

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

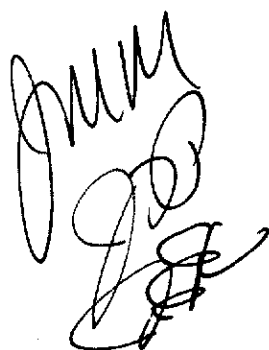
FIRST CIRCUIT

2012 CU 1975

YVONNE LANDRY

VERSUS

JEFFREY THOMAS



Judgment Rendered: MAY 31 2013

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 2008-10514

THE HONORABLE DAWN AMACKER, JUDGE

Richard Ducote
Pittsburgh, Pennsylvania

Attorney for Plaintiff/Appellant
Yvonne Landry

Robert C. Stern
New Orleans, Louisiana

Attorney for Defendant/Appellee
Jeffrey Thomas

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

McDonald, J.

At issue in this appeal is a judgment by the trial court terminating the requirement for supervision of the visitation between a father, Jeffrey Thomas, and his minor child, S.T.,¹ which had been in effect since April 2010. The mother of the child, Yvonne Landry, appeals the judgment, asserting the trial court erred because there was no finding that it was in the child's best interest to discontinue the supervision requirement. Ms. Landry also appeals the refusal of the trial court to accept Dr. Dickson as an expert in the assessment and treatment of children alleged to have been sexually abused and the refusal of the trial court to allow Dr. Dickson to testify about the significance of the child's symptoms.²

FACTS AND PROCEDURAL HISTORY

The facts and procedural history have already been detailed in the companion case, **Landry v. Thomas**, 2012 CU 1974 (La. App. 1 Cir. 5/31/13) (unpublished), also decided today, and will not be repeated herein.

On January 17, 2012, Mr. Thomas filed a "Motion to Change Custody, To Remove Therapist, To Terminate Supervision of Visitation and For Specific Visitation." These matters were heard on May 31, 2012, and a judgment was signed on June 25, 2012, terminating the supervised visitation, removing Amy Dickson as S.T.'s therapist and appointing Lisa Tadlock in her place, and providing for other matters that are not in dispute.

ASSIGNMENT OF ERRORS NOS. 1 AND 2

In these assignments of error, Ms. Landry asserts that the trial court erred in refusing to accept Dr. Dickson as an expert in the assessment and treatment of

¹ The minor child's initials are used in accordance with La. R.S. 46:1844(W).

² In the companion case, **Landry v. Thomas**, 2012 CU 1974 (La. App. 1 Cir 5/31/13) (unpublished) also decided this date, Ms. Landry appeals the judgment of the trial court denying her motion to provide for professionally supervised visitation and the failure to grant a new trial on this issue.

children alleged to have been sexually abused, and erred in refusing to allow Dr. Dickson to testify about the significance of S.T.'s symptoms.

At the May 31, 2012, hearing on this matter, Dr. Dickson was tendered by Ms. Landry as an expert in the field of clinical psychology and the psychological treatment of children where sexual abuse is at issue. Mr. Thomas stipulated that Dr. Dickson was an expert in clinical psychology and clinical child psychology, and she was accepted as such by the trial court. However, the trial court refused to accept Dr. Dickson as an expert in the treatment of children where sexual abuse is at issue. At the June 27, 2011, hearing Ms. Landry had previously sought to have Dr. Dickson similarly qualified as an expert in the psychological treatment of children where sexual abuse is at issue and the court refused to accept her as such. The June 27, 2011, hearing was continued to December 8, 2011, and resulted in a judgment dated May 3, 2012. That judgment is the subject of appeal 2012 CU 1974. There was no appeal or request for review of the decision by the trial court on June 27, 2011, to not accept Dr. Dickson as an expert in the treatment of children where sexual abuse is at issue. However, the fact that Ms. Landry did not choose to appeal the former decision, does not prohibit her from raising it in this appeal.

Trial judges are generally given wide discretion in determining whether a question or subject falls within the scope of an expert witness's field of expertise. Absent a clear abuse of the trial court's discretion in accepting a witness as an expert, appellate courts will not reject the testimony of an expert or find reversible error. **Belle Pass Terminal, Inc. v. Jolin, Inc.**, 92-1545 (La. App. 1 Cir. 3/11/94), 634 So.2d 466, 477, writ denied, 94-0906 (La. 6/17/94) 638 So.2d 1094.

