

[Cite as *Moshos v. Moshos*, 2004-Ohio-4932.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

GABRIELLE G. MOSHOS, NKA :
CHAMBERS

Plaintiff-Appellee : C.A. CASE NO. 03CA83

vs. : T.C. CASE NO. 96DR135

DANIEL M.L. MOSHOS : (Civil Appeal from
Common Pleas Court)

Defendant-Appellant :

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O P I N I O N

Rendered on the 17th day of September, 2004.

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GRADY, J.

{¶ 1} Appellant, Daniel Moshos, divorced Gabrielle Moshos in 1998.¹ They have two minor children. The original divorce decree allowed shared parenting. Gabrielle subsequently remarried and moved to California. In October, 2002, she was diagnosed with Hodgkin's Lymphoma. Gabrielle underwent chemotherapy and radiation treatments and was

¹For convenience, the parties will be identified by their first names.

unable to work throughout the period relevant to this appeal.

{¶ 2} On March 5, 2003, Gabrielle moved the Court of Common Pleas, Domestic Relations Division, to establish a visitation schedule and modify her child support obligations. The court awarded Gabrielle unsupervised visitation over Thanksgiving holidays and for two weeks during the children's summer vacation from school. The court considered all sixteen factors identified in the statute governing parental visitation, R.C. 3109.051(D), and Gabrielle's illness and inability to work, and ordered Daniel to "pay all costs for the children's transportation" for the summer visits. Daniel filed a timely appeal.

ASSIGNMENT OF ERROR

{¶ 3} "THE TRIAL COURT ERRED BY ORDERING DEFENDANT/APPELLANT TO PAY ALL COSTS OF TRANSPORTATION FOR PLAINTIFF/APPELLEE'S PARENTING TIME IN THE STATE OF CALIFORNIA."

{¶ 4} We recognize that the underlying issue in Daniel's appeal is the financial burden of transporting the children for their summer visitation. The thrust of Daniel's argument is that the court's order is ambiguous, unreasonable and arbitrary, and amounts to a "blank check" for Gabrielle, allowing her to force him to pay the costs of transporting the children anywhere in the world.

{¶ 5} We review an unambiguous court order for abuse of discretion. See *Peters v. Peters* (February 23, 2001),

Montgomery App. No. 18445. Whether an ambiguity exists is a matter of law determined by this court. *Id.* "Abuse of discretion means more than just an error of law or judgement; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 6} There is no ambiguity in the court's order that Daniel "pay all costs for the children's transportation." The order cannot be reasonably read to require Daniel to pay transportation costs for the children to vacation in Europe or Mexico or any other exotic location, as he contends. The order imposes a duty on Daniel to provide airfare and associated ground transportation for two weeks in the summer for the children to visit with Gabrielle at her home in California. In discharging that duty, Daniel may choose the modes of transportation used, giving him some control over the costs. If Gabrielle's residence changes so as to impose an unreasonable burden, Daniel may move the court to modify the order under its continuing enforcement authority.

{¶ 7} Furthermore, the court order says nothing about costs for Thanksgiving visitations. While Gabrielle clearly has the right to unsupervised visitation over the Thanksgiving holiday, Daniel is not required to pay transportation costs if Gabrielle desires to bring them to California.

{¶ 8} Daniel also argues that the court abused its discretion by imposing an additional financial burden upon

him while eliminating Gabrielle's obligation to pay child support. He contends that the court failed to apply R.C. 3119.23(D) and (H), which allow a court to consider "extended times of visitation or extraordinary costs associated with visitation" and "benefits that either parent receives from remarriage," in his favor in its analysis. However, R.C. 3119.23 concerns deviations from child support obligations the court imposes. Here, the court relieved Danielle of her child support obligation. Therefore, those matters which pertain to deviations are inapplicable. Daniel does not appeal the court's elimination of Gabrielle's child support obligation.

{¶ 9} Finally, Gabrielle argues that Daniel's appeal is frivolous and, under App. R. 23, we should allow her to recover costs, including attorney fees, incurred while defending this appeal. We have held that a frivolous appeal is one that presents no reasonable question for review. *E.g. Danis Montco Landfill Co. v. Jefferson Twp. Zoning Comm.* (1993), 85 Ohio App.3d 494. Daniel raises a reasonable question of whether the court abused its discretion in requiring him to pay transportation costs. His appeal is not frivolous as contemplated by App. R. 23 and costs will not be granted.

{¶ 10} We find that the trial court's analysis was not unreasonable or arbitrary and it did not abuse its discretion when it ordered Daniel to pay the costs of transporting the couple's minor children on their annual

summer visitation at Gabrielle's home in California.

Blakemore, supra.

{¶ 11} The assignment of error is overruled.

FAIN, P.J. and WALSH, J. concurs.

Hon. James E. Walsh, Court of Appeals, Twelfth Appellate District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

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