STATE OF MICHIGAN

COURT OF APPEALS

STEVE MUSKA, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED September 13, 2012
v	No. 308195 Tuscola Circuit Court
MICHELLE HERFORD, f/k/a MICHELLE POHLOD, Defendant/Counter-Plaintiff-Appellant.	LC No. 10-025788-DC

Before: GLEICHER, P.J., and OWENS and BOONSTRA, JJ.

PER CURIAM.

In this child custody dispute, Michelle Herford appeals as of right from a judgment awarding the parties joint legal and physical custody of their child. The circuit court made several errors in considering the custody question before it. While the majority of the court's errors were not so prejudicial as to require reversal, the circuit court's failure to explicitly state its findings in relation to each best-interest factor of MCL 722.23 is fatal. We therefore reverse the circuit court's custody judgment and remand for a new de novo hearing before that court.

I. BACKGROUND

Plaintiff Steve Muska and defendant Michelle Herford were never married. They dated for ten months from October 2008 through August 2009, following Herford's divorce from her first husband. In approximately April 2009, Muska and Herford conceived their son, J. Their relationship was stormy both before and after Herford became pregnant. Although the pair attended couples' and individual counseling, they were unable to resolve their difficulties and Muska ended the relationship before J's birth. The parties bitterly disagree about the events of their break-up. Herford claims that Muska abandoned her and made no contact until filing his motion for full custody when J was one day old. Muska claims that Herford blocked all avenues of communication, tried to hide J's birth, and would not allow Muska to see his son until ordered by the circuit court when J was three months old.

Both parties are now 36 years old and have stable employment with sufficient incomes to provide for J. Herford lives with her second husband in Cass City. She has primary physical custody of her two children from her first marriage. She and her new husband also have custody

of her husband's two children on a part-time basis. Muska has never been married and J is his only child. Muska lived almost four hours away in Three Rivers until August 2011 when he sold his house and moved to Cass City to be near J.

Because Muska lived so far away at the time and because Herford was breastfeeding the infant, the circuit court originally ordered limited parenting time for short periods for Muska. Muska exercised his parenting time at his mother's Cass City home. Over time, Muska's parenting time increased and he changed his focus from taking full custody of J to attaining joint physical custody. Herford, however, has continued to battle for primary physical custody with limited parenting time for Muska. A custody hearing was held before Friend of the Court (FOC) referee Pamela Wistrand on eight days spread over a ten-month period from August 2010 through June 2011.

At the hearing, the referee heard favorable and unfavorable evidence regarding both parties. Dr. Sherry Baker, the counselor who treated the parties separately and as a couple during their relationship, testified that Herford "has borderline personality disorder" and that Muska could provide the most stable home for J. Muska also presented evidence that Herford tried to alienate her older two children from their father and had completely cut her parents and her brother out of her children's lives. Herford presented evidence that Muska was an alcoholic. In December 2010, the parties agreed to undergo psychological evaluations with Dr. Tracey Allan. Dr. Allan opined that neither parent had a problem with alcohol nor there was any sign that Herford suffered from borderline personality disorder. She indicated that both parents appeared to have a bond with J. Dr. Allan observed, however, that Muska was too focused on discrediting Herford.

Ultimately, the referee determined that J had an established custodial environment with each parent, although "it has been established with mother having the majority of time with [J] and father having very limited time with [J]." As both parties wanted to shift the balance of time he or she received with J, the referee determined that each was required to prove his or her cause by clear and convincing evidence. The referee then proceeded to analyze the best interest factors of MCL 722.23.

The referee found that factor (a), "love, affection, and other emotional ties" between parent and child, favored Muska. The referee acknowledged that both parties loved and were bonded with J, but tipped the scales in Muska's favor because Herford had prevented Muska from seeing J. The referee also favored Muska in relation to factor (b), "capacity and disposition of the parties involved to give the child love, affection, and guidance." The referee again relied on evidence that Herford had interfered with Muska's ability to connect with J, such as by switching to a different pediatrician before a scheduled well-child visit without informing Muska. The referee further cited Herford's pattern of "eliminat[ing]" loved ones from the children's lives if they "crossed her." The referee found that factor (j), "willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent," weighed in Muska's favor. The referee noted her findings in relation to factors (a) and (b). She also cited evidence that Herford had not facilitated and encouraged her ex-husband's relationship with her two older children. The referee determined that Muska had tried to maintain a relationship after the break-up for J's sake, but that Herford had refused.

