

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

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JERRY FLOYD CLINTON,

Plaintiff/Counterdefendant-  
Appellee,

v

MONIQUE EVETEE FINLEY, a/k/a MONIQUE  
E. CAMPBELL,

Defendant/Counterplaintiff-  
Appellant.

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UNPUBLISHED

January 19, 2006

No. 262493

Wayne Circuit Court

LC No. 95-509670-DM

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Defendant Monique Evetee Finley appeals as of right the trial court's "temporary order" granting "joint legal and joint physical custody of the minor child," Alexis Clinton, to plaintiff Jerry Floyd Clinton. Defendant also challenges the trial court's April 6, 2005 order holding her in contempt of court. We affirm the trial court's orders and remand to allow the trial court to conduct the previously scheduled hearing to consider whether a change of custody would be in the child's best interests.

**I. Factual and Procedural Background**

Alexis Clinton was born on December 22, 1992. Plaintiff and defendant were married shortly after Alexis's birth, and subsequently divorced in 1995. Following a highly acrimonious custody battle, the parties were awarded joint legal custody of Alexis. Defendant was awarded physical custody, but plaintiff was allowed liberal parenting time. In the following years, the parties continued to disagree over parenting time and custody issues, often seeking court intervention. These disputes became more heated after defendant moved to Missouri with the child.<sup>1</sup> In 1999, plaintiff was ultimately awarded specific parenting time with Alexis in

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<sup>1</sup> When the parties first separated, defendant moved to Illinois with the child to be closer to her family. It appears from the record that defendant subsequently moved to Missouri in 1997 or 1998.

Michigan for eight weeks every summer, as well as time over holiday breaks. However, defendant continued to challenge the parenting time schedule and unsuccessfully petitioned the court to reduce the length of plaintiff's summer visitation. Defendant admitted that, following plaintiff's 2003 summer visit, she refused to send Alexis to Michigan to visit with plaintiff.<sup>2</sup> As a result, plaintiff did not see his child again until April of 2005.<sup>3</sup>

In late 2004, plaintiff sought a change custody and filed a motion to show cause why defendant should not be held in contempt for violating the court's previous parenting time orders. Defendant failed to attend a show cause hearing scheduled for March 8, 2005, but sent counsel in her stead. The court ultimately issued a bench warrant for defendant's arrest. The court found that defendant's refusal to allow plaintiff to exercise his parenting time for such an extended period amounted to a "change in circumstances." Therefore, the court "temporarily modified" the custody award, granting plaintiff "joint legal and joint physical custody" of Alexis. The court also entered an order allowing plaintiff to remove the child from Missouri for visitation over Easter break from March 24 until April 1, 2005.

With the assistance of the local police department, plaintiff attempted to enforce the court's parenting time order in Missouri. Although defendant was served notice on March 22, 2005, she sent Alexis to visit her grandparents in Chicago to avoid the ordered visit.<sup>4</sup> In response to defendant's evasive tactics, plaintiff filed an emergency motion seeking sole physical custody of Alexis. At an April 6, 2005 hearing regarding this motion, the court found that defendant had willfully disobeyed the court's orders and held her in contempt of court. The court imposed a two-day jail term and adjourned the hearing until April 8. After hearing argument from both parties and questioning Alexis in chambers, the trial court determined that plaintiff was entitled to "make-up" visitation for the extended period during which he was denied contact with his child. Defendant was, therefore, ordered to allow plaintiff to bring Alexis to Michigan for the entire summer break.<sup>5</sup> The court reserved its determination regarding plaintiff's motion seeking sole physical custody pending a hearing to consider the best interests of the child pursuant to MCL 722.23. That hearing was originally scheduled for June; however, it has not yet been conducted, apparently due to defendant's continued dilatory tactics.<sup>6</sup>

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<sup>2</sup> Defendant alleged that plaintiff physically abused his current wife and verbally abused Alexis. She further alleged that Alexis was "traumatized" after her last summer visit, and required counseling. Yet, defendant did not raise these allegations until the hearing on plaintiff's emergency motion to change custody in April of 2005.

<sup>3</sup> We note that defendant filed a motion seeking increased child support in August of 2003. Although defendant prevented plaintiff from exercising his parenting time during the 2003-2004 school year, the court entered an order increasing these payments in May of 2004.

<sup>4</sup> In fact, Alexis told the trial judge that her mother did not send her to school during this period in the event that plaintiff tried to enforce the order during the school day.

<sup>5</sup> Defendant was again held in contempt of court for disobeying this order. Defendant fraudulently secured an ex parte protection order from a Missouri court using an unsigned letter from a purported psychologist alleging that plaintiff had abused Alexis.

<sup>6</sup> Defendant moved to adjourn the hearing on the originally scheduled date. The rescheduled  
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Consequently, the trial court extended the period of plaintiff's make-up visitation and allowed Alexis to begin the school year in Michigan.

