

STATE OF MICHIGAN
COURT OF APPEALS

In re CODY THOMAS BENNETT, Minor.

BRUCE CRANHAM, Guardian ad litem,

Petitioner-Appellee,

v

CODY THOMAS BENNETT,

Respondent-Appellant.

UNPUBLISHED

July 16, 1999

No. 215809

Chippewa Circuit Court

Family Division

LC No. 98-012045 DL

Before: Whitbeck, P.J., and Markman and O'Connell, JJ.

O'CONNELL, J. (dissenting).

I respectfully dissent. Contrary to the majority, I am of the opinion that the analysis of this case should include the entire history of this disputed custody situation, including the contentious relationships between the persons involved. Once the evidence is viewed in its entirety and with proper perspective, instead of as indicative of an isolated incident, it becomes clear that the trial court properly assumed jurisdiction of respondent. I would affirm the trial court's decision to take jurisdiction in this matter.

Parents come to the family court to seek its assistance. In some instances the purpose of the court is not to declare winners and losers, or that an individual is guilty or innocent. The family court is, in part, a relationship court whose job includes assisting persons with the difficult task of rearing their children. In order to fulfill this duty it is sometimes necessary for the court to take jurisdiction over a minor. The present case is one of those instances.

The majority reviews de novo the lower court record and concludes that the court erred when it assumed jurisdiction over respondent. Rather than concentrate on the history of the family relationship and the problems that precipitated the current crisis, the majority focuses solely on a single incident. This narrow analysis under which the evidence indicates only a single instance of defiance of proper authority dictates the conclusion that respondent was not repeatedly disobedient. However, family disputes of the kind at issue here normally traverse a long road before arriving at the court house. Without considering the entire history of the dispute, it is impossible to analyze this case properly. Were this a case of a different sort I might join in the majority's stoic review of the record and its conclusion

that the record shows only a single incident where the court was obliged to look for multiple incidents, but because the dispute involves complex family dynamics I insist on examining the record with that in mind. Accordingly, I conclude that the record indicates not just one incident of disobedience but rather a troubling pattern that eventually required court intervention.¹

My reading of the record reveals that respondent's parents have never been married but have long been embroiled in a bitter custody dispute. Respondent, who is now 10 years old, is the prize in this contest. The circuit court awarded the father custody, and the mother visitation rights. Still, despite the court's resolution of this matter, the parties have not been able to resolve their difficulties. In light of the continuing tensions, the circuit court appointed a guardian ad litem for respondent. The circuit court file would help this Court resolve this matter, but unfortunately is not part of the lower court record. However, even without the help of the circuit court file, it is obvious that the parents do not get along with each other, and that the guardian ad litem had to make a decision that he considered to be in the best interest of respondent. The guardian ad litem was placed in a difficult situation because he was responsible to see that the respondent obeyed the circuit court's custody order, and, at the same time, the lawful commands of his parents. It is clear that in some instances the guardian ad litem and respondent have had to choose between complying with the court order and respecting the mother's desire to retain possession of respondent.

While visiting his mother, respondent indicated to his father and the guardian ad litem that he would not obey the court order requiring him to return to his father's home. Some time afterward the father contacted the sheriff's department for help, but the sheriff was unable to obtain respondent's compliance. Because respondent had refused to return to his father's home, the guardian ad litem concluded that he and respondent's father needed the family court's assistance in resolving this difficult situation. It should be clear that if the court did not act at that time, then respondent and his mother would continue dictating to the father when respondent would return to the father's home, the custody order notwithstanding.

After listening to the testimony, the trial court took jurisdiction over respondent and ordered respondent to report to his father. The court stated as follows:

[T]he Court's going to ... find that [respondent], by his repeated refusal to, or ongoing refusal and previous refusals constitutes, ah, the basis defined in, and in violation of, MCLA 712A.2(a)(3). Not only did he state that he would refuse to go to his father's; he continued, day after day, not to do that, and it wasn't until there was actually a petition filed that he was placed with his father; so, it's the repeated, continuing refusal that brings him within the statutory basis. Obviously, it is a reasonable and lawful command to comply with the order of the court. Ah, he is not in a position to disobey that order.

The court's action resolved the immediate crisis, and gave effect to the custody order. Now, however, the majority reviews this matter, finds only an isolated incident, and concludes that the lower court erred when it concluded that the minor was "repeatedly disobedient." Although one could legitimately read

the transcript as the majority interprets it, I believe that when the lower court record is viewed in its entirety it is clear that this contentious situation arose from more than one incident.

It is obvious from the lower court record that respondent had expressed his refusal to return to his father's home, that respondent in fact failed to appear at his father's home at the required time, that it had been necessary to engage the sheriff in an attempt to return respondent to his father's home, and that this dispute had been going on for an extended period of time.² It is to the guardian ad litem's credit that he was able to persuade the trial court to take jurisdiction of this matter and resolve the long-standing dispute. If the trial court had refused to do so the matter most likely would still be unresolved. It is the majority's "dogged literalism"³ in reading the lower court record that allows it to box into a single incident of disobedience what has obviously been a protracted pattern of noncompliance with proper authority, this in turn providing a methodology for reversing the lower court.⁴

If the majority has serious doubts about the trial court's decision, at most it should remand this case for further articulation of factual findings and legal conclusions. In my opinion, the lower court record adequately supports the trial court's factual findings and decision in this difficult matter.

/s/ Peter D. O'Connell

¹ The majority maintains that respondent was brought to the family court because he refused only once to return to his father's home. However, the majority opinion itself at least hints at a broader pattern of disobedience, where it reports that respondent's father testified that "he had, previous to July 24, 1998, 'asked [respondent] to please come home, you know, without any hassles, on that day, like he was supposed to.'" Majority opinion at 2. This testimony indicates that respondent's father had approached this conversation with apprehension of a repeated pattern of resistance to his lawful commands.

² It is apparent from the lower court record that respondent was in willful disobedience of an order from the circuit court, which the guardian ad litem was simply attempting to enforce. It is also obvious that respondent's father was of the opinion that respondent was failing to adhere to the court order. The trial court agreed with the guardian ad litem that respondent was in violation of the order. The majority here draws a thin line between being repeatedly disobedient to a "parent[], guardian, or custodian," MCL 712A.2(a)(3); MSA 27.3178(598.2)(a)(3), and violating a court order by resisting efforts on the part of a parent and a guardian ad litem to enforce it.

³ See *Goodridge v Ypsilanti Twp Bd Command Officers Ass'n*, 451 Mich 446, 453 n 8.

⁴ It appears that the majority does not want to hold a ten-year-old boy accountable for violating the court order, implying that it is the parents, not respondent, who bear responsibility for the violation.