The referee found the parties equal in relation to factor (c), capacity and disposition to provide for the child's basic needs, as they each had good, stable employment. In relation to factor (d), "length of time the child has lived in a stable, satisfactory environment," the referee favored Herford as J had lived with her and his half-siblings since birth and had since gained a stepfather. But the referee found the parties equal in relation to factor (e), "permanence, as a family unit, of the existing or proposed custodial home," as both parties asserted that they had no intention of changing their relationship status or adding new family members to their homes. The referee also found the parties equal in relation to factor (f), moral fitness, and factor (g), mental and physical health. The referee did not weigh factors (h), the child's "home school, and community record," or (i), child's reasonable preference, as J was too young for either to apply. The referee also found factor (k), domestic violence, to be inapplicable to the circumstances.

The referee ultimately concluded that Muska had "shown by clear and convincing evidence that it [was] in the best interests of this child" to award joint legal and physical custody to the parents, with Muska's parenting time gradually increasing until it would be equal by the age of two. The referee further commented that Herford had not shown by clear and convincing evidence that granting her primary physical custody would be in J's best interests.

Herford was not satisfied with the referee's findings of fact or her custody recommendation. She filed extensive objections, arguing that only she had an established custodial environment with J and, therefore, should not have been required to prove by clear and convincing evidence that granting her primary physical custody was in the child's best interests. Herford also challenged the referee's exclusion of Dr. Allan's analysis of the best interest factors of MCL 722.23 as the court was allowed to consider that opinion under MCL 722.27(1)(d). In connection to MCL 722.23(a), (b), and (j), Herford challenged the referee's conclusion that she had blocked Muska's access to the child after Muska ended their relationship. Rather, Herford continued to argue that Muska made no contact with her until his motion for full custody when J was only one day old. She explained that Dr. Baker, the couple's joint counselor, recommended that she avoid contact with Muska to protect her own health and had to cut off ties with her parents because they verbally abused her in front of the children when she divorced her first husband. Herford claimed that she did not change J's pediatrician to prevent Muska from attending the appointment but because the doctor was not flexible enough with her work schedule. Finally, Herford requested that the court decline to consider Muska's move to Cass City to be nearer to J, which occurred after the end of the referee hearing.

By the time of the December 12, 2011 de novo custody hearing before Tuscola Circuit Court Judge Amanda Roggenbuck, J was nearly two years old, the point at which the FOC referee recommended equal parenting time. By then, Muska enjoyed at least one overnight visit each week, in addition to his daytime visits. The court reviewed the transcripts of the referee hearing and the evidence presented. Herford was not present, but the court accepted testimony from Muska regarding his move to Cass City, his parenting time schedule since the close of the referee hearing, and Herford's increased cooperation. At the close of the de novo hearing, the circuit court indicated its acceptance of the FOC's findings of fact in relation to J's custodial environment, the best interest factors of MCL 722.23, and the award of joint legal and physical

custody. The court, however, shortened the adjustment period so the parents would have equal parenting time three weeks before J's second birthday.[1]

II. FAILURE TO ADJOURN

Herford challenges the circuit court's failure to adjourn the de novo hearing of the referee's decision. In early October 2011, Muska's attorney asked to adjourn the hearing, originally scheduled for November 9, to allow him additional time to respond to Herford's objections to the referee's recommendation. Herford stipulated to the adjournment and the hearing was rescheduled for December 12. On November 18, Herford contacted Muska's counsel and J's guardian ad litem, asking for a stipulated adjournment. Herford indicated that she would be undergoing surgery on December 6 and would be placed on restrictions for four to six weeks, making her appearance at the December 12 hearing impossible. The same day, Herford's counsel sent a letter to the court "to request either a phone conference or settlement conference" to resolve her client's scheduling conflict. Herford's counsel notified the court that Herford "feels that her surgery is of a personal nature and does not want it disclosed. She believes this to be her personal right to keep this private." Herford further indicated that Muska's counsel had already rejected her request for a stipulated order. On November 22, Muska's counsel reduced his rejection of the stipulated adjournment to writing, stating "without substantially more information regarding your client's medical situation and condition we are not willing to stipulate to adjourning the hearing date . . . . [W]e request you schedule a hearing regarding this matter as soon as possible."

