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IN THE COURT OF APPEALS OF INDIANA

J.S.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 75A03-0911-CV-535
	)	
J.M. and M.M.,	)	
	)	
Appellees-Petitioners.	)	

APPEAL FROM THE STARKE CIRCUIT COURT
The Honorable Roger V. Bradford, Special Judge
Cause No. 75C01-0809-MI-41

June 11, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

J.S. ("Mother") appeals the trial court's order granting visitation with her minor daughter C.G.M. ("C.") to C.'s paternal grandparents (collectively, "Grandparents") -- J.M. ("Grandmother") and M.M. ("Grandfather").

We affirm.

ISSUES

1. Whether the trial court abused its discretion when it found that it was in C.'s best interest that Grandparents have visitation with her.

2. Whether the trial court abused its discretion when it granted Grandparents visitation with C. for seven hours on each Sunday.

FACTS

Mother and Grandparents' son S. are the unmarried parents of C., who was born on September 21, 2006. According to the Chronological Case Summary, on September 11, 2008, Grandparents filed a petition for grandparent visitation.[1] At the evidentiary hearing on August 6, 2009, the following evidence was heard.

Subsequent to C.'s birth, Mother and S. had an "on and off" relationship. (Tr. 18). When things were good, Grandparents would see C.; but when Mother and S. were at odds, Mother would not allow them any contact with her. At some point after being adjudicated C.'s father, S. sought a court order for visitation. On July 1, 2008, an order

[1] Mother did not include the petition in her Appendix.

was issued granting him visitation each Sunday from 9 a.m. until 4 p.m.[2] Apparently Mother did not comply with the order. In December of 2008, the court admonished Mother that if she "didn't allow visitation he was going to put [her] in jail," (tr. 32), and a second order was issued for S. to have visitation.[3] S.'s visitation with C. began in January 2009, and Grandparents saw C. for seven hours each Sunday – during S.'s visitation. After visitation on May 3, 2009, S. was jailed for forgery.[4]

At the hearing on August 6, 2009, Grandparents testified that whenever Mother was not getting along with S., they were not able to see C. They further testified that after S.'s May 3, 2009 visitation, Mother refused to allow Grandparents any contact with C. Mother admitted this, and further admitted that if there were no court order to do so, she would never let Grandparents see C.[5]

Grandmother testified to her healthy relationship with her other grandchildren, and her desire to "have a relationship" with C., for C. to "know [her] as a grandmother." (Tr. 7). She further testified that during the months when they had seen C. in their home weekly, C. was "very comfortable" with them. (Tr. 19). Grandfather testified that C.'s

[2] At the August 6, 2009 evidentiary hearing, the trial court took judicial notice of the July 2008 order. However, Mother did not include the order in her Appendix.

[3] The trial court also took judicial notice of this December 2008 order at the August 2009 evidentiary hearing. Again, it is not included in the Appendix submitted with Mother's appeal.

[4] Father was released after eighty-eight days, on July 29, 2009.

[5] In response to a question from her own counsel, Mother testified that she would not object to Grandparents having "supervised parenting time with [C.]." (Tr. 38).

visits to their home had been good, and that they had had a good relationship with C. – "she likes us and she loves us." (Tr. 22).

Mother testified that she did not "approve" of C. seeing Grandparents. (Tr. 31). When asked "what [she] mean[t] by that," Mother answered that Grandparents "don't put in the plug-in things where the kids cannot stick their fingers in it"; did not "always put up the gate for their stairway that is open," had been "drinking alcohol" and become "intoxicated" in front of C.; and had "smok[ed] in front of" C. (Tr. 31, 40, 32). Grandmother testified that all electrical sockets were now covered; a locked door now closed off the stairway; that she did not drink, but on a single occasion in the past twenty-five years, Grandfather had become intoxicated at his son's wedding; and that they "never smoked around [their] grandchildren" – always going "outside." (Tr. 50). Mother testified that she was "getting ready to" report to Family and Children's Services [FCS] her belief that S. had molested C. (tr. 29); however, she admitted that her previous report to FCS that S. had molested her oldest daughter had been investigated and found unsubstantiated.

At the conclusion of the August 6, 2009, hearing, the trial court ordered that Grandparents have visitation with C. each Sunday from 9:00 a.m. until 4:00 p.m. On August 26, 2009, Mother filed a motion to correct error, asserting that the trial court erred when it failed to enter findings of fact and conclusions of law – as required by Indiana Code section 31-17-5-6.

