

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

In Re: G.J.

Court of Appeals No. L-09-1134

Trial Court No. 99007463

DECISION AND JUDGMENT

Decided: December 18, 2009

* * * * *

Salvatore C. Molaro, Jr., for appellant.

Kevin P. McManus, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellant mother appeals the order of the Lucas County Court of Common Pleas, Juvenile Division, denying her request for a return of custody of her oldest son from the child's maternal grandmother. For the reasons that follow, we affirm.

{¶ 2} Appellant is N.J., the mother of the 11-year-old child, G.J. Appellee is L.J., appellant's mother and the child's maternal grandmother. The child exhibits traits of Asperger's syndrome and high functioning autism. Appellant has two younger children, both of whom also have special needs.

{¶ 3} When G.J. was one year old, appellant approved a consent order transferring custody of him to appellee. Like many other aspects of this matter, there are competing reports as to the purpose of this arrangement. Appellant maintains that she granted custody of G.J. to her mother so that he could be legally added to appellee's health insurance. Appellee insists that the order merely formalized an arrangement that had existed since the child's birth; he lived with appellee.

{¶ 4} There are likewise divergent accounts of G.J.'s care through the early years of his life. Appellant contends that, irrespective of the custody document, she was the child's principal caregiver during these years. When he was old enough, she enrolled him in Sylvania schools near where she lived. According to appellant, G.J. spent most of his time in her home, visiting appellee's home only for extended babysitting while appellant was at work.

{¶ 5} Not so, says appellee. Since appellant frequently worked the night shift, G.J. spent the vast majority of his time in appellee's home. Appellee's husband drove the child to school in the morning and picked him up from school in the afternoon. According to appellee, it was she who provided G.J.'s real home during these years.

Whatever the ratio of the division of responsibilities, this shared arrangement continued, with varying degrees of tension between the parties, for a number of years.

{¶ 6} The tipping point in this relationship appears to have occurred in 2007, in an incident involving not G.J., but a younger sibling, who was five years old at the time. This sibling is terminally ill and, at that time, was under hospice care. Appellant had granted permission for the sibling to go on a bus trip with a local children's home. When the bus arrived at the event location, it was closed. The children, reportedly, had to stay on a hot bus for approximately an hour before an alternate venue was chosen. A home care nurse accompanying the sibling refused to allow him to go to the alternative venue and called appellee, who collected him.

{¶ 7} Appellee apparently concluded that subjecting the sibling to this discomfort reflected poorly on appellant's parental judgment. She responded by removing G.J. from a Boy Scout camp he was attending and advising appellant that she intended to deny her future visitation without supervision. Except for two occasions, appellee did not allow appellant to see G.J. for four months, when appellant obtained a visitation order. When school started, appellee enrolled G.J. in a private Catholic school. Concurrent with these events, appellee sought custody of all of appellant's children. Appellant, in turn, moved to a change of custody for G.J.

{¶ 8} Appellee's request for custody of the other two children was resolved prior to the hearing on appellant's petition to change G.J.'s custody. During this hearing, a magistrate heard testimony concerning events from each party's perspective. The

magistrate also heard testimony that the change of schools was particularly difficult for G.J., but that he has since adapted and adjusted to his new surroundings.

{¶ 9} G.J.'s guardian ad litem issued a report to the court recommending that the parties enter a shared parenting arrangement, but if the parties could not agree to such a plan, that custody be granted to appellant. In an in camera interview, the boy expressed a "strong desire" to remain with his grandparents.

{¶ 10} At the conclusion of the hearing, the magistrate issued a decision, finding that appellant had proved a change of circumstances predicate to a change of custody. Nevertheless, the magistrate found that the child was being well cared for in his present placement, another change of schools would be traumatic, and the presence of two other special needs children in appellant's home would likely deny G.J. the positive attention he needs. On these grounds, the magistrate concluded that G.J.'s continued custody with appellee would be in his best interest. The magistrate rejected appellant's request for a custody change.

{¶ 11} When, on review, the trial court adopted the magistrate's decision, appellant instituted this appeal. Appellant sets forth the following single assignment of error:

{¶ 12} "The Trial Court erred when it affirmed the Courts [sic] ruling as said ruling was against the manifest weight of the evidence and contrary to the recommendation of the Guardian Ad Litem."

{¶ 13} R.C. 3109.04(D)(2) provides that, if a court determines that it is not in a child's best interest for a parent to be designated the residential parent, the court may

commit the child to the care of a relative. Once such an order of commitment is entered, the court may not modify such a prior decree. "* * * unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child.* * *" Moreover, the placement designated by a prior decree shall not be changed unless the court finds that the modification is in the child's best interest and, unless there is an agreement or consent, "[t]he harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child." R.C. 3109.04(E)(1)(a).

{¶ 14} In determining whether a modification is in the child's best interest, the court is directed to consider, inter alia, the parent's wishes, the child's wishes, the child's interactions with siblings and others, the child's adjustment to home, school and community and the mental and physical health of those involved. R.C. 3109.04(F)(1).

{¶ 15} "[A] trial court is vested with broad discretion when determining the allocation of parental rights and responsibilities for the care of minor children. *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74. Further, a trial court's decision to adopt, reject or modify a magistrate's report and recommendation will be reversed on appeal only for an abuse of that discretion. See *Wade v. Wade* (1996), 113 Ohio App.3d 414, 419. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*

(1983), 5 Ohio St.3d 217, 219. Absent an abuse of that discretion, a trial court's judgment regarding these issues will be upheld. *Masters v. Masters* (1994), 69 Ohio St.3d 83, 85, 1994 Ohio 483." *Sinn v. Cawood*, 6th Dist. No. WD-06-087, 2007-Ohio-4326, ¶ 12.

{¶ 16} In this matter, after a thorough review, the record reveals sufficient evidence to support the trial court's findings. Concerning the best interest analysis, the court articulated a process in full conformity with the statute and stated a reasoned conclusion. The court's failure to follow the recommendations of the guardian ad litem does not inherently constitute an abuse of discretion. *Ferrell v. Ferrell*, 7th Dist. No. 01-AP-0763, 2002-Ohio-3019, ¶ 43. The ultimate decision in any proceeding rests with the court, not a representative of the parties. *In re Height* (1975), 47 Ohio App.2d 203, 206.

{¶ 17} Accordingly, the court acted within its discretion when it denied appellant's request for a custody change. Appellant's sole assignment of error is not well-taken.

{¶ 18} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is order 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.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, 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>.