Herford did not file a written motion seeking an adjournment of the de novo hearing before the circuit court. Instead, Herford's counsel appeared at the de novo hearing without her client and renewed her request for an adjournment on the record. The guardian ad litem expressed his concern that Herford failed to file a written adjournment motion. Both the guardian ad litem and Muska's attorney questioned the need to schedule a surgery one week before a court hearing that was already known to Herford.

The circuit court denied Herford's counsel's request to adjourn the hearing as follows:

> I suspect all surgeries are necessary in some form or fashion, but there is insufficient documentation in the court's file or evidence presented. There is lack of a written motion for telephone testimony or an adjournment based on the information presented to the court.
>
> This was a prior scheduled matter. I cannot assume that [this was] something that was done on the 29th. It doesn't appear that there was any medical

[1] Herford characterizes the circuit court's action as "changing the referee's result from a gradual move to joint physical custody [to] a screeching and immediate change of the child's custodial arrangement." This description simply is not supported by the record and we decline to consider any challenge in this regard.

> emergency. That this surgery was scheduled whatever date it was scheduled and could have been moved forward or backwards a week or two.
>
> It doesn't appear that there was anything that would require the court to grant an adjournment on this matter. I believe it's in the child's best interest that the matter be resolved and the parties be able to have some closure in this aspect of the case. So the request for adjournment at this time is denied.

As a result of the court's denial, Herford was unable to place her live testimony on the record at the de novo hearing.

The adjournment of hearings is governed generally by MCR 2.503. A party requesting an adjournment must secure his or her opponent's stipulation or must submit a motion "made in writing or orally in open court based on good cause." MCR 2.503(B)(1). "In its discretion the court may grant an adjournment to promote the cause of justice." MCR 2.503(D)(1). Interpreting the "good cause" requirement in the adjournment provision of the child protective proceeding court rules, this Court has held that the moving party must show a "legally sufficient or substantial reason." *In re Utrera*, 281 Mich App 1, 10-11; 761 NW2d 253 (2008) (citations omitted).

We decline to hold that the circuit court abused its discretion in denying Herford's request for an adjournment. Herford knew on November 18, almost a full month before the hearing date, that she needed a court-ordered adjournment. Yet, Herford did not file an adjournment motion as required by MCR 2.503(B)(1). Instead, she informally asked the circuit court by letter for a telephone conference and waited to officially request an adjournment through her counsel at the hearing. Given Herford's unnecessary delay in following proper court procedures, we cannot say that the circuit court's refusal of her adjournment request was unreasonable or unprincipled. See *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

We take this opportunity to advise the circuit court that, had Herford properly and timely raised her motion, her need to recover after surgery would have been "good cause" to adjourn the hearing regardless of whether the surgery was "elective" as described by the court. A party has a right to participate in his or her own proceeding. This is especially true where, as here, the party had a right to present live testimony to update the court on events since the FOC referee hearing. MCR 3.215(F)(2). On this record, however, we discern no error so prejudicial to require reversal. At the de novo hearing, Herford's counsel specifically stated that she did not intend to present any live testimony. Moreover, Herford has not described how she would have challenged Muska's hearing testimony or what other testimony she would have presented.

III. ADMISSIBILITY OF DR. ALLAN'S BEST INTEREST ANALYSIS AND THIRD-PARTY INTERVIEWS

Herford contends that the FOC referee and the circuit court should have considered those portions of Dr. Allan's report that referenced her interviews with outside parties, such as J's siblings and grandparents. Herford also contends that the circuit court should have taken Dr. Allan's analysis of the statutory best interest factors into consideration. We review a circuit

court's decision to exclude evidence for an abuse of discretion. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004).

The rules of evidence "apply to referee hearings." MCR 3.215(D)(1). Under the rules of evidence and statutes governing the presentation of reports to the FOC referee and circuit court, the majority of Dr. Allan's psychological evaluation report, including her consideration of the statutory best interest factors, was admissible.

