

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

G.A. nka G.S.

Court of Appeals No. E-08-061

Appellee

Trial Court No. 2003-SU-155

v.

G.L.

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2009

* * * * *

Michael D. Kaufman, for appellee.

G.L., pro se appellant.

* * * * *

SWEENEY, J .

{¶ 1} Appellant, G.L., appeals pro se a decision by the Erie County Court of Common Pleas ordering appellant to pay child support for minor children S.S. and R.S. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} This appeal involves two cases relating to child support, paternity, and custody, both of which were filed in, and ultimately consolidated by, the Erie County Court of Common Pleas, Juvenile Division.

{¶ 3} G.S. and G.L. are the biological parents of S.S. and R.S. On June 6, 2004, G.S., the children's mother, filed a complaint for child support in case number 2003 SU 155 to address support issues relating to S.S. and R.S.

{¶ 4} On February 13, 2004, the magistrate issued a decision recommending that summary judgment be granted in favor of G.S. and that G.L. be ordered to pay child support. The magistrate further recommended that G.L. be granted parenting time with the minor children.

{¶ 5} On October 4, 2004, the trial court ruled on objections to the magistrate's decision and, rejecting the magistrate's determination that summary judgment should be granted in favor of G.S., denied G.S.'s motion.

{¶ 6} On October 29, 2004, G.L. filed a petition, under case number 2004 PA 015, to establish paternity of minor child R.S., and, further, to establish custody, and time sharing with respect to both children.

{¶ 7} At some point after the subject actions were filed in the juvenile court, G.S.'s husband filed a petition to adopt the minor children in the Erie County Probate Court.

{¶ 8} On February 15, 2005, G.S. filed a motion requesting suspension of G.L.'s visitation with the minor children, asserting that it would not be in the best interest of the children "to be subjected to visitation with their father in light of the probability that they will soon be adopted by [G.S.'s husband]," and that "forcing the children to participate in visitation with [G.L.] will serve only to confuse the minor children."

{¶ 9} Attached to G.S.'s motion were judgment entries issued by the probate court stating that G.L.'s consent was not required in the pending adoption actions of the minor children, because G.L. (1) had failed without justifiable cause to communicate with the minor children for a period of at least one year immediately preceding the filing of the adoption petition; and (2) had failed without justifiable cause to provide for the maintenance and support of the children as required by law or judicial decree for a period of at least one year immediately preceding the filing of the petition.

{¶ 10} On the same day that G.S.'s motion was filed, the juvenile court issued a judgment entry suspending G.L.'s visitation, determining, "for good cause shown," that "it would be inconsistent with the best interest of the children to attend visitation at this time."

{¶ 11} On March 4, 2005, G.L. filed in the juvenile court an "Emergency Petition to Invalidate Orders of Termination of Parental Rights," In this petition, G.L. requested that the juvenile court invalidate the determination made by the probate court that G.L.'s consent was not necessary relative to the petition to adopt the minor children. Specifically, G.L. argued that the children were subject to the federal Indian Child Welfare Act and, as such, the probate court erred in proceeding to hear the petition to adopt and determine the issue of consent. On March 8, 2005, the trial court denied this petition on the grounds that the juvenile court was without jurisdiction to order the probate court to vacate its orders.

{¶ 12} On March 30, 2005, genetic testing results confirmed that R.S. is G.L.'s biological child. On April 22, 2005, G.L., citing the results of the genetic testing, filed a motion in the juvenile court requesting full visitation with the children. G.L. noted in the motion that the adoption proceedings had been "halted without further notice of trial."

{¶ 13} On April 25, 2005, G.S. filed a motion to continue the evidentiary hearing in both of the juvenile court cases. As grounds for this motion, G.S. asserted that G.L. had filed in the probate court an "Emergency Petition to Invalidate Orders of Termination of Parental Rights." According to G.S., G.L.'s petition, alleging that the minor children are of Indian heritage, resulted in the probate court continuing the final adoption hearing to research issues of federal law. G.S. additionally stated that pending the probate court's decision, it would be detrimental to the children's best interest to subject them to visitation with G.L.

{¶ 14} On May 23, 2005, the probate court found that the adoption of the children was not, in fact, governed by the federal Indian Child Welfare Act.¹

{¶ 15} On May 25, 2005, G.S.'s motion for a continuance was granted in the juvenile court. A hearing on the issues of support and visitation was held before the juvenile court judge on July 8, 2005.

