STATE OF MICHIGAN

COURT OF APPEALS

BRAD ALLEN PSCHIGODA, Plaintiff-Appellant,	UNPUBLISHED October 12, 2010
v	No. 296157 Berrien Circuit Court
RACHEL REBECCA DOOLEN, Defendant-Appellee.	LC No. 2008-003154-DC

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

In this child custody case, plaintiff appeals as of right the trial court's January 8, 2010 opinion and order which granted defendant sole physical and legal custody of the parties' minor child. We affirm.

The parties in this matter are unmarried, but resided together as a couple for several years, during which time they had a child (d.o.b. 6/11/07) together. The parties signed an affidavit of parentage concerning the child, and continued to reside together after the child's birth. According to plaintiff, he returned to the parties' home on October 10, 2008 to find that respondent had taken her and the child's personal belongings and moved out of the home. Respondent and the child had apparently moved to Wisconsin. Defendant initiated the instant action on October 15, 2008, seeking the return of the minor child to Michigan, as well as sole legal and physical custody of the child.

The trial court entered a temporary custody order in November 2008, granting defendant sole legal and physical custody of the minor child and granting plaintiff supervised parenting time with the child. The order was modified in June 2009 to allow for unsupervised parenting time. After a trial concerning custody and parenting time concluded in October 2009, the trial court issued an opinion and order finding that the child had an established custodial environment with defendant and, after considering the "best interest" factors, awarded defendant sole legal and physical custody of the minor child, with plaintiff to receive parenting time. Plaintiff now appeals the trial court's decision.

"The great weight of the evidence standard applies to all findings of fact" in a custody matter. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004). "Questions of law are reviewed for clear legal error. A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law." *Id*.

A proper determination of the issues presented in this case requires us to interpret provisions of the Child Custody Act, MCL 722.21 *et seq*.; the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*.; and the Acknowledgment of Parentage Act, MCL 722.1001 *et seq*. "Statutory interpretation is a question of law that is considered de novo on appeal." *Id*. The Court in *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526-527; 672 NW2d 181 (2003), indicated that:

> The primary goal of statutory interpretation is to give effect to the intent of the Legislature. This determination is accomplished by examining the plain language of the statute. Although a statute may contain separate provisions, it should be read as a consistent whole, if possible, with effect given to each provision. If the statutory language is unambiguous, appellate courts presume that the Legislature intended the meaning plainly expressed and further judicial construction is neither permitted nor required. Statutory language should be reasonably construed, keeping in mind the purpose of the statute. If reasonable minds could differ regarding the meaning of a statute, judicial construction is appropriate. When construing a statute, a court must look at the object of the statute in light of the harm it is designed to remedy and apply a reasonable construction that will best accomplish the purpose of the Legislature.

Where a term is not defined within the statute itself, courts may consult a dictionary in construing the meaning of a term or the language used in the statute. *Linton v Arenac Co Rd Comm*, 273 Mich App 107, 117; 729 NW2d 883 (2006).

Plaintiff does not take issue with the trial court's ultimate ruling with respect to custody and parenting time. Instead, plaintiff contends that the trial court erred in initially allowing the minor child to remain in Wisconsin. Specifically, plaintiff contends that defendant was prohibited from removing the child from Michigan, which was the child's legal residence and home state, pursuant to MCL 722.31(1). Plaintiff argues that the exception set forth in MCL 722.31(3), which allows a child's two residences to be more than 100 miles apart when the action commences was not applicable because the child's residence was not established in Wisconsin after only living in Wisconsin for five days. Hence, the trial court erred by allowing the child to remain in Wisconsin solely on the premise that the move to Wisconsin preceded any order. We disagree.

To the extent that plaintiff appears to argue that simply because Michigan is the home state of the child, the child should be returned to her home state, the argument has no merit. The plain statutory language set forth in MCL 722.1201(a)(1) guides the determination of which state is a child's home state, but that determination only relates to whether a court has jurisdiction. It does not involve whether a child can be moved more than 100 miles away to another state. Consequently, any argument by plaintiff that the child should be returned to Michigan because Michigan is the child's home state lacks merit. Michigan, however, clearly had jurisdiction as the child's home state to make an initial child-custody determination, pursuant to the extended home state rule in MCL 722.1201(1)(a).

Further, pursuant to the plain language of MCL 722.31(1), in order for the prohibition against moving a child more than 100 miles away to apply, there must be a court order involving custody already in place:

> (1) A child whose parental custody *is governed by court order* has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued. MCL 722.31.