MCL 722.27(1)(d) permits a circuit court in a child custody proceeding to "[u]tilize . . . community resources in behavioral sciences and other professions in the investigation and study of custody disputes *and consider their recommendations for the resolution of the disputes*." (Emphasis added.) Part of Dr. Allan's recommendation for the resolution of this custody dispute was her analysis of the best interest factors and her opinion on how those factors should be weighed. The FOC referee and the circuit court therefore erroneously determined that they could not consider Dr. Allan's best interest analysis. Yet, we find that error harmless. See MRE 103(a) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected . . . ."). The circuit court and the FOC referee both considered Dr. Allan's substantive evidence in reaching their independent best interest judgments. As neither was required to accept Dr. Allan's application of the facts to the statutory factors, we see no reason to return this matter to the lower court for reconsideration in light of Dr. Allan's conclusions.

In any event, we agree with the FOC referee and the circuit court that Dr. Allan's references to statements made by Herford's two older children, current husband, and father were inadmissible. These statements were hearsay, i.e. oral assertions by declarants made outside the courtroom and offered to prove the truth of the matters asserted. MRE 803(a)-(c). Herford claims for the first time on appeal that the referee and circuit court should have considered this portion of Dr. Allan's evaluation pursuant to MRE 1101(b)(9) and MCL 555.505(1)(g). However, neither of these provisions is applicable.

MRE 1101(b)(9) provides that the evidentiary rules, except for those relating to privileges, do not apply to FOC reports and recommendations submitted in domestic relations matters "pursuant to MCL 552.505(1)(g) or (h)." The statute, in turn, imposes a duty on the FOC "[t]o investigate all relevant facts, and to make a written report and recommendation to the parties and to the court, regarding child custody or parenting time, or both, if ordered to do so by the court." MCL 552.505(1)(g). The statute further provides that the FOC investigation "may include reports and evaluations by outside persons or agencies if requested by the parties or the court . . . ." *Id.* Dr. Allan's report was not part of the FOC investigation and was not incorporated into the FOC report and recommendation. The FOC investigation report and recommendation were submitted to the circuit court on March 2, 2010. The parties did not stipulate to undergo psychological evaluations until nine months later. Accordingly, MCL 552.505(1)(g) and MCR 1101(b)(b) simply are not applicable.

IV. CUSTODIAL ENVIRONMENT

On the merits of the case, Herford contends that the FOC referee and the circuit court incorrectly determined that J had an established custodial environment with both parents and

therefore each needed to prove by clear and convincing evidence that their proposed change in custody was in J's best interest.

> To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue. [MCL 722.28.]

"[W]hen considering an important decision affecting the welfare of the child, the trial court must first determine whether the proposed change would modify the established custodial environment of that child." *Pierron v Pierron*, 486 Mich 81, 92; 782 NW2d 480 (2010). The Child Custody Act provides that a trial court may not "issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child." MCL 722.27(1)(c); *Baker v Baker*, 411 Mich 567, 579; 309 NW2d 532 (1981). Determining a child's established custodial environment "is an intense factual inquiry." *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001). As a question of fact, "we must affirm unless the trial court's finding is against the great weight of the evidence." *Berger v Berger*, 277 Mich App 700, 706; 747 NW2d 700 (2008), citing MCL 722.28. Under the great weight standard, the trial court's findings of fact must be affirmed unless the evidence clearly preponderates in the opposition direction. *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994). The Legislature directs:

> The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. [MCL 722.27(1)(c).]

> An established custodial environment is one of significant duration in which a parent provides care, discipline, love, guidance, and attention that is appropriate to the age and individual needs of the child. It is both a physical and a psychological environment that fosters a relationship between custodian and child and is marked by security, stability, and permanence. [*Berger*, 277 Mich App at 706.]

The FOC referee and circuit court's determinations that J had an established custodial environment with both parents is supported by the great weight of the evidence. When J was with Herford, the infant looked to his mother "for guidance, discipline, the necessities of life, and parental comfort." When J was with Muska, he looked to his father. And J was with Herford for

the majority of his time and with Muska during parenting time, which began at only eight hours each week and increased over the course of the proceedings to include overnight visits.[2]

We agree with Herford that the FOC referee and circuit court incorrectly required her to present clear and convincing evidence to maintain primary physical custody. Herford did not seek to eliminate Muska's parenting time, only to prevent him from expanding his time with J. Herford's requested relief did not alter J's established custodial environment and therefore she should not have been tasked with proving anything. However, this error was inconsequential. See *Fletcher*, 447 Mich at 889 (providing that the harmless error standard applies in child custody cases). The referee and the court also required Muska to prove by clear and convincing evidence that changing J's custodial environment so that each party had equal parenting time was in J's best interest. The lower tribunals determined that Muska met that burden. Accordingly, it is irrelevant that any burden was placed on Herford.

