STATE OF MICHIGAN

COURT OF APPEALS

RONALD H. RADFORD, Plaintiff-Appellee,	UNPUBLISHED July 27, 2010
v	No. 290292 Wayne Circuit Court Family Division
JANICE ASHENHIRST, Defendant-Appellant.	LC No. 07-704134-DC

Before: MURPHY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

In this custody dispute, defendant, in pro per, appeals as of right the trial court's January 2009 order denying her petition to change custody. We affirm.

I. BASIC FACTS

In 2004, the parties began a dating relationship. Plaintiff moved into defendant's home in late 2004 or early 2005. The relationship produced one child, born December 29, 2006. In late January 2007, the parties ended their romantic relationship and defendant asked plaintiff to move out of her home. The child remained in defendant's physical custody.

In February 2007, plaintiff filed a complaint for joint legal and physical custody of the child, asking the court to enter an order of temporary joint legal and physical custody and to award him unsupervised parenting time. The Friend of the Court (FOC) referee recommended that the parties share temporary joint physical and legal custody of the child, and that plaintiff be entitled to parenting time on the second, third, and fourth weekends of every month, from Friday evening until Monday morning. Defendant failed to appear at this hearing. The trial court adopted the FOC recommendation as an interim order of the court on May 17, 2007. Several days later, on May 25, 2007, defendant obtained a personal protection order (PPO) against plaintiff in a different case. See *Ashenhirst v Radford*, unpublished order of Wayne County Circuit Court, issued May 25, 2007 (Docket No. 07-714084-PP).

While the case was proceeding, defendant apparently failed to abide by the parenting time schedule. Consequently, in June 2007, plaintiff filed a motion to show cause for defendant's denial of his parenting time. Defendant did not appear at the show cause hearing. That same month, the FOC submitted a final recommendation. It recommended that the parties

have joint legal custody and that defendant have physical custody of the child. It also recommended that plaintiff pay defendant $369 per month in child support. The trial court did not act upon the custody recommendation, and no order was entered requiring plaintiff to pay support.

Subsequently, in August 2007, defendant filed a letter with the court asking it to dismiss plaintiff's complaint and motion. Defendant's primary argument was that she was not properly served with the complaint. She also asked the court to enforce the PPO order and to order plaintiff to pay child support. A hearing was scheduled for October 2, 2007, during which the court would undertake consideration of plaintiff's complaint and consider defendant's motion to dismiss. Defendant, however, failed to appear for this hearing as well. Consequently, an order was issued for defendant's arrest.

Defendant was arrested on December 20, 2007, and the hearing was rescheduled for December 21, 2007. At that hearing, the trial court dismissed defendant's motion to dismiss and awarded plaintiff temporary physical and legal custody of the child. Defendant was granted supervised parenting time. The trial court further ordered that plaintiff's "obligation to pay child support is terminated and that the issue of child support shall be referred to the [FOC] for an investigation and recommendation." It stated that "all other terms and provisions of all subsequent orders [sic] entered with this court which are not inconsistent with this order shall remain in full force and effect." At this point, the child was to be turned over to plaintiff, but defendant's mother fled the courtroom with the child. The child was eventually located on January 3, 2008, at the maternal grandparents' home, and plaintiff was given custody of the child pursuant to the terms of the custody order.

Defendant moved for reconsideration of the December 21st order. Plaintiff countered that defendant's parenting time should be supervised because defendant was a flight risk, as demonstrated by the events at the December 21st hearing, and because defendant was psychologically unstable. On April 24, 2008, the trial court issued an order denying defendant's motion "to set aside the Order awarding custody to Plaintiff." It reasoned that an established custodial environment existed with plaintiff and that defendant had failed to demonstrate a change of circumstances. The trial court again did not address the issue of child support.

