Summary of SC98308, *State ex rel. Kelsey Koehler v. The Honorable Sandra Midkiff*
Proceeding originating in the Jackson County circuit court, Judge Sandra Midkiff
Opinion issued March 31, 2020

Attorneys: The mother was represented by Jonathan Sternberg of Jonathan Sternberg, Attorney, PC in Kansas City, (816) 292-7000; and William H. Reynolds and Roya R. Hough of The Reynolds Law Firm LLC in Kansas City, (816) 531-6000. The father was represented by Nancy A. Garris, an attorney in Blue Springs, (816) 694-7746.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A mother in a pending dissolution case seeks to prohibit the circuit court from entering a temporary order regarding custody of the couple's son without a hearing. In a 4-3 per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri issues a permanent writ of prohibition ordering the circuit court to vacate its order awarding the father temporary custody of the son without a hearing. The record shows the mother objected to the temporary custody award being awarded solely on the motions, requiring the circuit court to hold a hearing, and she has no other remedies available to her.

Judge W. Brent Powell dissents. He would hold extraordinary writ relief is inappropriate because the mother has not exhausted potential remedies available to her in the circuit court.

Facts: A married mother and father had one child, a son. The mother filed a petition to dissolve the marriage, contemporaneously moving for temporary joint legal and physical custody to be awarded after a hearing. The parties subsequently filed competing motions and other pleadings regarding temporary custody of their son. Ultimately, the circuit court did not hold a hearing but entered an order granting sole legal and physical custody temporarily to the father during the pendency of the dissolution case. The court also granted the mother supervised visitation. The mother seeks this Court's writ prohibiting the circuit court from entering a temporary custody order without a hearing on the competing motions.

PERMANENT WRIT ISSUED.

Court en banc holds: The circuit court exceeded its authority in awarding the father temporary custody of the son without first conducting a hearing. The plain language of section 452.380.1, RSMo, requires the court to hold a hearing before awarding custody if there is an objection. Given the contentious nature of the custody dispute and the mother's requests for a hearing to determine temporary custody, the record establishes the mother objected to temporary custody being awarded solely on the basis of the motions. The circuit court is ordered to vacate its order sustaining the father's amended motion and awarding him temporary custody of the son.

Dissenting opinion by Judge Powell: The author would deny the writ. Following a pretrial conference, the circuit court entered an order directing the parties to work together to arrive at a mutually agreeable modification of the court's temporary custody order. Nothing in the record or

filings in this Court indicates the mother attempted to work with the father and the son's guardian ad litem to reach a mutually agreeable modification of the temporary custody order, nor has she asked the circuit court to rule on her pending motion to set aside, amend or vacate the original temporary custody order. Because she has not exhausted potential remedies available to her in the circuit court, extraordinary writ relief is inappropriate.