IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 6, 2017 Session

SHAYLA LEANNE GUY BRANTLEY v. CORDARY QUINCY VERNARD BRANTLEY

Appeal from the Chancery Court for Sumner County
No. 2015-DM-325 Louis W. Oliver, III, Chancellor

No. M2016-01999-COA-R3-CV

In this divorce action, Father contends the trial court erred by adding substantive restrictions to the parties' agreed upon Permanent Parenting Plan that, *inter alia*, imposed "paramour" and "lifestyle" restrictions on Father that were not imposed on Mother. We have determined that the trial court unilaterally imposed substantive and material restrictions on Father's activities during his parenting time without affording him an evidentiary hearing. We have also determined that some of the restrictions placed on Father are too vague to be enforceable and that the Statement of the Evidence does not provide a factual basis for the restrictions placed on Father. For these reasons we vacate the judgment of the trial court and remand for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated and Remanded

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and RICHARD H. DINKINS, J., joined.

Morgan E. Smith, Nashville, Tennessee, for the appellant, Cordary Quincy Vernard Brantley.

Shayla Leanne Guy Brantley, Gallatin, Tennessee, pro se.

OPINION

Cordary Quincy Vernard Brantley ("Father") filed a pro se complaint for divorce from Shayla Leanne Guy Brantley ("Mother") in the Sumner County Chancery Court on

September 17, 2015.[1] Two children were born during the marriage. Mother did not contest the divorce.

At a hearing on August 1, 2016, Father made an oral request for genetic testing based on concerns that the youngest child born of the marriage was not his biological child.[2] The court denied the oral motion and set the uncontested divorce for final hearing on August 22, 2016.

The purpose of the hearing on August 22 was for the trial court to consider and either approve or reject the Final Decree of Divorce that incorporated the agreed upon Marital Dissolution Agreement and Permanent Parenting Plan. During the hearing, the court heard from both parties who revealed, *inter alia*, that Father was HIV positive and in a relationship with a male paramour. At the conclusion of the hearing, the court modified the Final Decree of Divorce by adding handwritten "Injunctions by Court" that read:

> No corporal punishment of children by either party. No paramours overnight and paternal uncle may not be around children. No homosexual activity around children. Father to avoid body fluid exchange with children, no bathing, showering or sleeping with children. Children exchanged at Rivergate Mall unless parties agree otherwise. Father may have no paramours around children whatsoever.

The Marital Dissolution Agreement provided that the division of court costs "will be discussed later amongst both parties after the divorce decree has been processed and final fees are drawn up." Following the hearing, the court taxed all court costs to Father.

ISSUES

Father filed a timely appeal and sought reversal of all but two of the injunctions.[3] He also appeals the court's denial of his oral motion for genetic testing regarding the

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[1] Father was the original plaintiff and Mother was the original defendant. At some point in the litigation the caption was reversed.

[2] The facts and procedural history set forth in this opinion are based on the technical record and a Statement of the Evidence, filed pursuant to Tenn. R. App. P. 24 (c), which is so modest it is of little value to a reviewing court.

[3] Father does not appeal the injunction that forbids both parties from corporally punishing the children or that the children shall be exchanged at Rivergate Mall.

youngest child, and the court's determination that Father shall pay all court costs.[4] We have determined that the dispositive issue is whether Father was deprived of due process by not being afforded a meaningful evidentiary hearing before the trial court made substantive changes to the agreed upon Final Decree of Divorce and Permanent Parenting Plan. We have also determined that some of the injunctions imposed on Father are too vague to be enforced.

ANALYSIS

The parties requested a divorce on the grounds of irreconcilable differences. The parties' "agreement" was set forth in a proposed Final Decree of Divorce that incorporated a Martial Dissolution Agreement and Permanent Parenting Plan that had been signed by both parties and acknowledged by a notary public. During the "uncontested" review hearing, Mother requested certain changes to the parties' agreement to which Father objected. After a discussion of Father's objections, the court imposed several restrictions, identified as "injunctions," some of which applied only to Father. We have determined the trial court made substantive and material changes to the parties' agreement without affording Father due process of law.

Here, the court issued a series of injunctions restraining Father's liberty. Under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 8 of the Tennessee Constitution, the government may not deprive an individual of life, liberty, or property without due process of law. *Heyne v. Metropolitan Nashville Bd. of Public Educ.*, 380 S.W.3d 715, 731 (Tenn. 2012). Due process requires "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 732 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). When a court's determination turns on a question of fact, the court must give litigants the chance to present evidence and to confront adverse witnesses. *Golberg v. Kelly*, 397 U.S. 254, 269 (1970); *Baltimore & O.R. Co. v. United States*, 298 U.S. 349, 368-69 (1936); *Tenent v. Tenent*, No. 02A01-9305-CV-0017, 1994 WL 317531, at *3- 4 (Tenn. Ct. App. July 6, 1994).

