

STATE OF MICHIGAN  
COURT OF APPEALS

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LINDSEY NICOLE PECIC-BADGLEY f/k/a  
LINDSEY NICOLE PECIC,

UNPUBLISHED  
June 25, 2009

Plaintiff-Appellant,

v

HAROLD J. WHITE a/k/a H. JAMES WHITE,

No. 288875  
Ingham Circuit Court  
LC No. 98-003187-DP

Defendant-Appellee.

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Before: Fort Hood, P.J., and Cavanagh and K. F. Kelly, JJ.

PER CURIAM.

In this child custody action, plaintiff appeals by right from a judgment ordering that the parties share joint legal custody of their minor child, with defendant having primary physical custody during the school year and plaintiff having primary physical custody during the summer months. We vacate the trial court order and remand for the issuance of an order consistent with this opinion.

Plaintiff argues that the trial court erred when it ordered and conducted an evidentiary hearing for a change of custody determination when this Court's prior remand was to resolve a specific issue only. We agree. "The power of a lower court on remand is to take such action as law and justice require that is not inconsistent with the judgment of the appellate court." *McCormick v McCormick (On Remand)*, 221 Mich App 672, 679; 562 NW2d 504 (1997) (citations removed). In the prior opinion in this matter, we instructed the trial court to make a finding of fact regarding whether the 2003 order was applicable to this case and, if so, whether Howell was within the greater Lansing area. The court concluded that it was not applicable.

However, instead of finding that the inapplicability of the 2003 order concluded the dispute, the trial court treated plaintiff's request as a motion for change of custody and held a hearing to determine the best interests of the child based on the change of circumstances. However, plaintiff was not seeking to change custody. Indeed, her motion was completely inconsistent with such a request. Moreover, this action was not required to enforce justice. Therefore, in accordance with the trial court's conclusion that the 2003 order was not applicable to this case, we vacate the trial court's October 27, 2008, order and remand for the issuance of an order stating that the 2003 order was no longer applicable to the parties in this dispute. The physical custody arrangement should revert back to the arrangement in existence before the 2003 order was issued. Plaintiff's move to Howell is of no consequence.

In light of the foregoing, we need not consider the remaining issues on appeal.

Vacated and remanded for proceedings consistent with this opinion. All proceedings shall be conducted on the record. We retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly

**Court of Appeals, State of Michigan**

**ORDER**

LINDSEY NICOLE PECIC-BADGLEY V HAROLD J WHITE

Docket No. 288875

LC No. 98-003187 DP

Karen M. Fort Hood  
Presiding Judge

Mark J. Cavanagh

Kirsten Frank Kelly  
Judges

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On the Court's own motion, the Court orders that the June 9, 2009 opinion is hereby VACATED, and a new opinion is attached. Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand shall be given priority, shall be conducted on the record, and shall be concluded within 56 days of the Clerk's certification of this order. As stated in the accompanying opinion, the trial court shall issue an order as directed.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed with this Court within 14 days after completion of the proceedings.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 25 2009  
Date

*Sandra Schultz Mengel*  
Chief Clerk