On October 7, 2009, according to the Chronological Case Summary, the trial court conducted an additional hearing at which "evidence [was] submitted." (App. 6).[6] On October 16, 2009, the trial court issued its order -- with findings of fact and conclusions of law -- granting Grandparents' petition for visitation. It began by noting that C. was "now three years old"; it found that Mother's testimony made "abundantly clear" her "great . . . animosity toward C.'s father, S.," but that "there was no evidence presented that [Grandparents] . . . have ever done anything to harm C. or that would put her in a position to be harmed." (App. 8, 9). It further found that Grandparents "had a previous relationship with C." *Id.* Finally, it concluded that it was "in the best interests of C. for [Grandparents] . . . to have visitation with her." *Id.*

DECISION

Our Supreme Court has stated that "[a]lthough grandparents do not have the legal rights or obligations of parents and do not possess a constitutional liberty interest with their grandchildren," Indiana Code section 31-17-5-1, commonly referred to as the Grandparent Visitation Act, "represents a Legislative recognition that 'a child's best interest is often served by developing and maintaining contact with his or her grandparents.'" *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453, 462 (Ind. 2009) (quoting *Swartz v. Swartz*, 720 N.E.2d 1219, 1221 (Ind. Ct. App. 1999)). The Act represents the Legislature's balancing of "two competing interests: 'the rights of the parents to raise

[6] No transcript from this hearing is included in Mother's Appendix.

their children as they see fit and the rights of grandparents to participate in the lives of their grandchildren.'" *Id.* (further quoting *Swartz* at 1222).

K.I., however, "was not litigated under the Grandparent Visitation Act." *Id.* Therefore, it did not apply a standard of review in that regard. In *Swartz*, we held that "[t]he determination of the best interests of the child is committed to the sound discretion of the trial court." 720 N.E.2d at 1221. Hence, a trial court's order awarding grandparent visitation under the Act "will be reversed on appeal only upon a showing of an abuse of that discretion." *Id.* "An abuse of discretion exists where the trial court's decision is clearly against the logic and effects of the facts and circumstances before the trial court or the reasonable, probable deductions to be drawn therefrom." *Id.* "We will not reweigh the evidence or judge the credibility of witnesses." *Id.*

1. Grant of Visitation

Mother argues that the trial court abused its discretion when it granted Grandparents visitation with C.[7] She first reminds us that when considering grandparent visitation, there is a "presumption that a fit parent acts in his or her child's best interests," *K.I.*, 903 N.E.2d at 462; and asserts that Grandparents did not "even attempt to rebut the presumption" that she is a fit parent acting in C.'s best interest. Mother's Br. at 7. However, we believe that Mother's testimony to the trial court regarding why she did not want C. to have any contact with Grandparents presents a credibility determination for

[7] Mother makes the broad claim that "the evidence did not support the Court's findings and the . . . findings did not support its conclusions." Mother's Br. at 5. However, having made that contention, she does not challenge any of the findings or develop it.

the trier of fact. Mother enumerated her reasons for not "approv[ing]" contact between C. and Grandparents, (tr. 31), and the trial court heard responsive testimony. The trial court then weighed the evidence and witness credibility and concluded that regardless of Mother's fitness as a parent, her desire to bar C.'s contact with Grandparents was not in C.'s best interest.

Mother further argues that the record "lacks evidence presented by [Grandparents] showing that visitation with them is in C[.]'s best interest." Mother's Br. at 7. To the contrary, the trial court heard testimony that Grandparents had a long-term, stable marriage and home life; they enjoyed a regular healthy relationship with other grandchildren; they had treasured their time with C. when they were allowed to see her, and she loved them and had enjoyed their company in return; they were being refused contact with C.; and they desired to develop and maintain a loving grandparental relationship with C. This evidence before the trial court supports its conclusion that it is in C.'s best interest for Grandparents to have visitation with her. Therefore, we find no abuse of discretion in this regard.

2. Amount of Visitation Time

Mother also argues that the trial court abused its discretion when it granted Grandparents visitation with C. from 9:00 a.m. until 4:00 p.m. each Sunday. She contends that such exceeds the bounds of "occasional, temporary visitation" contemplated by the Act. Mother's Br. at 9. We are not persuaded.

In *Swartz*, we stated that "[v]isitation rights conferred by the Act are not a substantial infringement on the parent's fundamental rights because the Act only contemplates temporary visitation as found to be in the best interest of the child." 720 N.E.2d at 1222 (citing *Sightes v. Barker*, 684 N.E.2d 224, 230 (Ind. Ct. App. 1997), *trans. denied*). We find the critical principle in that statement to be that the visitation is that which is "in the best interest of the child." *Id.* Further, our Supreme Court expressly "observe[d]" in *K.I.* that "the amount of visitation is left to the sound discretion of the trial court." 903 N.E.2d at 462 (emphasis added).

We find that the trial court did not abuse its discretion when it determined that it was in C.'s best interest for Grandparents to have visitation with her. Based upon the evidence presented and the fact that C. was three years of age at the time, we do not find that the trial court's grant of visitation for a seven-hour period each week is an abuse of discretion as exceeding the bounds of "occasional, temporary visitation" contemplated by the Act.

Affirmed.

BAKER, C.J., and CRONE, J., concurs.