{¶ 16} On August 17, 2005, G.S.'s husband's petition to adopt the minor children was granted by the probate court. G.L. never appealed the probate court's decision.

¹G.L. appealed the Probate Court's decisions in this matter, but the appeals were dismissed by this court, in a decision and judgment entry dated July 8, 2005, for being filed one day late.

{¶ 17} On July 11, 2008, nearly three years after the probate court granted the adoption, the juvenile court issued a judgment entry consolidating the two actions and ordering that G.L. pay child support for the minor children, as follows:

{¶ 18} " * * * Based upon the consolidation of these matters and the child care expenses referred to above the Court finds it reasonable to set support according to the following time periods involved in this matter. For the period of June 6, 2003 (original filing in 2003-SU-155) to December 31, 2003 support for child, [S.S.], only, with adjustment for child care expenses. * * * From January 1, 2004 until October 29, 2004 (original filing of 2004-PA-0015) support for child [S.S.] only, with no adjustments. * * * From October 29, 2004 until August 17, 2005 (Adoption Decree granted) for both children, no adjustments. * * *

{¶ 19} "It is therefore ORDERED, ADJUDGED AND DECREED that case No. 99-SU-120 is closed and consolidated into this matter.²

{¶ 20} "It is FURTHER ORDERED that Respondent/Father, [G.L.] shall pay child support for the minor child, [S.S.], * * * to the Petitioner, [G.S.], at the rate of \$643.31 per month * * * commencing June 6, 2003 to December 31, 2003. * * *

{¶ 21} "It is FURTHER ORDERED that Respondent/Father, [G.L.] shall pay child support for the minor child, [S.S.], to the Petitioner, [G.S.], at the rate of \$591 per month * * * commencing January 1, 2004 to October 28, 2004. * * *

²In a nunc pro tunc entry dated July 21, 2008, the trial court amended this line to read: "It is therefore ORDERED, ADJUDGED AND DECREED that Case No. 2004-PA-015 is closed and consolidated into this matter."

{¶ 22} "It is FURTHER ORDERED that Respondent/Father, [G.L.] shall pay child support for the minor children, [S.S.] and [R.S.], to the Petitioner, [G.S.], at the rate of \$851.05 per month * * * commencing October 29, 2004 to August 17, 2005. * * *"

{¶ 23} In addition to the foregoing, the trial court stated that the visitation with R.S. that was requested by G.L. was "moot by the Adoption of the involved child by his stepfather."

{¶ 24} Regarding the lengthy delay between the hearing on the matter and the issuance of the court's judgment entry, the court stated:

{¶ 25} "This matter has been pending decision from the Court for an inexcusably long time. The Court had originally intended to await the determination of a Petition to Adopt the children, who are the subject of this action by the Mother's current Husband. The Petition to Adopt was ultimately granted by the Probate Court on August 17, 2005. However, due to neglect by the Court, the matter was not brought back to the Court's attention until recently. Nevertheless a decision is necessary to bring complete closure to this matter."

{¶ 26} G.L. timely appealed the juvenile court's decision, raising the following assignments of error:

{¶ 27} I. "WHEN A TRIAL COURT ERRS BY PURPOSELY ABDICATING ITS JURISDICTION AND DUTIES IN A CHILD CUSTODY, VISITATION AND SUPPORT CASE AND THEREBY ALLOWS ANOTHER COURT TO USURP ITS JURISDICTION BY THAT OTHER COURT RENDERING A DECISION ON SUPPORT AND VISITATION ANY ERROR MUST BE CURED BY THE ERRING

COURT RETROACTIVELY CURING THE ERROR AND BOTH COURTS STARTING FROM SQUARE ONE. THE COURT VIOLATES APPELLANT DUE PROCESS RIGHTS WHEN THE COURT DOES NOT ADEQUATELY PROCEED WITH THE CASE."

