STATE OF MICHIGAN

COURT OF APPEALS

ADAM COSTON, Plaintiff-Appellee,	UNPUBLISHED November 10, 2015
v	No. 327395 Kalamazoo Circuit Court
AMY COSTON, Defendant-Appellant.	LC No. 2014-006400-DM

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

PER CURIAM.

Defendant mother appeals as of right the trial court's April 24, 2015 order which, among other things, temporarily suspended her legal custody and parenting time rights and ordered her to undergo a psychological[1] evaluation. We affirm.

The parties were married in 2007 and had the minor child that year. They separated in 2012, whereupon mother moved out of the house to a nearby apartment, and father remained the primary caregiver. Although the parties apparently had an informal agreement under which mother had some parenting time, she was not a significant part of the child's life. In May of 2014, mother moved out of Kalamazoo to join her boyfriend in Chicago, Illinois, although she continued to have parenting time visits in Michigan until July 3, 2014, when she removed the child to Chicago with her. Father did not give mother permission to take the child to Illinois. Mother initiated divorce proceedings in Illinois, father commenced the instant divorce proceedings, and mother ultimately dismissed the Illinois divorce action.

During the ensuing divorce proceedings, the trial court indicated that it was not impressed with mother's actions, and it described her as "a very bright, eccentric young woman who relishes the world of fantasy and at times is unable to distinguish between what is fantasy and what is the real world." The trial court concluded that notwithstanding the child living with

[1] The trial court's order specifies only a "psych eval," which mother implies in her brief, and we find it reasonable to presume, was intended to mean a psychological evaluation. Because this matter remains under the trial court's jurisdiction, the trial court may correct its order or the parties may seek clarification should this presumption be incorrect.

mother during the pendency of the proceedings, the child's established custodial environment was with father. After weighing the various best-interest factors, MCL 722.23, the trial court concluded that it was in the child's best interests for father to have physical custody. The parties were awarded joint legal custody, and mother was afforded parenting time. The divorce judgment specified, *inter alia*, that mother was entitled to parenting time with the child in Chicago the first full weekend of every month during the school year, but although she was also permitted some visitation in Michigan, she was not to remove the child from Michigan without father's permission. Mother initially refused to comply and failed to return the child until the trial court entered another order directing that father could pick the child up in Chicago and take her back to Michigan, which father did. Multiple attempts to modify the custody order by mother were denied by the trial court.

Shortly thereafter, mother filed a petition for a protective order in Cook County, Illinois, seeking the child's return to Chicago. Mother represented to the Illinois court that the Illinois court had jurisdiction over the child and that an order of protection was necessary because father had repeatedly "poisoned" the child with drugs, had a history of taking the child with him on drug deals, and because another such drug deal was about to take place. The Illinois court granted an interim order of protection. The trial court in this case would ultimately find that mother had known full well of the valid Michigan orders granting physical custody to father and prohibiting mother from taking the child out of state, had intentionally withheld from the Illinois court the fact that the Kalamazoo County court had jurisdiction over the matter, and had "absolutely lied and perjured herself under oath" to the Illinois court.

After securing the Illinois order of protection, mother called the child's school in Michigan to inform it that she would be picking the child up after school and taking her back to Chicago. The school notified father, who immediately picked the child up from the school first. Mother summoned the police, who determined that father had a valid Michigan court order granting him physical custody. Mother then resorted to posting[2] on social media; including posts on Facebook, a crowdfunding site, and an image hosting site; all to the general effect that father had "kidnapped" the child and was seriously endangering her. She included photographs of the child and of the Illinois order, as well as the Kalamazoo County Sheriff's Department's telephone number, pleas for donations and for people to contact the police if they saw the child, and the child's home address and the name of her elementary school.

In response to mother's actions, father filed an ex parte motion, seeking to have the information posted on mother's various social media sites removed, to have mother post a new status on Facebook correcting the misinformation previously posted, to have mother "undergo a mental health examination," and to have her legal custody and parenting time rights temporarily suspended. A hearing on the matter then took place, during which the trial court took judicial

[2] Mother denied having personally made most of the posts, and even awareness of some of them, but it appeared that she either explicitly or tacitly approved of or endorsed others. The trial court's poor estimation of mother's credibility appears warranted, so we find no clear error in the trial court's implied finding that, one way or another, mother was responsible for the posts.

notice of the existing Michigan custody order and of the fact that the Illinois order of protection had since been vacated after the Illinois court learned of the Michigan proceedings. Following testimony, the trial court found that mother was clearly aware of the Michigan custody order, that she had deceived the Illinois court into granting her a protective order by making false allegations and withholding pertinent information about the Michigan proceedings, and that she had endangered the child by posting false information to her social media sites. The trial court adopted father's request for relief, ordered mother to remove the content from her social media sites, ordered her to post a new status to Facebook explaining the circumstances of the case, ordered her to undergo a "psych eval", and ordered that her legal custody rights and parenting time would be temporarily suspended until such time that she could complete the evaluation.

Child custody determinations are governed by the requirements of the Child Custody Act of 1970, MCL 722.21 et seq. A "child-custody determination" means "a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child." MCL 722.1102(c). We "affirm all custody orders unless the trial court's findings of fact 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." *Brausch v Brausch*, 283 Mich App 339, 347; 770 NW2d 77 (2009) (quotation omitted), citing MCL 722.28.

Mother first argues on appeal that the trial court erred by modifying the custody order without making the statutorily-mandated findings under the Child Custody Act, and in particular the best interests factors enumerated in MCL 722.23 and a finding of proper cause or change of circumstances under MCL 722.27. We disagree.