On July 24, 2008, the trial court entered an "interim" order requiring defendant to pay $220 per month in child support. Defendant filed objections to the order on August 13, 2008. It is unclear from the record how the court ruled, or whether it even considered, defendant's objections. Defendant never appealed the order of custody or the award of child support.

Subsequently, in November 2008, defendant filed a motion to change custody asking the court to grant her "sole custody" of the child. In January 2009, the trial court denied the motion reasoning that defendant had failed to show a proper cause or change in circumstances that would justify a change in the child's custody. Defendant appeals as of right from the January 2009 order.

II. JURISDICTION

At the outset, we note that the majority of defendant's arguments on appeal relate to the trial court's initial December 21, 2007 custody determination. For example, defendant argues

that numerous alleged procedural defects deprived the trial court of jurisdiction or otherwise prejudiced her, including plaintiff's failure to properly serve defendant with the summons and complaint, plaintiff's failure to sign the original complaint and provide defendant's correct name, and the court's alleged failure to recognize her special appearance. In addition, defendant argues that the trial court failed to consider the best interests factors before it entered its temporary change of custody order in December 2007 and that the trial court erred by failing to enter an order requiring plaintiff to pay child support for the period of time that defendant had physical custody of the child. Defendant further asserts that the December 2007 order is defective and should be reversed because the presiding judge had no knowledge of the case, because plaintiff and plaintiff's attorney committed perjury, because the trial court did not protect her due process rights, and because her objections were never heard.

Although we are sympathetic to defendant's position, we do not have jurisdiction to consider the substance of her arguments. All of these claims of error relate to the trial court's previous final order, which defendant never appealed. A "final order" is "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties . . . ." MCR 7.202(6)(a)(i). Thus, when the resolution of a claim found in either the complaint or the counter-claim is postponed to a later date, the judgment is rendered non-final. *Helms v Helms*, 185 Mich App 680, 685; 462 NW2d 812 (1990). Further, "in a domestic relations action, [a final order is also] a postjudgment order affecting the custody of a minor." MCR 7.202(6)(a)(iii). Generally, a party must file a claim of appeal within 21 days from the entry of a final order. MCR 7.204(A). This Court may consider an untimely appeal if it decides to grant leave to appeal. MCR 7.205(F)(1). "[This] discretion [,however,] is limited: this Court may not grant leave to appeal if the untimely appeal 'is filed more than 12 months' after the entry of 'a final judgment or other order that could have been the subject of an appeal of right . . . .'" *Chen v Wayne State Univ*, 284 Mich App 172, 193; 771 NW2d 820 (2009), citing MCR 7.205(F)(3)(a).

Defendant has not complied with these rules in the instant case. After the court entered its temporary custody order in December 2007, defendant moved for reconsideration. The trial court denied defendant's motion on April 24, 2008, reasoning that an established custodial environment existed with plaintiff and that defendant had failed to demonstrate a change of circumstances. Although the April 24th order would appear to be the first final order in this case, it was not because the trial court had declined to rule on the issue of child support. See *Helms*, 185 Mich App at 685. The trial court later entered an "interim" order on July 24, 2008, requiring defendant to pay child support. Although this July 24th order was labeled an interim order, it nonetheless constituted a final order because it disposed of all the parties' claims related to plaintiff's complaint and adjudicated their rights and liabilities. MCR 7.202(6)(a)(i); see also *Thurston v Escamilla*, 469 Mich 1009; 677 NW2d 28 (2004) (holding that the actual result of the order, not the terminology of the order or the underlying motion, controls a finality analysis). Significantly, defendant never appealed the July 24th order, but instead filed a motion to change custody. This motion was denied and the trial court entered a subsequent final order in January 2009, which is the order from which defendant now appeals. In the context of child custody disputes, "[w]hen a final order is entered, a claim of appeal from that order must be timely filed. A party cannot wait until the entry of a subsequent final order to untimely appeal an earlier final

order." *Surman v Surman*, 277 Mich App 287, 294; 745 NW2d 802 (2007). Defendant's failure to timely appeal issues related to the July 2008 final order deprives this Court of jurisdiction to consider those arguments.[1]