{¶ 28} II. "THE JUVENILES [sic] COURT ERRED BY NOT ALLOWING FATHER VISITATION AND ORDERING A CHILD SUPPORT SCHEDULE WHEN THE ONLY BASIS FOR NOT DOING SO WAS TO ASSIST THE MOTHER IN ADOPTING THE CHILDREN OUT TO HER PRESENT HUSBAND; NO SUPPORT SHOULD BE REQUIRED WHEN THE COURT, AND THE OPPOSING PARTY STALL A CASE SO THAT ANOTHER COURT CAN OBTAIN A JUDGMENT."

{¶ 29} III. "THE TRIAL COURT ERRED BY NOT TAKING INTO CONSIDERATION THAT THE PLAINTIFF, FATHER AND THE CHILDREN INVOLVED WERE OF INDIAN OR NATIVE AMERICAN HERITAGE AND THE PLACEMENT OF THE CHILDREN OR THEIR STATUS OF PLACEMENT WAS GOVERNED BY 25 U.S.C. § 1912, INDIAN CHILD WELFARE ACT."

{¶ 30} G.L. appears to argue in his first assignment of error that the juvenile court purposely delayed issuing its decision in the subject cases as part of a calculated effort to influence the probate court's decision to grant the stepfather's adoption of the minor children. G.L. further appears to argue that this court should reverse the juvenile court's decision, with the result being a negation of the final decrees of adoption issued by the probate court. G.L.'s argument is simply not supported by the facts of this case or by the applicable law.

{¶ 31} First, nothing in the record suggests any purposeful impropriety in the juvenile court's handling of the proceedings.

{¶ 32} Second, reversal of this case, for any reason, would have no impact on the probate court's now four-year old adoption decrees, which -- in addition to having been issued by a separate court not involved in this appeal -- cannot, at this point, be questioned by any person. See R.C. 3107.16(B).³ Accordingly, G.L.'s first assignment of error is found not well-taken.

{¶ 33} G.L. argues in his second assignment of error that the trial court erred in simultaneously ordering child support and disallowing visitation, "when the only basis for not doing so was to assist the mother in adopting the children out to her present husband." We disagree. As discussed above, there is nothing in the record to show purposeful misconduct in the trial court's delay of its decision in this case.

{¶ 34} In addition, there was no error in the trial court's order of child support. R.C. 3103.031 relevantly provides that "[a] biological parent of a child, a man determined to be the natural father of a child under sections 3111.01 to 3111.18 or 3111.20 to 3111.85 of the Revised Code, a parent who adopts a minor child pursuant to Chapter 3107. of the Revised Code, or a parent whose signed acknowledgment of paternity has

³R.C. 3107.16(B) relevantly provides, "Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued, the decree cannot be questioned by any person * * * unless, in the case of the adoption of a minor by a stepparent, the adoption would not have been granted but for fraud perpetrated by the petitioner or the petitioner's spouse." We note that there is no evidence or allegation of fraud on the part of G.S. or her husband, nor is there or has there been any direct appeal of the probate court's decisions.

become final pursuant to section 2151.232, 3111.25, or 3111.821 of the Revised Code assumes the parental duty of support for that child."

{¶ 35} G.L., as the biological parent of the children, had a statutory duty to support them from the time of their birth until August 17, 2005, the date on which the probate court issued the final decrees of adoption. The child support that was ordered in this case was expressly limited to the period following G.S.'s filing of the support action up to the date when the adoptions were granted.

{¶ 36} With respect to visitation, the trial court properly found that issues of visitation and custody were all rendered moot by the children's August 17, 2005 adoption by their stepfather.

{¶ 37} For the foregoing reasons, G.L.'s second assignment of error is found not well-taken.

{¶ 38} G.L. argues in his third assignment of error that the trial court erred by not taking into consideration his allegation that he and the children were of Native American heritage and that, as a result, "the placement of the children or their status of placement was governed by 25 U.S.C. § 1912, Indian Child Welfare Act."

{¶ 39} As indicated above, issues of visitation and custody were all rendered moot by the children's August 17, 2005 adoption by their stepfather. Notably, G.L. never appealed from the probate court's final adoption decisions.⁴ Accordingly, appellant's third assignment of error is found not well-taken.

⁴We note that the issue of the applicability of the Indian Child Welfare Act was fully litigated in the probate court in connection with the adoption proceedings.

{¶ 40} For all of the foregoing reasons, the judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

James J. Sweeney, J.
CONCUR.

JUDGE

JUDGE

Judge James J. Sweeney, Eighth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.