

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

W.V.

Court of Appeals No. WD-09-039

Appellant

Trial Court No. 2008 JF 0905

v.

A.S.

DECISION AND JUDGMENT

Appellee

Decided: December 11, 2009

* * * * *

Salvatore C. Molaro, Jr., for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas, Juvenile Division, that adopted the magistrate's decision denying appellant's amended petition for custody of the parties' minor child. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} The parties' child was born in early April 2008. Three days after the child was born, appellant/father, W.V., filed a pro se "Petition for Custody" in the Ottawa County Court of Common Pleas, Juvenile Division. On April 18, 2008, father filed an

emergency motion for temporary custody in the same court. On April 24, 2008, the juvenile court granted appellee/mother, A.S., temporary custody of the infant. The court also granted father visitation and companionship with the child. On May 15, 2008, father filed an "Amended Petition for Custody" in which he alleged that mother was not suited to be custodial parent because she had no income and has lost custody of her two older children. In a June 27, 2008 temporary order, the juvenile court named mother the residential parent; father was awarded visitation. On July 9, 2008, due to mother's change of residence, the Ottawa County Juvenile Court ordered this case transferred to the Wood County Court of Common Pleas, Juvenile Division.

{¶ 3} On September 2, 2008, mother filed motions to modify father's parenting time, to set child support, and for other relief. On November 20, 2008, the matter came before the juvenile court magistrate for a hearing on mother's motions and on father's May 15, 2008 amended petition for custody. On December 4, 2008, the magistrate filed a decision denying father's amended petition for custody, mother's motion to modify father's parenting time, and mother's motion for supervised visitation. The magistrate made additional recommendations relative to visitation and child support.

{¶ 4} On December 19, 2008, father filed timely objections to the magistrate's decision to exclude evidence regarding mother's loss of custody of her two older children approximately two years before the hearing date as well as evidence of a diagnostic assessment of mother dated October 6, 2006. Father also asserted that the magistrate's decision was against the weight of the evidence.

{¶ 5} Upon consideration of the record, the trial court issued a decision on April 1, 2009, adopting the magistrate's decision and recommendations. In its decision, the trial court noted that the disputed evidence arose from incidents not related to the parties' child and consisted of evidence of matters that occurred well before the April and June 2008 orders the parties wished to have modified. The trial court further found that the evidence father sought to have admitted was not relevant to whether there had been a change of circumstances of the child or residential parent since the existing orders were entered.

{¶ 6} On appeal, father presents the following as his assignments of error:

{¶ 7} "Assignment of Error:

{¶ 8} "A. The Trial Court erred when it excluded evidence of prior removal of a child from the home of Appellee.

{¶ 9} "B. The Trial Court erred when it excluded evidence of a diagnostic assessment of Appellee.

{¶ 10} "C. The Trial Court erred when it characterized Appellant's case as a motion for custody and not an original petition.

{¶ 11} "D. The Trial Court erred when it did not relate back the amended petition to the date of original filing of the petition."

{¶ 12} We will consider appellant's first two arguments together as both raise the issue of admissibility of evidence. We note that "[t]he admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage*

(1987), 31 Ohio St.3d 173, paragraph two of the syllabus. This court, therefore, will not reverse a trial court's ruling regarding the admission or exclusion of evidence unless the trial court abused its discretion. An abuse of discretion "connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶ 13} The record reflects that at the hearing held on November 20, 2008, the magistrate excluded evidence father wished to offer of a psychological assessment of mother from 2006, as well as testimony as to the removal of two older children from mother's care by the authorities in 2006. As to the disputed evidence, the magistrate ruled that the two-year-old psychological evaluation was not relevant and that a more recent assessment could have been obtained for purposes of the current custody dispute. The magistrate further ruled that the matter before the court was limited to the custody of the child born in April 2008, and that custody determinations as to the other children, which had been litigated in another county, were not relevant. In affirming the magistrate's ruling, the trial court noted that the disputed evidence arose from incidents which had occurred two years earlier and which were not related to the child who is the subject of this case. The trial court concluded that the disputed evidence was not relevant to the matters before the court.

{¶ 14} Based on our review of the record, we find that the magistrate's decision to exclude the disputed evidence was not an abuse of discretion and, accordingly, the trial

court did not err by adopting the magistrate's ruling. Father's first and second assignments of error are not well-taken.

{¶ 15} In his third and fourth assignments of error, father asserts that the trial court erred by characterizing appellant's case as arising from a motion for modification of custody rather than an original petition. The record shows that the trial court did in fact determine that the matters that had come before the magistrate in November 2008 were all requests for modification of existing custody orders and other child-related issues. The trial court then determined that, in addressing such requests for modification of prior orders, the court should apply R.C. 3109.04(E)(1)(a), which directs a court to look to whether there has been a change in the circumstances of the child or the child's residential parent since the prior orders.

{¶ 16} Our review of the record, however, shows that in the December 4, 2008 decision, the magistrate determined that this matter was before the court on father's "Amended Petition for Custody" filed on May 15, 2008.¹ The magistrate did not consider father's "petition" to be a motion to modify a prior order of the court. We further see that, in deciding the issues before the court, the magistrate applied the factors set forth in R.C. 3109.04(F)(1)(a-j) for determining the best interest of a child in a custody matter. R.C. 3109.04(F)(1) states in relevant part that "[w]hen making the allocation of the parental rights and responsibilities for the care of the children under this section in an original

¹The record further reflects that father had filed a pro se "Petition for Custody" on May 7, 2008.

proceeding or in any proceeding for modification of a prior order of the court making the allocation, the court shall take into account that which would be in the best interest of the children. * * *" Our review of the magistrate's decision reveals that the magistrate considered each of the ten factors set forth in R.C. 3109.04(F)(1) as they applied to this custody matter based on the evidence before the court. Having made a thorough and careful consideration, the magistrate found that it was not in the child's best interest to be placed in father's custody and denied father's amended petition for custody.

{¶ 17} The record in this matter clearly reflects that the magistrate correctly applied the best interest standard set forth in R.C. 3109.04(F)(1), and that the trial court adopted the magistrate's decision in its entirety. Even though the trial court based its discussion of father's objections on the change of circumstances standard set forth in R.C. 3109.04(E)(1)(a), the trial court nevertheless adopted the magistrate's decision. A reviewing court is not authorized to reverse a correct judgment on the basis that some or all of the lower court's reasons are erroneous. *Goudlock v. Voorhies*, 119 Ohio St.3d 398, 2008-Ohio-4787, ¶ 12. Accordingly, we find that the proper standard of review was applied to the issues raised by father's petition for custody and father's third and fourth assignments of error therefore are not well-taken.

{¶ 18} On consideration whereof, the judgment of the Wood County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant 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.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

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>.