

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN FRANCIS HALL,

UNPUBLISHED

Plaintiff-Appellant/Cross-Appellee,

v

No. 195702

Midland Circuit Court

JULIE ANN STEWART,

LC No. 91-009199 DP

Defendant-Appellee/Cross-Appellant.

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Before: Hood, P.J. and McDonald and White, JJ.

WHITE, J. (concurring in part and dissenting in part).

I agree with the majority that the trial court did not abuse its discretion in its rulings regarding plaintiff's cross-examination and presentation of witnesses, was not biased, and did not err with respect to the taped conversations or in determining that an established custodial environment existed with defendant. I also agree with the majority's resolution of defendant's cross-appeal.

This is a difficult, unfortunate and troubling case. The record depicts a situation going beyond the mere exercise of "extremely poor judgment" by defendant. One could easily conclude on this record that defendant's poor judgment was purposeful and aggressive, and had evolved to the point where she was doing serious, and soon to be irreparable, harm to the minor child, requiring a change of custody in the child's best interest. One could also conclude on this record that, taking into account the established custodial environment, plaintiff's physical location,<sup>1</sup> and the minor child's age, defendant should be given an opportunity to remedy the situation and custody should remain with defendant subject to compliance with strict conditions and monitoring.

I cannot agree that this record supports an award of custody to defendant absent the imposition of conditions such as those recommended by the court-appointed Friend of the Court custody evaluator, Alan Zoltowski, the need for which was echoed by the testimony of the court-appointed psychologist who evaluated the parties, Dr. Kenneth Bertram.<sup>2</sup> Both Zoltowski and Bertram<sup>3</sup> recommended that plaintiff father be awarded custody.

Zoltowski testified that he spent approximately 200 hours on this case over thirteen months, interviewed plaintiff seven times, interviewed defendant nine times, and interviewed

defendant and plaintiff with their respective spouses. Zoltowski's in-depth forty-three page report to the court recommended that plaintiff's petition for change of custody be granted immediately, and noted that if the court did not follow his recommendation, the court should seriously consider implementing the following for the child's well-being and development:

1. The Mother involve herself in psychotherapy with a psychologist selected by this Evaluator. This psychologist will be apprised of the Mother's devaluation of the Father through the forwarding of the Friend of the Court Custody Evaluator's report and the report by Dr. Ken Bertram to the psychologist prior to Ms. Shangraw's [defendant] involvement in therapy. The purpose of therapy is to hopefully "reprogram" her current affective, cognitive and behavioral devaluation of the Father. This psychologist will report periodically to the Evaluator on Ms. Shangraw's progress. It is also recommended that costs incurred by the Mother and the minor child in therapy be the responsibility of the Mother.

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3. The Court "review" this case in one year (or earlier if necessary), taking into account the progress or lack of progress of Ms. Shangraw in therapy, the adjustment and well-being of [the child], and, finally, whether or not there has been a significant change in the Mother's behavior, attitude and demeanor regarding [the child's] relationship with the Father. Here, the Evaluator is inviting the Mother to recognize and acknowledge her actions as debilitating and learn to make it right in the best interests and rights of [the child]. It is hoped that the Mother, and her family, will extend themselves to the Father for the benefit of [the child].<sup>4</sup>

In the conclusion section of his report, Zoltowski stated:

The Friend of the Court Custody Evaluator has spent an inordinate amount of time investigating, gathering data, reviewing case notes and the facts of this case and has identified four areas that are of most concern and significance to this case:

1. The Mother has outright, maliciously and painstakingly thwarted [the child's] relationship with her Father, John Hall, since July 7, 1991. The Mother does not value the presence of the Father, at all in the life of her daughter, .... Is this continued, lack of facilitation of the parent-child relationship great enough to change custody? By not changing custody now, will [the child] continue to be damaged beyond changing custody?

\* \* \*

4. With the custody ... remaining with the Mother, and the Mother being informed of how inappropriate her behavior is, it is the opinion of this Evaluator that the Mother will most certainly continue her alienation and further devaluation

of the Father. This continued alienation has the ability to cause the most psychological and maybe even pathological damage to the psyche of [the child].

Admittedly, the Friend of the Court Custody Evaluator has struggled with this case. By way of analysis, there are consequences for [the child] if she remains in the custody of her Mother as well as if she is removed from this environment. Despite the Evaluator's above opinion that the child is psychologically bonded to the Mother due to her role as primary caregiver, the Evaluator will go one step further and state his opinion that he feels it is a shame and a tragedy that the Mother is void of understanding the need of [the child] to experience ties with her Father. The Mother has demonstrated herself to be immature, insecure, and too selfish to allow her daughter to have a relationship with Mr. Hall. The Mother fails miserably at allowing [the child] her inalienable right to regard this man as being a significant figure in her life. The Father clearly presents a healthier environment for [the child].

