STATE OF MICHIGAN

COURT OF APPEALS

JOHN J. MCQUILLAN and DENISE M. MCQUILLAN, Plaintiffs-Appellees, v CASSANDRA SANBACK, Defendant-Appellant.	UNPUBLISHED May 11, 2010 No. 289380 Tuscola Circuit Court LC No. 08-024762-DZ

Before: TALBOT, P.J., and FITZGERALD and M. J. KELLY, JJ.

PER CURIAM.

Defendant, the mother of plaintiffs' two minor grandchildren, appeals as of right from a judgment awarding plaintiffs grandparent visitation time with their grandchildren after the death of their son, Joshua, the children's father. We affirm.

Joshua Sanback died on April 10, 2007, as a result of injuries sustained in an automobile accident. Plaintiffs filed a complaint against defendant, their daughter-in-law, in March 2008 seeking to establish grandparenting time with Joshua's two children.

The parties entered into a stipulated settlement to address grandparenting time visitation at a hearing on August 15, 2008. Plaintiffs' counsel stated in open court the arrangement the parties had reached, and defense counsel responded, "It is a fair and accurate full statement of the agreement of the parties of the settlement." Following plaintiffs' September 10, 2008, motion for entry of an order, and after a hearing on that motion, an order memorializing the agreement was entered on October 13, 2008.

On October 30, 2008, defendant filed a motion for judgment notwithstanding the verdict and for a new trial. Defendant alleged in the motion that she was under duress at the time she reached the settlement agreement, that she did not understand what she was agreeing to, and that it was not in the best interest of her children to provide the level of grandparenting time specified in the agreement. Following a hearing on November 24, 2008, the trial court denied the motion on the ground that defendant was bound by the agreement that was placed on the record and that it could not change the grandparenting time order without a showing of a change of circumstances.

Defendant first argues that the court did not have the power to order grandparenting time, and that she was denied due process under the Fourteenth Amendment, as incorporated by the Fifth Amendment, because her liberty interest in the care and custody of her children has been infringed. We disagree.

Generally, we review a visitation order de novo, but we will not reverse the order unless the trial court made findings of fact against the great weight of the evidence, committed a palpable abuse of discretion, or committed a clear legal error. See *Deal v Deal*, 197 Mich App 739, 741; 496 NW2d 403 (1993) (relating to a visitation order between parents). We also review issues pertaining to the interpretation of court rules de novo. *Haliw v Sterling Heights*, 471 Mich 700, 704; 691 NW2d 753 (2005).

"A child's grandparent may seek a grandparenting time order . . . [if] the child's parent who is a child of the grandparents is deceased." MCL 722.27b(1)(c). Here, plaintiffs are the grandparents of the two minor children. Because Joshua Sanback is deceased, plaintiffs are entitled to seek a grandparenting time order in accordance with MCL 722.27b(1)(c).

Defendant's challenge to the court's authority to order grandparenting time is without merit. If no circuit court has continuing jurisdiction over a child, the child's grandparents may seek a grandparenting time order in the circuit court for the county where the child resides. MCL 722.27b(3)(b). Once in the circuit court, the court has authority to either accept a stipulation provided by the parties or to modify the agreement as it deems appropriate. *Bowman v Coleman,* 356 Mich 390, 392-393; 97 NW2d 118 (1959). Nevertheless, a trial court is permitted to accept a stipulation regarding visitation and incorporate it into a judgment. *Koron v Melendy*, 207 Mich App 188, 191; 523 NW2d 870 (1994). Here, the court allowed the parties to stipulate to a grandparenting time plan that would ostensibly work for all parties. The court merely recognized that the agreement was equitable and reasonable, and subsequently entered an order reflecting the stipulated agreement.

Moreover, an agreement that is read in open court is binding on the parties under MCR 2.507(G).[1] "Judgments entered pursuant to the agreement of the parties are of the nature of a contract, rather than a judicial order entered against one party." *Massachusetts Indemnity & Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994). Absent a showing of fraud or duress, it is appropriate for a court to enforce the terms of the parties' agreement. *Id*. "The litigant who so asserts to a stipulation freely entered into in open court carries a heavy burden of persuasion. Every presumption of judicial care, or professional competence, and of decretal stability is against the overthrow, in the appellate court, of such stipulation and of orders and

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[1] MCR 2.507(G), formerly MCR 2.507(H) states:

> An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney. [MCR 2.507(G).]

decrees based thereon." *Wagner v Myers*, 355 Mich 62, 68; 93 NW2d 914 (1959). Defendant has not demonstrated that she was suffering from duress or undue influence at the time the stipulation was entered and, therefore, the trial court did not err in entering the order based on the stipulation.

Defendant's argument that her due process rights were violated is also without merit. Defendant contends that because she is a fit parent, she has the right to grant visitation and the court must accord some special weight to her determination about proposed visitation before taking away her fundamental liberty interest in relation to her children. Here, the court not only accorded some special weight to defendant's decision, it fully complied with the agreement entered into by the parties, and entered an order on October 13, 2008, that represented the full agreement between the parties.

A party may not benefit from a claim of error resulting from conduct that the aggrieved party contributed to by plan or negligence. *Lewis v Legrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003). Thus, because the parties entered into the stipulated visitation agreement, and defendant contributed to the stipulation by agreeing to it in open court, she is bound by the stipulation and the order entered as a result of the stipulation.

Defendant next argues that the grandparents are seeking to control the amount of visitation they have with their grandchildren, despite the fact that they have not proven that this fit parent's decision to lessen grandparenting time created a substantial risk of harm to the children, as required under MCL 722.27(4)(b). However, the requirements of MCL 722.27b(4)(b) do not apply to this appeal. MCL 722.27b(4)(b) pertains to a grandparent's request for grandparenting time, and includes a rebuttable presumption that is triggered when a fit parent denies grandparenting time. Here, plaintiffs' request for grandparenting time occurred when plaintiffs filed a complaint with the court on March 5, 2008. Presuming that defendant is a fit parent, MCL 722.27b(4)(b) would provide her with a presumption that her denial of grandparenting time did not create harm to the children. At that point, plaintiffs would have had the burden to rebut this presumption. That is not what occurred here. At the August 15, 2008, hearing, defendant did not deny grandparenting time. Instead, defendant agreed to visitation time and entered a stipulated agreement on the record. Because defendant did not deny grandparenting time, plaintiffs' burden to overcome the presumption provided by MCL 722.27b(4)(b) was never triggered. Essentially, defendant waived this presumption by agreeing to the grandparenting visitation time stipulation. Again, defendant may not benefit from a claim of error resulting from her own conduct. See *Lewis*, 258 Mich App at 210.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Michael J. Kelly