Dr. Dickson was serving as S.T.'s therapist, and not an evaluator, in this case. The parties stipulated that Dr. Dickson would provide therapy to S.T. Dr. Dickson testified that her role in the case was to provide emotional support to S.T.

and to hear about different behavior that contributed to her emotional, developmental, and physical well-being.

During Dr. Dickson's testimony at the May 31, 2012 hearing, the following exchange took place:

THE COURT:

But you have not been appointed to be the evaluator, so you can't render an opinion, can you, on which environment might be causing the child to exhibit these behaviors? Would that be correct?

[DR. DICKSON]:

That's correct.

THE COURT:

That would be a dual role which you are prevented ethically from maintaining in a case; is that correct?

[DR. DICKSON]:

That is correct.

THE COURT:

You would require a lot more information than you have right now in order to reach a conclusion on what is the cause of this child's behavior; is that correct?

[DR. DICKSON]:

That is correct.

After a thorough review of the record, we cannot say that the trial court abused its discretion in refusing to accept Dr. Dickson as an expert in the treatment of children where sexual abuse is at issue. Further, we cannot say that the trial court abused its discretion in refusing to allow Dr. Dickson to testify about the significance of S.T.'s symptoms.

ASSIGNMENT OF ERROR NO. 3

In this assignment of error, Ms. Landry asserts that the trial court erred in terminating the requirement for supervision of the visitation between Mr. Thomas and S.T.

Each child custody case must be viewed in light of its own particular set of facts and circumstances. The paramount consideration in any determination of child custody is the best interest of the child. Thus, the trial court is in the best position to ascertain the best interests of the child given each unique set of circumstances. Accordingly, a trial court's determination of custody is entitled to great weight and will not be reversed on appeal unless an abuse of discretion is clearly shown. **Perry v. Monistere**, 2008-1629 (La. App. 1 Cir. 12/23/08), 4 So.3d 850, 852.

When Judge Crain determined that supervised visitation was appropriate for Mr. Thomas, in his reasons for judgment, he stated that after therapy, and after S.T. matured, it could be possible to determine definitely whether sexual abuse did or did not occur. The child's therapist, Dr. Dickson, was ordered to report to the court any indication that sexual abuse had occurred without raising the issue with S.T. There was no such reporting to the court by Dr. Dickson. Thus, after more than a year of supervised visitation, Judge Amacker determined that the time had come to allow Mr. Thomas unsupervised visitation with his daughter.

In her oral reasons for judgment, Judge Amacker stated:

Part of the problem in the beginning on this one was the stipulation that I allowed the parties to make with their attorneys that the therapist at the time, Dr. Amy Dickson, would be limited, in certain circumstances, as far as she would certainly be required to come in and testify as a mandatory reporter if there had been any further disclosures by the child or anyone else of any previous abuse or current abuse.

It's obvious from the testimony today that there has been absolutely no disclosures to anyone of any physical, verbal, mental or

sexual abuse by anyone since Judge Crain heard this case -- of this child -- since he heard this case, which has been over [one year] now.

It's obvious from Judge Crain's Reasons for Judgment that he contemplated that, as the child got older, certainly she would be more verbal. That was the point of us appointing a therapist. I am hearing from everyone that [S.T.] is verbal to all of you, and there have been absolutely no disclosures. And that's why I am lifting the requirement of supervision.

.....

She is to live her life and have a joyful life as a young child should. And I am convinced she hasn't for quite some time, and I am going to do what I can to change that. And that's the reason for my decision today.

Clearly the trial court found that it was in the best interest of S.T. to lift the requirement for supervised visitation with Mr. Thomas after more than a year of supervised visitation. After a thorough review of the record, and looking at both the reasons for supervised visitation, and the reasons for lifting the supervision requirement, we can find no clear abuse of the discretion in the trial court's dermination to terminate the supervised visitation.

For the foregoing reasons, the trial court judgment is affirmed. Costs are assessed against Ms. Landry.

AFFIRMED.