## II. "Temporary Change of Custody"

Defendant contends that the trial court improperly modified the standing custody order without first conducting an evidentiary hearing to determine whether a change in custody was in the best interests of the child. Defendant further contends that she will be prejudiced at the best interests hearing, as the court's order effectively changed Alexis's established custodial environment in plaintiff's favor. We review a trial court's determination regarding custody issues for an abuse of discretion and underlying questions of law for clear legal error.<sup>7</sup> "Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue."<sup>8</sup>

A trial court may amend its previous orders regarding custody "for proper cause shown or because of [a] change in circumstances."<sup>9</sup> The trial court properly determined that plaintiff established a change in circumstances justifying the reconsideration of the custody award. Despite plaintiff's repeated efforts to compel defendant's compliance with the court's parenting time orders, defendant prevented plaintiff from having contact with his child for over one and a half years. Contrary to defendant's assertion, however, the court did not improperly modify the custody award without a hearing. Before a court may modify a custody award, even on a temporary basis, the court must first conduct an evidentiary hearing to consider the best interests of the child.<sup>10</sup> While the trial court inartfully labeled its order as a temporary change of custody, it is clear from the hearing transcripts that the court only intended to award plaintiff extended parenting time as a remedy for the time he was separated from his child.<sup>11</sup> The court properly reserved its determination regarding plaintiff's motion to change custody until it could conduct the required evidentiary hearing.

We further reject defendant's contention that this extended parenting time will create an established custodial environment in plaintiff's favor. In a motion to change custody, the party seeking to change the child's established custodial environment bears the burden of demonstrating by clear and convincing evidence that the change would be in the child's best

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hearing was further delayed when defendant moved to change jurisdiction to Missouri.

<sup>7</sup> *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005).

<sup>8</sup> *Pickering v Pickering*, 268 Mich App 1, 5; \_\_\_ NW2d \_\_\_ (2005).

<sup>9</sup> MCL 722.27(1)(c).

<sup>10</sup> *Grew*, *supra* at 336.

<sup>11</sup> It is likely that the court used this title to ensure the enforceability of its order in a foreign jurisdiction.

interests.<sup>12</sup> Defendant contends that the trial court's order effectively changed Alexis's established custodial environment in plaintiff's favor and shifted the burden of proof. However, plaintiff conceded at oral argument that the trial court's order did not affect Alexis's established custodial environment with defendant. Plaintiff further conceded that he will bear the burden of proof at the best interests hearing. In light of these concessions, defendant cannot establish that she will be prejudiced at the evidentiary hearing.

### III. Contempt Order

Defendant also challenges the trial court's order holding her in contempt of court and requiring her to serve two days in jail.<sup>13</sup> We review a trial court's decision to hold a party in contempt for an abuse of discretion.<sup>14</sup> This Court has defined contempt of court as a "'willful act, omission, or statement that tends to . . . impede the functioning of a court.'" <sup>15</sup> A court of this state is empowered by statute to hold a party in contempt for "disobeying any lawful order, decree, or process of the court."<sup>16</sup> The court may use this power to "punish past transgressions, compel future adherence to . . . the court rules and court orders, or compensate the complainant."<sup>17</sup> It is clear that defendant disregarded the court's order requiring her personal appearance at the March 8, 2005 show cause hearing. It is equally clear that defendant purposefully disobeyed the court's parenting time orders on an ongoing basis for more than a year and a half. In fact, defendant continued to blatantly disregard the trial court's parenting time orders even after she was held in contempt. In light of defendant's general disregard for the authority of the court, the trial court properly held her in contempt. Such action was required to impress upon defendant the necessity of obeying its parenting time orders.

Accordingly, we affirm the trial court's order holding defendant in contempt of court and the court's order awarding plaintiff make-up visitation with Alexis. We remand to allow the trial court to conduct a hearing, as previously contemplated by that court, to determine whether

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<sup>12</sup> *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001).

<sup>13</sup> Defendant was also ordered to pay to plaintiff "fines and costs" amounting to \$6,566.08. See MCL 600.1715(1) (in punishing a party for contempt, a court may either impose a jail term up to 30 days *or impose a fine of no more than \$250*). It appears from the transcript, however, that the trial court actually assessed costs under MCR 2.119(E)(4)(c), as defendant failed to attend a hearing on a contested motion pursuant to subrule (E)(4)(a)(i). The awarded amount included the costs to plaintiff of traveling to Missouri to attempt to enforce the court's visitation order and of engaging counsel in that state. These costs were not assessed as an additional penalty for defendant's contempt.

<sup>14</sup> *In re Dudzinski*, 257 Mich App 96, 99; 667 NW2d 68 (2003).

<sup>15</sup> *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 708; 624 NW2d 443 (2000), quoting *In re Contempt of Robertson*, 209 Mich App 433, 436; 531 NW2d 763 (1995).

<sup>16</sup> MCL 600.1701(g).

<sup>17</sup> *Auto Club Ins Ass'n*, *supra* at 708.

awarding plaintiff joint or sole physical custody would be in Alexis's best interests pursuant to MCL 722.23. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Jessica R. Cooper

/s/ Pat M. Donofrio