Related to this argument, Herford claims that only she was considered J's "parent" at his birth pursuant to MCL 722.1(b),[3] and therefore J began his life in her sole physical custody under MCL 722.2.[4] To modify that custody arrangement to give Muska any time with the child, Herford claims that Muska was required to show a change of circumstances or proper cause. Yet, the proper cause and change of circumstances conditions apply only when a court is asked to "[m]odify or amend its previous judgments or orders," MCL 722.27(1)(c), not when a court is asked to first visit a child custody issue. We note, however, that Muska's reliance on MCL 722.1004, giving the father of a child born out of wedlock equal rights as the mother, is misplaced as that statute applies only when the father signs an acknowledgment of paternity. Muska did not sign an acknowledgment, but sought a court order of filiation if deemed proper after DNA testing.

V. DE NOVO HEARING

Herford also challenges the circuit court's blanket adoption of the FOC referee's findings of fact at the conclusion of the de novo hearing. She complains that the court was required to reconsider the factors anew, discuss its conclusions on the record, and reach an independent resolution of the custody issue. We agree.

Pursuant to MCR 3.215(F)(2), when a party objects to a FOC referee's findings of fact or conclusions of law, the circuit court must conduct a hearing. "The court may conduct the judicial hearing by review of the record of the referee hearing, but the court must allow the

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[2] Herford makes too much of the FOC referee's statement that J's bond with Muska was evidenced by the infant following his father with his eyes. The referee also noted the time spent and activities engaged in together and Muska's conduct in caring for his child.

[3] MCL 722.1(b) defines parents as "natural parents, if married prior or subsequent to the minor's birth; . . . or the mother, if the minor is illegitimate."

[4] MCL 722.2 provides, "Unless otherwise ordered by a court order, the parents of an unemancipated minor are equally entitled to the custody [and] control . . . of the minor . . . ."

parties to present live evidence at the judicial hearing." *Id.* The hearing must be de novo as provided by MCL 552.507:

> (5) 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.
>
> (6) Subject to subsection (5), de novo hearings include, but are not limited to, the following:
>
> (a) A new decision based entirely on the record of a previous hearing, including any memoranda, recommendations, or proposed orders by the referee.
>
> (b) A new decision based only on evidence presented at the time of the de novo hearing.
>
> (c) A new decision based in part on the record of a referee hearing supplemented by evidence that was not introduced at a previous hearing.

The Child Custody Act "places an affirmative obligation on the circuit court to 'declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with'" the act "whenever the court is required to adjudicate an action 'involving dispute of a minor child's custody.'" *Harvey v Harvey*, 470 Mich 186, 192 (2004), citing MCL 722.24(1). This means that the circuit court, when it reviews a referee's recommendations, must "satisfy itself concerning the best interests of the children" under the best interest factors of MCL 722.23. *Harvey*, 470 Mich at 192-193.

Although the circuit court clearly subjected the referee hearing to a thorough review, we cannot hold that the court satisfied itself that joint physical custody was in J's best interests. "To determine the best interests of children in custody cases, . . . [t]he trial court must consider and *explicitly state its findings* and conclusions with respect to each" statutory best interest factor. *Bowers v Bowers*, 190 Mich App 51, 54-55; 475 NW2d 394 (1991) (emphasis added). See also *Dailey v Kloenhamer*, 291 Mich App 660, 667; 811 NW2d 501 (2011) ("When ruling on a custody motion, the circuit court must expressly evaluate each best interest factor . . . ."); *Rivette v Rose-Molina*, 278 Mich App 327, 329-330; 750 NW2d 603 (2008) ("In deciding a child custody matter, the trial court must evaluate each of the statutory factors pertaining to the best interest of the child and must explicitly state its findings and conclusions regarding each factor."); *Constantini v Constantini*, 171 Mich App 466, 470; 430 NW2d 748 (1988) ("In determining an issue of child custody between parents, a court must consider and state its findings on each of the best-interest-of-the-child factors enumerated in the Child Custody Act.").

If the circuit court fails to explicitly state its findings on each best interest factor, we must reverse and remand for a new de novo hearing before the circuit court. *Rivette*, 278 Mich App at 330; *Bowers*, 190 Mich App at 56; *Constantini*, 171 Mich App at 470.

Judge Roggenbuck opined on the record that both Herford and Muska were good parents that were well equipped to care for J. She indicated that she had read the voluminous FOC record three times and also perused the evidence presented. Judge Roggenbuck indicated that the record supported that J had an established custodial environment with each parent, each parent was equally capable of loving and caring for the child, and joint physical custody was in J's best interests. After a discussion of the parties' love for the child and their difficulties with co-parenting, followed by an extended negotiation on the details of each party's parenting time, Muska's counsel questioned the need to make a record of the court's best interest analysis:

> In regard to a lot of cases I've read, the court has to make a determination as to each of the factors in the child custody act otherwise it's shipped back. So are we adopting the referee's findings of fact or maybe that doesn't apply when we have a referee hearing, Judge.

The circuit court's response was simply:

> No, that's a fair question. And, yes, this court is in fact adopting the referee's findings. And that was why I pointed out that with regards to the factors that the referee considered and findings of the referee . . . .
>
> . . . So in fact this court is adopting findings of the referee in the recommendation.

The court's statement was insufficient to meet the clear requirement that it explicitly state its findings in relation to each best interest factor. The court did not elucidate the content of any best interest factor, let alone indicate which parent was favored or how the evidence applied. We do not necessarily disagree with the lower court's conclusion that joint physical custody is in J's best interests. But precedent dictates that we must therefore reverse and remand for a new de novo hearing.[5]

On remand, the circuit court is directed to specifically identify each factor delineated in MCL 722.23 and discuss the relevant evidence before determining what custody arrangement is in J's best interests. The circuit court is further directed to "'consider up-to-date information'" in analyzing the best-interest factors. *Ireland v Smith*, 451 Mich 457, 468; 547 NW2d 686 (1996), quoting *Fletcher*, 447 Mich at 889. The circuit court may impose "reasonable restrictions and conditions" on the new hearing, MCL 552.507(5), but must allow both "parties to present live evidence," MCR 3.215(F)(2), and to reiterate and supplement the evidence previously placed

[5] Herford also challenges the FOC referee and circuit court's failure to consider the factors of MCL 722.27a before determining the parenting time schedule. However, the parenting time schedule was part of the joint custody order pursuant to MCL 722.26a. That statute does not require the court to consider the factors of MCL 722.27a, only those of MCL 722.23.

before the FOC referee. MCL 552.507(5)(b). As the circuit court erred in excluding Dr. Allan's best-interest analysis at the first de novo hearing, it is directed to review that evidence before reaching its conclusion. As eight months have passed since Muska was given equal parenting time with J, the circuit court must also determine whether that arrangement has become J's new established custodial environment and therefore whether Herford must present clear and convincing evidence that her primary custody would be in J's best interests. For the sake of resolving this matter expeditiously to preserve J's relationship with each of his parents, we retain jurisdiction to consider the court's best-interest analysis after the creation of a full record.

Reversed and remanded for further proceedings consistent with this opinion. We retain jurisdiction to ensure the expeditious resolution of this priority custody matter.

/s/ Elizabeth L. Gleicher
/s/ Donald S. Owens
/s/ Mark T. Boonstra

Court of Appeals, State of Michigan

ORDER

Steve Muska v Michelle Herford, f/k/a Michelle Pohlod

Docket No. 308195

LC No. 10-025788-DC

Elizabeth L. Gleicher
Presiding Judge

Donald S. Owens

Mark T. Boonstra
Judges

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.

As stated in the accompanying opinion, the trial court shall specifically identify each factor delineated in MCL 722.23 and discuss the relevant evidence before determining what custody arrangement is in the child's best interests, subject to the additional directions included in this Court's opinion. This matter shall be given priority in the trial court and shall be concluded within 56 days of the Clerk's certification of this order.

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 within 21 days after completion of the proceedings. If defendant-appellant chooses to file a supplemental brief, it must be filed within 14 days of filing the transcript. Plaintiff-appellee must file any responsive supplemental brief within 21 days of filing the transcript.

A true copy entered and certified by Larry S. Royster, Chief Clerk, on

SEP 13 2012
Date

Chief Clerk