

STATE OF MICHIGAN
COURT OF APPEALS

In re CRUZ, Minors.

UNPUBLISHED
September 30, 2021

No. 356428
Shiawassee Circuit Court
Family Division
LC No. 20-014546-NA

ANTHONY DAVID CRUZ,

Plaintiff-Appellee,

v

STEPHANIE ANN REICHOW,

Defendant-Appellant.

No. 356437
Shiawassee Circuit Court
Family Division
LC No. 20-004674-DC

Before: BECKERING, P.J., and SHAPIRO and SWARTZLE, JJ.

PER CURIAM.

Two actions are before us on interlocutory appeal regarding the placement and custody of two of appellant Stephanie Ann Reichow's children.¹ Docket No. 356428 is a child-protective proceeding brought by the Department of Health and Human Services (DHHS). Reichow appeals by delayed leave granted² the trial court's order allowing DHHS to place her minor children, MJC

¹ This Court entered an order consolidating these two appeals on April 30, 2021. *In re Cruz*, unpublished order of the Court of Appeals, entered April 30, 2021 (Docket Nos. 356428 and 356437).

² *In re Cruz*, unpublished order of the Court of Appeals, entered April 2, 2021 (Docket No. 356428). While we normally do not identify the full names of respondents in child welfare

and RAC, with their father, Anthony David Cruz. Reichow claims that the court erred by changing the children's placement outside statutory placement timelines and without making a best-interests determination.

Docket No. 356437 is a child custody action filed by Cruz soon after the child-protective proceedings began. Reichow appeals by leave granted³ the trial court's order finding that placement of the children with Cruz in the child-protective proceedings constituted proper cause or a change in circumstances that warranted revisiting the existing custody order. On appeal, Reichow argues that the court's findings were against the great weight of the evidence when it concluded that Cruz had established the threshold requirement to revisit custody when the existing custody order only became enforceable at the conclusion of the child welfare case, the child welfare case was still open and ongoing, and any custody orders by the trial court would conflict with the ultimate goal of Reichow being reunified with her children in the child welfare case. Reichow also appeals the court's order temporarily granting sole legal and physical custody to Cruz, contending that the trial court erred by entering a temporary order modifying custody without first making a best-interests determination.

We conclude that because Reichow has subsequently consented to a joint custody order in lieu of a best interests hearing in the custody case and the child-protective proceeding regarding Reichow was later dismissed, such that her right to parent is no longer under scrutiny, the issues on appeal have been rendered moot.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The child protective proceedings began in March 2020, when DHHS filed a petition seeking the removal of Reichow's minor children, AW, MJC, and RAC, from her home. The petition alleged that Reichow's boyfriend physically abused MJC, and that while Reichow knew about the abuse, she continued to leave MJC in her boyfriend's care. The sole allegation in the petition regarding Cruz was that he resided in Kentucky and had not physically seen MJC and RAC in over a year. The trial court authorized the petition in regard to Reichow. After an initial placement with a relative, DHHS placed AW, MJC, and RAC in the care of AW's father, JW.⁴

The custody proceedings began on April 7, 2020, when Cruz filed a verified complaint for custody, parenting time, and child support. The case was assigned to a different judge than the one handling the child protective proceeding. Cruz requested entry of an ex parte order granting him temporary sole physical custody of MJC and RAC and requiring any person with custody of the children to transfer them to his custody. The court denied Cruz's motion for an ex parte order

opinions, we do so here because of the consolidated custody case, where Reichow is properly identified as a party.

³ *Cruz v Reichow*, unpublished order of the Court of Appeals, entered April 2, 2021 (Docket No. 356437).

⁴ The court later dismissed the proceeding with respect to AW, and the child's placement is not at issue in this appeal.

the following day. Reichow filed an answer to the custody complaint, asking the court to award her sole legal and physical custody of the children.

In June 2020, Reichow pleaded no-contest to the allegations in the removal petition. The DHHS declined to raise any allegations concerning Cruz; and therefore, he was never adjudicated in the child-protective proceeding.

In July 2020, the court entered an order in the custody action staying further proceedings due to the ongoing child-protective proceedings. Nevertheless, the court ordered Reichow and Cruz to participate in a facilitation conference. On August 18, 2020, the court entered an initial custody order, adopting the recommendations of a Friend of the Court (FOC) facilitator. According to the order, once the child protective proceedings were concluded, Reichow and Cruz would share joint legal custody of the children, while Reichow would have primary physical custody, with parenting time to be agreed to by the parties. The custody court entered an order lifting its stay on August 24, 2020.