As an initial matter, we are not bound by nomenclature chosen by a party, but rather by substance. See *In re Wayne Co Treasurer*, 265 Mich App 285, 299; 698 NW2d 879 (2005). Mother characterizes the trial court's order as effectuating a change in her custody, but we find that characterization to be inaccurately overbroad. The order does suspend mother's legal custody, but it also affects her parenting time, and mother appears to be conflating the concepts. Before a trial court may modify a *custody* order, the trial court is required to make an express determination that proper cause or a change in circumstances warrants any such change. See *Vodvarka v Grasmeyer*, 259 Mich App 499, 509-512; 675 NW2d 847 (2003). However, a change in *parenting time* is not subject to the same stringent standards. *Shade v Wright*, 291 Mich App 17, 25-29; 805 NW2d 1 (2010). The distinction is whether the trial court's order, as a practical matter, has the effect of changing the custodial environment. See *Kaeb v Kaeb*, 309 Mich App 556, 566-572; ___ NW2d ___ (2015). Although the imposition of a condition on the exercise of parenting time *might* be so significant that it amounts to a change in custody, it generally will not. *Id*. at 570, 570 n 3; see also *McConchie v Voight*, ___ Mich App ___, ___; ___ NW2d ___ (Docket No. 326651, issued September 15, 2015); slip op at 4.

The trial court's order accomplished a number of relevant matters. As noted, *one* part of the trial court's order explicitly suspended mother's legal custody pending her completion of, *inter alia*, obtaining a psychological evaluation. Consequently, the trial court was obligated to find, pursuant to MCL 722.27(1)(c), "proper cause" or a "change of circumstances." *Vodvarka*, 259 Mich App at 508. If it so finds, it must then evaluate whether a custodial environment exists, and if so, whether changing that environment is clearly and convincingly in the child's best interests. *LaFleche v Ybarra*, 242 Mich App 692, 695-696; 619 NW2d 738 (2000). The

trial court generally should make explicit findings and conclusions on the record. *Id*. at 700. The trial court did not do so here.

However, notably, the trial court's custody order only affected *legal* custody. The purpose of the prerequisites to changing custody is to avoid disrupting the child's life by removing the child from a situation where the child "'naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort.'" *Foskett v Foskett*, 247 Mich App 1, 5; 634 NW2d 363 (2001), quoting MCL 22.27(1)(c). It is manifestly obvious from the record that a custodial environment did, and indeed had been established as existing, *with father*, and suspending mother's legal custody would have little, if any, practical effect on "the stability of the child's environment and avoidance of unwarranted and disruptive custody changes." *Shade*, 291 Mich App at 28-29. It is also manifestly obvious that it would be a waste of judicial resources to remand this matter for the effectively ministerial task of requiring the trial court to articulate that mother's deceitful, erratic, and even dangerous behavior is clearly "of a magnitude to have a significant effect on the child's well-being." *Vodvarka*, 259 Mich App at 512. We also note that mother has it within her power to comply with the trial court's condition at any time. Consequently, we find no error in the trial court's order suspending mother's legal custody.

The second relevant matter accomplished by the trial court's order is a suspension of mother's parenting time. As discussed, a suspension of parenting time is generally held to a less stringent standard. In *Kaeb*, this Court explained that it had been within the trial court's authority to compel attendance at AA meetings and participation in counselling as conditions upon the defendant's exercise of parenting time so long as such conditions were in the child's best interests. *Kaeb*, 309 Mich App at 569. The trial court here may not have expressly stated in precisely so many words that it found mother's participation in a psychological evaluation to be in the child's best interests, but we usually do not require talismanic language of parties or trial courts, particularly where their intent is obvious.

Mother also argues that the trial court's suspension of her parenting time and legal custody was against the great weight of the evidence because "[t]he facts of the case clearly establish that [she] acted in good faith when she pursued the Order of Protection in Illinois, and when she subsequently had the Order posted online on her facebook [sic] account." Mother points to her own testimony, wherein she did indeed assert as much. However, the trial court was not impressed with her credibility, and we defer to the trial court's assessments of such matters. See *McGonegal v McGonegal*, 46 Mich 66, 67; 8 NW 724 (1881). Our reading of the record reveals no reason to doubt the trial court's judgment. Mother further contends that requiring her to undergo a psychological evaluation went "too far" and seemingly understands it to be a punishment, but she provides no support for those assertions, thereby abandoning them. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). As above, mother has the ability to remove this condition at any time. We therefore find no error in the trial court's order suspending her parenting time.

Mother finally argues that the trial court violated her state and federal freedom of speech rights when it ordered her to remove content from her social media sites and to post a new update to Facebook about the circumstances of the case. Again, however, aside from stating that the information she posted was done in "good faith" and that the trial court's order constituted

unnecessary "censorship," mother does not provide a framework for analysis or cite any relevant authority that would support her position. We note, however, that the trial court's order included a directive to explain that mother had been ordered to make the post, so the court was not "putting words in her mouth" or requiring her to claim authorship of a statement she did not intend. Furthermore, mother's contention that she only posted matters "of public record" conveniently ignores the perjury she committed to generate some of those matters, as well as the fact that she actively publicized information that would otherwise be obscure and require dedicated effort to obtain. In any event, again, mother's failure to follow through on her arguments with more than merely a citation to the First Amendment is insufficient, so this argument is abandoned. *Wilson*, 457 Mich at 243.

Affirmed.

/s/ Jane E. Markey
/s/ Donald S. Owens
/s/ Amy Ronayne Krause