

[Cite as *McBride v. Gabriel*, 2010-Ohio-2209.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

LINDA S. MCBRIDE,

Plaintiff-Appellant,

vs.

TARA GABRIEL,

Defendant-Appellee.

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Case No. 10CA1

DECISION AND JUDGMENT ENTRY

APPEARANCES:

COUNSEL FOR APPELLANT: Linda S. McBride, 427 East Main Street, Loudonville,
Ohio 44842, Pro Se

COUNSEL FOR APPELLEE: Leif P. Bickel, 23483 Smith-Hulse Road, Circleville,
Ohio 43113

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 5-14-10

ABELE, J.

{¶ 1} This is an appeal from a Pickaway County Common Pleas Court, Juvenile Division, judgment that dismissed the request filed by Linda S. McBride, plaintiff below and appellant herein, for visitation with her grandson, “K.A.G.” (d.o.b. 1-26-03).

Appellant assigns the following errors¹ for review:

¹ Appellant’s brief does not set forth a separate statement of the assignments of error. See App.R. 16(A)(3). Therefore, we take these assignments of error from her brief’s “table of contents.” We also note that the errors set forth in the “table of contents” are different from those in the body of the “argument.” Nevertheless, in light of the leniency we afford pro se litigants and that the central issue here is whether the juvenile court erred by dismissing her action, we will consider the gist of both sets of “assignments of error” in this opinion.

FIRST ASSIGNMENT OF ERROR:

“MAGISTRATE ERRED IN APPLICATION OF CASE LAW.”

SECOND ASSIGNMENT OF ERROR:

“ABUSE OF DISCRETION BY PROBATE COURT IN ORIGINAL ADOPTION HEARING.”

THIRD ASSIGNMENT OF ERROR:

“CONTRADICTORY AND UNCONSTITUTIONAL STATUTES.”

{¶ 2} Appellant’s son, Michael McBride, was previously married to Tara Gabriel, defendant below and appellee herein. K.A.G. was born as issue of that marriage. The couple eventually divorced and Tara remarried Jeremy Gabriel. Gabriel subsequently filed a petition to adopt K.A.G. The Probate Court granted that petition on July 29, 2008. No appeal followed.²

{¶ 3} Appellant commenced the case sub judice on July 24, 2009, and sought visitation with her grandson. Appellee answered that the adoption of K.A.G. was complete and that her former mother-in-law has no visitation rights. After a hearing, the magistrate agreed with the appellee. Appellant objected to that ruling, but the Juvenile Court found no merit to her objection and dismissed her request. In so doing, the trial court relied on In re Adoption of Ridenour (1991), 61 Ohio St.3d 319, 574 N.E.2d 1055, for the proposition that Gabriel’s adoption of K.A.G. terminated the paternal grandmother's visitation rights. This appeal followed.

² McBride filed objections to the adoption more than a year later. The trial court treated the filing as a Civ.R. 60(B) motion and denied the request. We affirmed that judgment in In re K.A.G., Pickaway App. No. 09CA13, 2010-Ohio-1559.

I

{¶ 4} In her first assignment of error, appellant asserts that both the magistrate and trial court misinterpreted Ridenour. We disagree with appellant.

{¶ 5} At the outset, we note that the portion of Ridenour on which the magistrate and the Juvenile Court relied is based on R.C. 3107.15. That statute describes the effects of a final adoption decree:

“[It] terminate[s] all legal relationships between the adopted person and the adopted person's relatives, including the adopted person's biological or other legal parents, so that the adopted person thereafter is a stranger to the adopted person's former relatives for all purposes . . .” Id. at (A)(1).

In other words, even if we accept, for purposes of argument, that the magistrate and the Juvenile Court misinterpreted Ridenour, the fact remains that R.C. 3107.15 terminated any such claim that appellant had to visit her grandson, regardless of the alleged misinterpretation.

{¶ 6} We, however, are not persuaded that the magistrate or the Juvenile Court misinterpreted Ridenour. The Ohio Supreme Court observed that “on its face” the statute indicates that an adoption terminates the relationship between a child and biological grandparents and the latter’s rights cannot be considered. 61 Ohio St.3d at 325. The Ridenour court rejected a variety of arguments that attempted to interpret the statute in other ways. Thus, the plain language of R.C. 3107.15, together with Ridenour, dispose of appellant’s arguments.