At a dispositional review hearing held in the child protective proceeding on October 19, 2020, the caseworker reported to the court that the children were still placed with JW and doing well. Both Reichow and Cruz participated in services and virtual visits with the children. The caseworker indicated that DHHS had a home study of Cruz's residence completed under the Interstate Compact on the Placement of Children (ICPC). The verbal report was that Cruz's home was appropriate, but DHHS was waiting on a written report before recommending that the minor children be placed with Cruz. The court rejected the recommendation to change the placement of the children at that time, pointing out that the children were doing well with JW, and that Cruz had to show more than a positive home study in order for the children to live with him.

In January 2021, DHHS filed a report in the child protective proceeding indicating that it was in MJC's and RAC's best interests to be placed with Cruz "so that they can engage and bond with paternal family." The report recommended that the permanency goal should be placement with Cruz. It also recommended closure of the case as to Cruz, since he was a nonrespondent, never having been adjudicated as an unfit parent. According to the report, Reichow failed to share progress reports with DHHS as to her participation in recommended services, and she had limited contact with DHHS. Cruz filed a brief in support of his assertion that it was in the children's best interests to be placed with him. He asserted that he had completed all services requested by DHHS, including a home study, a psychological evaluation, and an illegal substances screen. According to Cruz, the psychological evaluation resulted in no recommendations and the substance screen did not show any illegal substances. Cruz also asserted that he had been participating in at least two virtual parenting visits with the minor children each week, visited the children seven times in person since April 2020, and had completed a parenting class. Cruz also asserted that he had more than one overnight visit with the minor children, was employed, and had housing.

At the January 11, 2021 disposition hearing, the caseworker recommended case closure as to Cruz and placement of the minor children with him. The court pointed out that such a placement would end when the child protective proceedings ended, and inquired as to whether the caseworker believed the placement was a form of permanence. She responded that it was a form of permanence for the minor children, "[a]nd then the parents would be allowed to work out their own custody orders with the court in best interests of the children." The court noted that it did not

disagree with the placement recommendation, but it was concerned that DHHS intended to use placement with Cruz as a basis to close the child protective proceedings matter without a custody order in place granting Cruz legal and physical custody of the minor children.

Reichow objected to placing the children with Cruz. She noted they had been in JW's care for almost 10 months and were doing well. She argued that it was in the best interests of the children to have stability by remaining where they were. The court responded:

I'd like to say [JW's] done a wonderful job. Because he's taking care of his kid, his child, and the other two children. He's provided the invaluable experience of children being able to get through this most traumatic time of their life with each other. With their sibling. So, I—I have nothing but positive to say about [JW]. Okay.

Here's the slight problem. He's not their father. Okay? Let's face it. Bill Gates could take care of my two kids and provide 'em with their own private jet as well as, you know, capped teeth so they didn't have to worry about dental care and blah, blah, blah, blah, blah. It's—it's a ridiculous metaphor, but the point remains, we can't pick the best possible care taker. We have to take certain priorities in life and—and the fact that Mr. Cruz fathered the children is something that can't be overlooked.

The goal is going to remain jurisdiction. [sic] Your client [Reichow] is not out of the picture. But I am going to, but she's the mother and Mr. Cruz is the father. And when the mother, I will be kinder in my comments and say has stumbled, then, legally, the father is the first runner up to take—to take the place of the—of their primary care. That is not something I decide. That is, well, I mean, I guess it is. But, I mean, it's not something I decide without guidance or mandate.

Therefore, the court gave DHHS permission to place the minor children with Cruz, but noted it would not dismiss the case until there was “a global resolution . . . that does allow for the mother to have the fair and reasonable change that she's entitled to. To—to get her children back without being undercut by a DO or DM order.” The court entered an order reflecting its permission for MJC and RAC to be placed with Cruz, which occurred shortly thereafter.

On January 19, 2021, Cruz filed a motion with the custody court for a modification of the custody order. Cruz argued that the recent events in the child protective proceedings constituted proper cause or a change of circumstances warranting a reconsideration of custody, and that it was in the children's best interests for Cruz to have primary physical custody. Reichow opposed the motion, asserting that the children's placement with Cruz was temporary and that the court should decline to enter any additional orders until the child protective proceedings concluded. At a hearing in regard to the motion, the court determined that the children's placement with Cruz in Kentucky clearly constituted either proper cause or change of circumstances. Accordingly, the court entered an order referring Cruz's motion to a referee for a best-interests hearing. The court also entered an order awarding Cruz temporary physical and legal custody of the minor children until further order of the court.

As noted above, Reichow filed an application for leave to appeal in both cases, and this Court granted those applications on April 2, 2021. Meanwhile, further actions were taken in each of the trial court cases. On April 8, 2021, the judge in the child protection proceeding entered an order granting DHHS's request to terminate the court's jurisdiction without a hearing because "the minor is in the full care, custody, and control of the parent(s), guardian, or legal custodian, and further court supervision is unnecessary." Yet on April 15, 2021, the judge handling the custody action entered an order of disqualification and reassignment to the judge who had been handling the child protection proceeding, with the reason being: "One family one judge." The custody matter was then assigned to the judge who had handled the child protection proceeding. According to a June 8, 2021 order in the custody action, in lieu of a contested evidentiary hearing the parties agreed to share joint legal and physical custody of the minor children. The order also set forth the parties' agreement with regard to a parenting time schedule and other matters. The order was signed by the parties, their attorneys, the referee, and the trial court judge.

II. ANALYSIS

Reichow argues on appeal that the court in the child-protection case erred by allowing the DHHS to change the placement of the children, and that the court in the custody case erred by finding proper cause or change of circumstances necessary to revisit custody. However, we decline to address the merits of the claims raised on appeal because these issues are moot.

"Courts of this state derive their authority from Article VI of the Constitution of the state of Michigan of 1963." *In re Detmer/Beaudry*, 321 Mich App 49, 55; 910 NW2d 318 (2017). "An 'essential element' of our courts' judicial authority is that the courts do not reach moot questions or declare rules of law that have no practical legal effect in a case." *Id.* (quotation marks and citation omitted). As a result, to warrant this Court's review, the parties must present "a real controversy, rather than a hypothetical one." *In re Smith*, 324 Mich App 28, 41; 919 NW2d 427 (2018). "This requirement, commonly known as the real-case-or-controversy requirement, prevents this Court from rendering advisory opinions that have no practical legal effect in a case." *Id.* (quotation marks and citation omitted). Generally, "a case becomes moot when an event occurs that makes it impossible for a reviewing court to grant relief, i.e., when the case presents only abstract questions of law which do not rest upon existing facts or rights." *Id.* (quotation marks and citation omitted). If no "collateral legal consequences exist, and there is no possible relief that a court could provide, the case is moot and should ordinarily be dismissed without reaching the underlying merits." *Id.* (quotation marks and citation omitted).

In this case, Reichow asserts that the court's erroneous decision to allow the DHHS to change the children's placement in the child-protection case resulted in the custody court's erroneous decision to revisit custody. Moreover, she contends that, in attempting to make the best out of an unfavorable situation caused by the aforementioned errors, she agreed to the custody arrangement so that she would have a sufficient amount of parenting time. However, the child-protective proceeding has been dismissed, and that court no longer has jurisdiction over Reichow or her children. We see no reason to reopen the child-custody proceedings because Reichow, a

now-presumptively fit parent, has already engaged in separate proceedings in the custody case.⁵ See *In re Smith*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 353861); slip op at 3 (explaining that there was no claim left to address in appeal from an order declining to order vaccination over the express objection of the nonrespondent parent because the child-protective proceeding was dismissed and the parents engaged in separate custody proceedings). Indeed, after the custody court determined that there was proper cause or change of circumstances sufficient to revisit custody, Reichow waived the evidentiary hearing concerning best interests and came to an agreement regarding custody with Cruz. Reichow asks this Court to remand the case back to the trial court, but remand to re-examine proper cause or change of circumstances, or the children's best interests is unnecessary in light of the subsequent custody agreement. In other words, even if we were to conclude that an error occurred, there is no possible relief that this Court could provide. *In re Smith*, 324 Mich App at 41. Therefore, we dismiss this appeal as moot.

/s/ Jane M. Beckering
/s/ Douglas B. Shapiro
/s/ Brock A. Swartzle

⁵ We also note that reopening the child-protective proceedings could put Reichow in danger of losing her parental rights to her children.