# STATE OF MICHIGAN

# COURT OF APPEALS

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MATTHEW MICHAEL JANISKEE,

Plaintiff-Appellee,

v

HEATHER LYNN WEILER, f/k/a
HEATHER LYNN JANISKEE,

Defendant-Appellant.

UNPUBLISHED
September 24, 2009

No. 284990
Kent Circuit Court
LC No. 98-003067-DM

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Before: Servitto, P.J., and Fitzgerald and Bandstra, JJ.

PER CURIAM.

Defendant appeals an order of the Kent Circuit Court, which affirmed a family court referee's decision to award plaintiff three makeup weekends of parenting time and to sanction defendant in the amount of $500 "for violation of the September 22, 2006 Court Order and for requiring Plaintiff to obtain Exparte Spring Break Order." We affirm.

Defendant first argues the trial court improperly refused to allow her to present live testimony and other evidence during the judicial review of the referee's recommendation. Defendant contends that the trial court should have allowed the presentation of such evidence because she was not given an opportunity to present live evidence before the referee.

Pursuant to MCL 552.507(4), a trial 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." MCL 552.507(5) provides, in pertinent part:

> A hearing is de novo despite the court's imposition of reasonable restrictions and conditions to conserve the resources of the parties and the court if the following conditions are met:
>
> (a) The parties have been given a full opportunity to present and preserve important evidence at the referee hearing.
>
> (b) For findings of fact to which the parties have objected, the parties are afforded a new opportunity to offer the same evidence to the court as was

> presented to the referee and to supplement that evidence with evidence that could not have been presented to the referee.

MCR 3.215(F)(2) permits the trial court to conduct the de novo hearing by review of the record of the referee hearing, "but the court must allow the parties to present live evidence at the judicial hearing." However, the court may, in its discretion "prohibit a party from introducing new evidence or calling new witnesses unless there is an adequate showing that the evidence was not available at the referee hearing." MCR 3.215(F)(2)(c).

In *Dumm v Brodbeck*, 276 Mich App 460; 740 NW2d 751 (2007), the defendant challenged the trial court's decision to adopt the referee's recommendations and findings of fact without conducting an evidentiary hearing. At the de novo hearing, the trial court heard from both parties and the referee and the "[d]efendant asserted that [the r]eferee [] had precluded him from presenting evidence." *Id*. at 465. This Court observed, "there is no indication, besides defendant's self-serving assertions, that defendant attempted to present evidence before the . . . [referee] and was prevented from doing so. Defendant brought no evidence or affidavits to the court on the day of the hearing. Rather, defendant continued to make allegations without providing support for his claims." *Id*. This Court held that the trial court properly considered the referee's recommendation because the defendant failed to ask the trial court for the opportunity to present live evidence and because defendant did not provide any documentation to support his allegations. *Id*. Under such circumstances, this Court found the trial court satisfied the requirements of MCL 552.507(4). *Id*. at 466.

In the present case, defendant requested that the trial court permit her to present live testimony at the review hearing before the trial court. Similar to *Dumm*, *supra* at 464, there is no indication in the record that defendant was prevented in any manner from presenting live evidence before the referee. In fact, a review of the referee hearing transcript reveals that defendant never requested that she be allowed to present evidence, never attempted to present evidence and never indicated in any manner that such evidence existed. Pursuant to MCR 3.215(F)(2) and MCL 552.507, the trial court was permitted to impose reasonable restrictions on the presentation of live evidence if defendant failed to demonstrate the evidence was unavailable at the time of the referee hearing. Defendant made no such showing of unavailability. Thus, the trial court acted well within its discretion when it denied defendant's request. MCL 552.507; MCR 3.215(F)(2); *Dumm*, *supra* at 464.

Defendant next contends the trial court improperly sanctioned her $500 for noncompliance with the parenting time order. However, plaintiff voluntarily satisfied the portion of the trial court's order imposing the sanction. "The general rule states that a satisfaction of judgment is the end of proceedings and bars any further efforts to alter or amend [that] judgment." *Becker v Halliday*, 218 Mich App 576, 578; 554 NW2d 67 (1996). As our Supreme Court has explained:

> When the judgment was rendered two courses were open to defendant. [Sh]e could satisfy the judgment or review it in this [C]ourt. [Sh]e could not do both. [Sh]e chose by [her] voluntary act to satisfy it. When the judgment was satisfied the case was at an end. [*Horowitz v Rott*, 235 Mich 369, 371-372; 209 NW 131 (1926).]

Having voluntarily satisfied the portion of the order imposing the sanction against her, defendant cannot now challenge the trial court's decision imposing that sanction in this Court. *Id.*

We affirm.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra