

STATE OF MICHIGAN
COURT OF APPEALS

BRIANNA MDJM MIDDLEBROOK,

Plaintiff-Appellant,

v

AIRRION LAMONT FREEMAN, JR.,

Defendant-Appellee.

UNPUBLISHED

August 21, 2018

No. 342827

Kalamazoo Circuit Court

LC No. 2016-006198-DS

Before: SAWYER, P.J., and STEPHENS and GADOLA, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order awarding defendant sole legal custody and primary physical custody of their son, ALF. We reverse and remand.

Plaintiff and defendant have three children together: ALF and twin boys.¹ They have never been married, but they have had an on-again/off-again relationship for several years. In 2016, the trial court entered a custody order granting sole physical custody of ALF to plaintiff. Both plaintiff and defendant shared joint legal custody. The order did not specify the parties' parenting time. Instead, the order stated: "The Defendant shall have reasonable parenting time, as the parties agree. If the parties are unable to agree, either party may file a motion with the Court." Further, the order specified that "[t]he domicile or residence of the child may not be moved from Michigan without the approval of this Court and the custodian shall promptly notify the Court when the child is moved to another address."

Defendant filed a motion to show cause and a modification of parenting time in October 2017, claiming that plaintiff violated the custody order by moving ALF to Chicago, Illinois without obtaining the trial court's approval. In addition, defendant asserted that plaintiff controlled parenting time and did not allow defendant to see ALF.

Before the evidentiary hearing, defendant filed an additional motion requesting that the trial court temporarily suspend plaintiff's parenting time on the basis of molestation allegations. Defendant explained that ALF inappropriately touched his younger half brother and that ALF

¹ The twins were not involved in this custody case.

informed defendant that he thought this behavior was acceptable because it happened to him in plaintiff's home. The trial court denied the motion, but the molestation allegations were thoroughly discussed at the evidentiary hearing. At the conclusion of the hearing, the trial court determined that it was in ALF's best interests to grant defendant primary physical and legal custody. This appeal followed.

We need not address all of plaintiff's issues, nor consider whether the trial court erred in its findings because we are convinced that the trial court failed to follow the proper procedure.

Plaintiff contends that the trial court erred in failing to determine ALF's established custodial environment before it modified the custody order. Plaintiff correctly states that the trial court failed to determine the established custodial environment. This failure constitutes error requiring reversal. The trial court never specifically addressed ALF's established custodial environment. Accordingly, the trial court clearly erred in failing to determine whether there was an established custodial environment with either or both of the parties before its custody determination. A remand is necessary to the trial court for such a determination. See *Kessler v Kessler*, 295 Mich App 54, 61-62; 811 NW2d 39 (2011). After making this determination, the trial court shall revisit the other issues in this case, following the proper procedure and making new determinations and conclusions.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ David H. Sawyer
/s/ Cynthia Diane Stephens
/s/ Michael F. Gadola