

STATE OF MICHIGAN
COURT OF APPEALS

MELANIE ELIZABETH MCCOY,
Plaintiff-Appellant,

UNPUBLISHED
April 11, 2017

v

ANTHONY JAMES MAIN,
Defendant-Appellee.

No. 334659
Saginaw Circuit Court
LC No. 12-017141-DS

Before: RONAYNE KRAUSE, P.J., and O'CONNELL and METER, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. Plaintiff did not object to the Friend of the Court (FOC) report until well after the 21-day deadline to file objections. I would affirm the trial court's decision.

MCR 3.210(C)(6) provides that the court must give the parties an opportunity to review and file objections to the FOC report. If a party files an objection to the report, the trial court must conduct an evidentiary hearing before changing custody of the minor children. MCL 552.507(4).

In this case, defendant filed a timely objection to the FOC report, and the trial court scheduled a hearing for June 27, 2016. At the June hearing, the trial court indicated it would hold a further hearing if the parties did not resolve the issue. On August 2, 2016, defendant moved to withdraw his objections to the report, and the trial court entered an order to that effect. Only then did plaintiff file objections to the report. The trial court ruled that plaintiff's objections were not timely and refused to hold an evidentiary hearing. Because plaintiff did not file an objection until substantially beyond the 21-day deadline, the trial court was not required to hold a hearing under MCL 552.507(4). Accordingly, the trial court did not err in declining to hold a hearing.

The trial court also did not fail to make its own independent findings. The trial court's August 16, 2016 order indicates that it reviewed the Friend of the Court's proposed findings

while “fully advised” and adopted the recommended ruling as its own.¹ Absent objection by a party, the trial court did not need to do more.

I would affirm.

/s/ Peter D. O’Connell

¹ The majority concludes that this order is ambiguous. Courts should interpret the terms in a trial court’s judgment in the same manner as courts interpret contracts. *Smith v Smith*, 278 Mich App 198, 200; 748 NW2d 258 (2008). A contract is ambiguous when its provisions are capable of conflicting interpretations. *Farm Bureau Mut Ins Co of Mich v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). There is nothing ambiguous about the trial court’s statement that it was fully advised and adopted the findings. The majority impermissibly creates an ambiguity in a clear, concise order where none exists. See *Frankenmuth Mut Ins Co of Mich v Masters*, 460 Mich 105, 111; 595 NW2d 832 (1995).