-028696-DM

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

MEMORANDUM.

Plaintiff Kelli Jo Thoman appeals the trial court's post-judgment order changing physical custody of her minor children to defendant Steven John Meurer and challenges the trial court's denial of her motion to reconsider that order. We affirm.

Thoman's only issue on appeal is that, because she did not receive the initial petition to change custody, her due process rights were violated and, therefore, the trial court abused its discretion when it denied Thoman's motion for reconsideration and refused to vacate the post-divorce order changing physical custody of the children.

"A party who enters a general appearance and contests a cause of action on the merits submits to the court's jurisdiction and waives service of process objections."¹ "Generally, any action on the part of a defendant that recognizes the pending proceedings, with the exception of objecting to the court's jurisdiction, will constitute a general appearance."² Although Thoman did not attend the initial hearing on Meurer's motion to change custody, no evidence was presented at that hearing and it merely resulted in an order to the Friend of the Court (the FOC) to investigate and assess custody. Thoman was informed of, and participated in, the FOC investigation. Subsequently, she appeared at an evidentiary hearing held in the matter, testified, was given the opportunity to present evidence, and specifically defended the allegations against her in Meurer's custody petition. The FOC investigation and the evidentiary hearing were both

¹ *Penny v ABA Pharmaceutical Co*, 203 Mich App 178, 181; 511 NW2d 896 (1993).

² *Id.* at 181-182.

held before the trial court made a decision regarding custody. After the order changing custody was entered, Thoman moved to stay the order. At the hearing on the motion to stay, Thoman presented additional evidence to support her assertion that a change in custody was not in the children's best interest. Therefore, Thoman's participation in the proceedings precludes her from now objecting to the lack of notice.

Affirmed.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Jane E. Markey