Defendant raises an additional and related argument that the trial court erred by not reprimanding plaintiff for failing to comply with the PPO and for otherwise failing to enforce it. However, the PPO was entered against plaintiff in an entirely different case and it is not the order appealed from. See *In re Contempt of Johnson*, 165 Mich App 422, 427; 419 NW2d 419 (1988). Moreover, appeals involving PPO-related orders must comply with MCR 3.709 and application of this court rule to the present matter requires rejection of defendant's arguments. Accordingly, this Court also does not have jurisdiction to consider this order.

Finally, defendant argues that the trial court erred in not retroactively enforcing plaintiff's obligation to pay her child support during the time that the minor child was in her custody. Again, this Court does not have jurisdiction to consider this issue. In addition, child support was never ordered while the child was in defendant's custody. Although the FOC recommended child support be paid to defendant, the trial court never addressed either the amount of support or its retroactivity.[2]

III. MOTION FOR CHANGE OF CUSTODY

With regard to the January 2009 order appealed, defendant only argues that the trial court erred by not taking into consideration "anything [she] had to say" and by continuing to require that her parenting time be supervised despite the fact that she had done nothing to be found unfit. Defendant's claims of error are without merit. At the outset, we note that defendant moved to change custody, not to modify the parenting time schedule. Thus, her argument as it relates to parenting time is irrelevant as it was not decided by the trial court and is not now properly before this Court. See *People v Herrick*, 277 Mich App 255, 259; 744 NW2d 370 (2007).

With regard to her motion to change custody, defendant generally asserts that the trial court erred by denying her motion to change custody, but her argument is better characterized as a denial of her procedural due process rights. We review claims of constitutional error de novo. *Hanlon v Civil Service Comm'n*, 253 Mich App 710, 717; 660 NW2d 74 (2002). In the civil context, procedural due process generally requires notice, the opportunity to be heard in a meaningful way, and an impartial decision maker. *Id*. at 723. The opportunity to be heard guaranteed by due process does not mean a full trial-like proceeding, but it does require a hearing to allow a party the chance to know and respond to the evidence. *Id*.

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[1] We also note that by the time defendant filed her claim of appeal with this Court in the instant matter, the time period in which this Court could have granted leave for an untimely appeal of the July 2008 order had expired. See *Chen*, 284 Mich App at 193; MCR 7.205(F)(3)(a).

[2] An issue must first be raised and addressed by the trial court before it may be properly considered on appeal. *Polkton Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

Our review of the January 7, 2009 hearing transcript shows that defendant's contention is without support in the record. At the hearing, the trial court entertained defendant's arguments and factual assertions, but determined that they were unavailing because defendant had failed to demonstrate a change of circumstances that would warrant a custody change. See *Vodvarka v Grasmeyer*, 259 Mich App 499, 513; 675 NW2d 847 (2003). When asked what had changed, defendant stated that she lived in a new home and that plaintiff's mother was taking care of the child while plaintiff was at work. In response, the trial court stated, "Who's taking care of the child is not a change of circumstances." As such, defendant failed to proffer any evidence or testimony at the hearing that would have convinced the trial court otherwise even though, contrary to her allegation, she was offered the opportunity to be heard. Thus, her contention that the court did not consider her arguments fails.[3]

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens

[3] Defendant also raised allegations of child abuse at the hearing. When the trial court asked whether Child Protective Services (CPS) had investigated and whether CPS had issued a report, defendant stated that they had investigated but had not issued a report or otherwise taken any action. Defendant raises similar allegations on appeal but does not explain the relevancy of her unconfirmed suspicions. A party cannot leave it up to this Court to discover and rationalize the basis for his or her position on appeal. *McIntosh v McIntosh*, 282 Mich App 471, 484-485; 768 NW2d 325 (2009).