In the case at bar, no such court order involving custody was in place when defendant moved the child more than 100 miles away because the first custody proceeding in the trial court was not initiated until October 15, 2008--five days after defendant moved with the child to Wisconsin. Thus, the prohibition set forth in MCL 722.31(1) is inapplicable to the case at bar. Moreover, because MCL 722.31(1) is inapplicable, the fact that there is an exception to MCL 722.31(1) set forth in MCL 722.31(3) is irrelevant.

Plaintiff next argues that an acknowledgment of parentage established custody of the child with defendant, and that this initial custody decision should have been treated as a court order for purposes of MCL 722.31(1). We conclude that although the acknowledgment of parentage conveyed initial custody of the child to defendant, the acknowledgment of parentage was not a court order.

An "order," which is also termed a "court order," is defined as "[a] written direction or command delivered by a court or judge." Black's Law Dictionary (8th ed). Importantly, the Acknowledgment of Parentage Act does not contain language suggesting that an acknowledgment of parentage is a direction or command delivered by a judge or that an acknowledgement of parentage should be treated like it is a direction or command delivered by a judge. In fact, plaintiff's position was squarely rejected by our Supreme Court in *Foster v Wolkowitz*, 486 Mich 356; 785 NW2d 59 (2010).

In *Foster*, the parents of a minor child had cohabitated in Michigan, then in Illinois, but never married, and had signed an affidavit of parentage concerning the minor child. When the parties' relationship deteriorated, the child's mother moved with the child back to Michigan while the father remained in Illinois. Five days after the move, the mother initiated a custody action in Michigan and was ultimately awarded physical custody of the minor child. A panel of this Court affirmed the trial court's decision, opining, in part, that the properly executed affidavit of parentage operated as an initial custody determination as a matter of law. *Id*. at 361-362. Our Supreme Court, however, disagreed, holding that "nothing in the plain language of the Acknowledgment of Parentage Act equates the execution of an AOP to a judicial determination regarding custody." *Id.* at 366. Further, "[a]n AOP is not issued or entered by *any* court, nor is it in the form of a 'judgment, decree, or other court order . . . .'" *Id*. at 367. Therefore, contrary to plaintiff's argument on appeal, the acknowledgment of parentage signed by the parties did not constitute a court order and should not be treated as a court order.

Plaintiff also argues that before the trial court entered its December 18, 2008 order which gave defendant temporary sole legal and physical custody of the child, the trial court should have made a custody determination on the record, which considered the best interest factors. We review plaintiff's unpreserved claim that the trial court should have considered the best interest factors before entering its December 18, 2008 temporary order for plain error. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

In *Mann v Mann*, 190 Mich App 526, 531-532; 476 NW2d 439 (1991), this Court ruled that in determining whether a temporary custody change is appropriate or necessary, a hearing must be conducted. The Court specifically indicated that "[w]ithout considering admissible evidence . . . a court cannot properly make the determination or make the findings of fact necessary to support its action . . ." Id. at 532. However, in this case, defendant already had custody pursuant to the acknowledgement of parentage. Consequently, the temporary order did not *change* custody. In addition, in this case, plaintiff agreed to supervised parenting time until a full hearing could he held, and an order was entered reflecting the agreement. Thus, plaintiff cannot argue that he was deprived of an evidentiary hearing when, in fact, plaintiff stipulated to the temporary custody arrangement pending a full evidentiary hearing. Because the temporary order did not change custody and plaintiff agreed to it, plaintiff's claim lacks merit.

Finally, plaintiff argues that he moved three times for defendant to return the child to Michigan, but that rather than specifically decide the motions, the trial court simply entered orders for temporary custody. Plaintiff argues that the trial court failed plaintiff and the minor child because decisions in custody disputes should have any findings set forth on the record. MCR 2.517(4) provides that "[f]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule." Because plaintiff is referring to the trial court failing to make findings with regard to motions to return the child to Michigan and the trial court ultimately found that MCL 722.31(1) was inapplicable, findings of fact and conclusions of law were unnecessary. See MCR 2.517(4). And, although the trial court's original decision not to order the child's return to Michigan was not a matter of record, the denial of plaintiff's motions was implied in the trial court's orders granting temporary physical custody of the child to defendant, whom all parties and the trial court were aware resided in Wisconsin. Moreover, the trial court indicated at the October 20, 2009 hearing and in its January 8, 2010 opinion and order that it was not ordering defendant to return the child to Michigan because the move predated any trial court order. Based on the foregoing, plaintiff's argument that the trial court was required to make findings and rulings on the record with regard to his motion to return the child to Michigan, but failed to do so, has no merit.

Affirmed.

/s/ Peter D. O'Connell
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro