STATE OF MICHIGAN

COURT OF APPEALS

HEATHER LYNN VISSER, Petitioner-Appellee,	FOR PUBLICATION December 18, 2012
v	Nos. 301864; 305900 Kent Circuit Court
DONOVAN J. VISSER, Respondent-Appellant.	LC No. 10-000897-PP

Before: MARKEY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

SHAPIRO, J. (*dissenting*).

I respectfully dissent. Referees are not authorized by statute or court rule to conduct personal protection order (PPO) hearings.

It is axiomatic that referees may only be appointed where specific statutory authority permits such an appointment. *Lindhout v Ingersoll*, 58 Mich App 446, 453; 228 NW2d 415 (1975). In this case, the unambiguous language of the relevant statute does not provide such authority. Neither does the related court rule.

MCL 552.507(2)(a), part of the Friend of the Court Act (FCA), MCL 552.501 *et seq.*, allows a referee to, "[h]ear all motions in a domestic relations matter, except motions pertaining to an increase or decrease in spouse support, referred to the referee by the court." "Domestic relations matter is then defined by MCL 552.502(m) as:

> [A] circuit court proceeding *as to child custody, parenting time, child support, or spousal support*, that arises out of litigation under a statute of this state, including, but not limited to, the following:
>
> (i) 1846 RS 84, MCL 552.1 to 552.45.
>
> (ii) The family support act, 1966 PA 138, MCL 552.451 to 552.459.
>
> (iii) The child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31.
>
> (iv) 1968 PA 293, MCL 722.1 to 722.6.
>
> (v) The paternity act, 1956 PA 205, MCL 722.711 to 722.730.

(vi) The revised uniform reciprocal enforcement of support act, 1952 PA 8, MCL 780.151 to 780.183.

(vii) The uniform interstate family support act, 1996 PA 310, MCL 552.1101 to 552.1901. [MCL 552.502(m)(i)-(vii).] (emphasis added).

The majority misreads this provision by emphasizing the use of the non-exclusive phrase "including, but not limited to," without considering what that phrase is modifying. The phrase allows for expansion of the list of statutes from which a domestic relations case may arise, but it does not expand the types of cases defined as domestic relations matters for the purposes of the act. Whatever statute the case arises under, the proceeding must still be one "as to child custody, parenting time, child support, or spousal support." If a statute defines a term, that definition controls, regardless of whether another definition is possible. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007).

The PPO in this case was issued under MCL 600.2950, which governs protective orders between individuals who are married or share a child. While this statute may be broadly said to involve domestic relations because the parties are married or are parents of the same child, issuance of a PPO, in and of itself, is not a "proceeding as to child custody, parenting time, child support, or spousal support." Therefore, contrary to the majority's conclusion, MCL 552.502(m) does not provide a basis for the referee to hear petitioner's PPO request.

MCL 552.507(1) provides another possible source of statutory authority as it allows the chief judge of a circuit to "designate a referee as provided by the Michigan court rules." As noted by the majority, MCR 3.215(B)(1) allows a chief judge to "direct that specified types of domestic relations motions be heard initially by a referee." Subchapter 3.200 of the Court Rules is titled "Domestic Relations Actions," and MCR 3.201(A) explains that this subchapter covers:

(1) actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, family support under MCL 552.451 *et seq*., the custody of minors under MCL 722.21 *et seq*., and visitation with minors under MCL 722.27b, and to

(2) proceedings that are ancillary or subsequent to the actions listed in subrule (A)(1) and that relate to

(a) the custody of minors,

(b) visitation with minors, or

(c) the support of minors and spouses or former spouses. [MCR 3.201(A)(1)-(2).]

The majority misreads this provision as well, erring in a similar manner to its analysis of the FCA. MCR 3.201(A) states that subchapter 3.200 covers several specific types of actions, and to any other action relating to custody, visitation, or support *but only if* that action is ancillary or subsequent to one of the actions listed in subrule (A)(1). The PPO proceedings in

this case are not part of an action for divorce, separate maintenance, annulment, paternity, child support, custody, or visitation. Further, the proceedings are not ancillary or subsequent to any such action.

The majority claims that PPO actions between individuals who share a minor child necessarily relate to the custody and visitation of minors such that MCR 3.201(A)(2) allows a referee to hear these PPO cases. That these matters are related in a general sense is, however, irrelevant. If a proceeding is not an action for divorce, separate maintenance, annulment, paternity, child support, custody, or visitation and is not ancillary or subsequent to any such action, it is not governed by subchapter 3.200 of the Court Rules. For example, a criminal case may severely impact an individual's custody or visitation rights, but is not governed by subchapter 3.200. Similarly, because the present case is not one of the types of actions listed in MCR 3.201(A)(1) and is not ancillary to any such action, it would not governed by subchapter 3.200 even if it had some impact on respondent's visitation rights (which the PPO in this case explicitly disavows). Therefore, the Court Rules do not authorize a referee to hear a PPO request under these circumstances.

Because this was not a domestic relations action under the explicit definitions provided in the FCA or the Domestic Relations subchapter of the Court Rules, the referee lacked the authority to conduct PPO hearings. I would therefore remand this case to the trial court for it to vacate the PPOs. I express no opinion regarding the merits of the PPOs.

/s/ Douglas B. Shapiro