It is this Evaluator's opinion that a proactive approach must be taken to allow this child to grow and develop in a healthy, fully-inclusive environment. This child needs to be shielded from further encroachment by her needy, insecure and overprotective Mother if she is to have any hopes of a healthy relationship with her Father. A child deserves the right to be cared for in an environment where both parents have social-psychological access to the child.

This Evaluator is inclined to believe that the Mother's behavior and belief system toward the Father will not change. It is, therefore, the opinion of the Friend of the Court Custody Evaluator that a "proactive" approach be taken, rather than "reactive" approach at a time when the minor child's relationship with the Father is unsalvageable. . . .

The trial court failed to appreciate the gravity of defendant's alienating and obstructive actions and their impact on the child's development and well-being. The award of custody to defendant without safeguards or conditions is against the great weight of the evidence. I would remand for modification of the order denying the petition.

/s/ Helene N. White

<sup>1</sup> At the time of trial, plaintiff and his wife lived in Alabama and defendant and her husband lived in Midland, Michigan.

<sup>2</sup> Dr. Bertram's recommendations were based on his psychological evaluations of the parties and his having observed defendant and her husband interacting with the child and her half-sister, and plaintiff and his wife interacting with the child. Dr. Bertram also noted that he spent an hour speaking with the maternal grandparents.

<sup>3</sup> Dr. Bertram testified at trial that he was altering his recommendation that custody remain with defendant and that custody should be awarded to plaintiff, in light of defendant's failure to modify her behavior and actions in alienating the child from plaintiff and obstructing plaintiff's relationship with the child. Dr. Bertram's initial report to the court, submitted eleven months before trial, in February 1995, recommended that custody remain with defendant mother and that plaintiff be granted liberal and abundant visitation. However, that initial recommendation was made with grave reservations:

. . . I offer the recommendations below with considerable distress and misgiving. I am deeply troubled by what appear to me to be hard-hearted, narrow-minded, and mean-spirited views held by Ms. Shangraw [defendant], her parents, and possibly her husband, Steve Shangraw, regarding Mr. Hall and his relationship with [the minor child]. Further, the Michigan contingent of [the child's] family seems to be committed to the notion of eradicating Mr. Hall's significance to his daughter, or at the least, of carefully managing his involvement in her life. In pursuit of this particular goal, the Shangraws and the Stewarts [the child's maternal grandparents] routinely practice what looks to me like insincerity, duplicity, and even deceit. This group of individuals appears to have made precious little effort to understand what it might be like to be Mr. Hall or [the child]. They seem, actually, not to have gotten further in their contemplation than the terror of losing [the minor child] to Mr. Hall.

The nature of my work as a clinical psychologist has, for many years, regularly brought me into intimate contact with extremely troubled, dysfunctional families. Because of this, I suppose my sensibilities have become somewhat blunted. I have acquired the tolerance for inappropriateness and destructiveness that accompanies cynicism. Yet it astonishes and chagrins me that [the minor child's] mother and her family are not capable of more largess, generosity, sophistication, and reason than their attitudes and deeds would seem to reflect.

Dr. Bertram altered his opinion at trial and testified that the dynamics he wrote about in his report, quoted above, continued to trouble him and cause him great reservations about continuing the child in defendant's environment. Dr. Bertram testified that he had changed his mind regarding the parties' emotional resources and psychological competence, from believing that the parties were "approximately equal," to concluding that plaintiff was the better choice in light of defendant's ongoing, continued efforts to alienate [the child] from plaintiff and obstruct plaintiff's relationship with [the child]. Dr. Bertram testified at trial regarding his initial conclusion, as stated in his recommendation of February 1995, that custody remain with defendant:

But what bothers me about it is that in spite of repeated arguments and suggestions and incitements and encouragements to allow and encourage Mr. Hall's involvement in this adaptive, hardy little child's life, Mrs. Shangraw and her family will not back down, will not alter their standard or their stance.

And it isn't based on any logical set of ideas. It isn't based on any rational, informed arguments. It isn't even based on any data or information. It's based on this feeling and on this belief that he's bad, they're good, and he ought to get the hell out and stay the hell out. Um, I find that beyond offensive. It's –and I find that beyond destructive.

And it's led me to the point where, even in spite of [the child's] tender years, I'm seriously considering making – shifting my professional recommendation to change custody now, instead of waiting for another four or five years, when I would be completely confident that this child would be unruffled and untraumatized by that change; and before the age of adolescence when one's friends are, in fact, more important than one's family and one's school is in fact, more important than one's family.

Dr. Bertram testified that he considered defendant's prognosis for change dismal, and that if custody remained with defendant, defendant and her family would likely feel vindicated and be less likely to change.

<sup>4</sup> Zoltowski also recommended that plaintiff's visitation be increased. The trial court's order effected that change. Zoltowski further recommended that the parties "stop preparing for Court" as adversaries and begin developing strategies for becoming allies towards the child's welfare, and that plaintiff not "turn up" his efforts at documenting and analyzing defendant's behavior and actions. Lastly, Zoltowski recommended that one of the parties consider moving in the geographic vicinity of the other to insure the child's relationship with both parents.