{¶ 7} As to her contention that the trial court abused its discretion by denying her visitation, we point out that court had no discretion here. Appellant also contends that Ridenour should be distinguished from the instant case because it involved

stranger adoptions rather than a step-parent adoption. However, R.C. 3107.15(A)(1) makes no such distinction. We also reject the argument that Ridenour should not apply to an adoption that is on appeal because (1) the statute does not make that distinction and, (2) even if it did so, the biological father did not appeal the final adoption decree in favor of Gabriel. Appellant's arguments concerning the "best interest" of K.A.G. and his need for a stable home life are, likewise, superfluous in view of the final adoption decree.

{¶ 8} For these reasons, we find no merit to appellant's assignment of error and it is hereby overruled.

II

{¶ 9} Appellant asserts in her second assignment of error that the Probate Court abused its discretion during the adoption proceeding. Even if we assume, arguendo, that appellant has standing to raise that issue, the adoption in question was finalized in July 2008. No appeal was taken from that judgment. Thus, the matter is res judicata. In re K.A.G., Pickaway App. No. 09CA13, 2010-Ohio-1559.

{¶ 10} Accordingly, we find no merit to appellant's assignment of error and it is hereby overruled.

III

{¶ 11} Appellant asserts in her third assignment of error that the Juvenile Court's decision deprived her of an "inalienable" and constitutional right to her grandson. Moreover, she continues, that right was taken without notice and without any wrongdoing on her part.

{¶ 12} We are not unsympathetic to appellant's situation. Indeed, we join the

sentiments of the New Jersey Supreme Court in Mimkon v. Ford (N.J. 1975), 332 A.2d 199, which characterized the special relationship between grandparents and their grandchild:

“It is biological fact that grandparents are bound to their grandchildren by the unbreakable links of heredity. It is common human experience that the concern and interest grandparents take in the welfare of their grandchildren far exceeds anything explicable in purely biological terms. A very special relationship often arises and continues between grandparents and grandchildren. The tensions and conflicts which commonly mar relations between parents and children are often absent between those very same parents and their grandchildren. Visits with a grandparent are often a precious part of a child's experience and there are benefits which devolve upon the grandchild from the relationship with his grandparents which he cannot derive from any other relationship. Neither the Legislature nor this Court is blind to human truths which grandparents and grandchildren have always known.” Id. At 204-205.³

However, the parent is vested with the fundamental rights of care and control of children. See In re Murray (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d 1169; also see Santosky v. Kramer (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 1394, 71 L.Ed.2d 599. In Ohio, grandparents acquire rights concerning their grandchildren through statute. See In re Whitaker, 36 Ohio St.3d 213, 214, 522 N.E.2d 563.

{¶ 13} In the case sub judice, appellant based her request on three statutes. The first, R.C. 3109.11, applies only when a “parent [is] deceased.” However, appellant’s son (and K.A.G.’s biological father) is alive. Thus, R.C. 3109.11 does not apply. Appellant also cites R.C. 3109.12, but reliance on that provision is misplaced because it involves grandparent visitation rights when the child is born to an “unmarried woman.” That is not the situation here. Finally, appellant cites R.C. 3109.051, but this

³ The Ridenour majority acknowledged “grandparent-grandchild relationships can be of significant value to a child’s development.” 61 Ohio St.3d at 328.

statute involves grandparent visitation in cases of “divorce, dissolution of marriage, legal separation [or] annulment. . .” Id. at (B)(1). As the trial court aptly noted, this statute would have initially applied, but once McBride’s rights to K.A.G. were terminated, his mother’s derivative statutory rights through that provision terminated as well. Consequently, in the absence of a statute that expressly grants or preserves a grandparent’s right to visitation after adoption, appellant has no legally enforceable claim involving her grandson. Appellant cites no other such statutory provision. Thus, appellant's third assignment of error is without merit and is hereby overruled.

{¶ 14} Having considered all of the errors assigned and argued by appellant in the brief, we hereby affirm the trial court’s judgment

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, P.J. & Kline, J.: Concur in Judgment & Opinion
For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.