

STATE OF MICHIGAN
COURT OF APPEALS

KATHRYN ANN DAY,

Plaintiff-Appellant,

v

TIMOTHY JAMES DAY,

Defendant-Appellee.

UNPUBLISHED

March 20, 1998

No. 205959

Washtenaw Circuit Court

LC No. 90-042427-DM

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order awarding temporary sole physical custody of the parties' three minor children to defendant pending a de novo evidentiary hearing. We affirm and remand.

Plaintiff and defendant divorced in April 1992 and, pursuant to the judgment of divorce, plaintiff received sole custody of the children. In April 1995 the parties signed a consent order creating joint legal custody over the children and giving defendant physical custody of the oldest child. In March 1997 the parties again signed a consent order allowing defendant to assume temporary physical possession of the other two children "for the rest of the current school year," at which time the friend of the court (FOC) was to review the custody matter (without further petition) and file a recommendation with the court upon the request of either party. In August 1997 both parties moved for permanent custody. Pursuant to the recommendation of the FOC, the court awarded defendant temporary custody of the children pending a full evidentiary hearing. Rather than moving to schedule such a hearing, plaintiff appealed to this Court.

Plaintiff now argues that the temporary order constitutes a change of custody and, therefore, the trial court erred by failing to hold an evidentiary hearing, evaluate the statutory best interest factors, and determine whether an established custodial environment existed before determining whether clear and convincing evidence was presented that would support a change of custody. We disagree. The court's temporary order did nothing more than maintain the status quo [which is favored in custody cases, see *Lyons v Lyons*, 125 Mich App 626, 630 n 5; 336 NW2d 844 (1983)] pending a full evidentiary hearing. We remand for such a hearing.

Affirmed and remanded. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Harold Hood

/s/ David H. Sawyer