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[4] The issues as framed by Father read:

> 1) Whether the Trial Court erred by adding the following restrictions to an agreed Permanent Parenting Plan at a final hearing for divorce: no paramours overnight and paternal uncle may not be around the children; no homosexual activity around the children; father to avoid body fluid exchange with children, no bathing, showering or sleeping with children; father may have no paramours around children whatsoever.
> 2) Whether the trial court erred by denying Father's oral motion requesting to rescind the presumption of paternity and request genetic testing and Father should have been permitted the opportunity to have a hearing on whether or not the required factors of T.C.A. §24-7-113(e) exist.
> 3) Whether the trial court erred by modifying the parties' contractual agreement to split costs to assess all costs to Father.

Due process also requires appropriate notice in order to afford the litigant the opportunity to be prepared to present evidence in addition to the opportunity for a meaningful hearing. *See Wilson v. Blount County*, 207 S.W.3d 741, 748 (Tenn. 2006). "The notice required by the Due Process Clause is that which is 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id*. (quoting *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950)). Therefore, to comport with due process, the trial court should have afforded Father and Mother notice so they could be prepared to present competent evidence. That was not done in this case. Therefore, the judgment of the trial court must be vacated.

On remand, should the parties not present an agreement that is acceptable to the court, after affording the parties due notice and an opportunity to present evidence, the trial court should consider the ruling in *Hogue v. Hogue*, 147 S.W.3d 245, 254 (Tenn. Ct. App. 2004) before imposing generalized "paramour" and "lifestyle" restrictions. As we discussed in *Hogue*, restraints on visitation "should be well defined." *Id*. Moreover, restraints "must involve conduct that competent evidence shows could cause harm to the child." *Id*. These principles were important in *Hogue* for the following reasons:

> Mr. Hogue was restrained from exposing the child to his "gay lifestyle." Tenn. R. Civ. P. 65.02(1) requires that every restraining order or injunction shall be specific in terms and shall describe in reasonable detail the act restrained or enjoined. "Lifestyle" is certainly not a specific term. Moreover, adding the word gay or another adjective does little if anything to enhance the specificity of the term or the description of the acts restrained. For example, prohibiting a parent from exposing a child to his or her "heterosexual" lifestyle or "urban" lifestyle or "stoic" lifestyle, without a description in reasonable detail of the acts restrained, affords little if any guidance to the court or the party restrained as to what is or is not restrained.
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> The above examples illustrate two important points. One is that the resolution of the issue before us does not hinge on Mr. Hogue's sexual orientation. Stated another way, the issue of whether the restraint on Mr. Hogue is valid, in a specificity challenge, exists whether or not the word "gay" is in the restraining order. Accordingly, the parties' arguments pertaining to sexual orientation are misplaced. Moreover, **it is not necessary to create new and different visitation rules and restraints depending on sexual orientation. Visitation decisions should be guided by the best interests of the child**. *Turner v. Turner*, 919 S.W.2d 340, 346 (Tenn. Ct. App. 1995). Generally, it matters little who the parent is or what he or she does when the child is not visiting. What matters is whether the

parental conduct during visitation is harmful to the child. *See Smith v. Smith*, 1996 WL 591181, at *4 (father was prohibited from smoking only during visitation). **Neither gay parents nor heterosexual parents have special rights. They are subject to the same laws, the same restrictions. Our courts should follow the same principles for placing restrictions on gay parents they use on any parents; those principles provide that after making an award of custody, the trial courts are to grant such rights of visitation as will enable the child and the non-custodial parent to maintain a parent-child relationship unless the court finds that visitation is likely to endanger the child's physical or emotional health. Tenn. Code Ann. § 36–6–301.**

The other important point illustrated by the above examples is that the term "gay lifestyle," like urban lifestyle, is anything but specific. Therefore, in the absence of other limiting terms or provisions to better describe the prohibited acts, the term fails to satisfy the specificity requirements of restraining orders and injunctions.

. . .

The purpose of restraints on parental conduct is to protect the child. The right of visitation may be limited, or eliminated, if there is definite evidence that to permit the right would jeopardize the child. *Suttles*, 748 S.W.2d at 429. The restraints to be placed on Mr. Hogue should be no different from restraints courts routinely place on other parents to shield their children from conduct that may be harmful to the child. Such restraints should be well defined and must involve conduct that competent evidence shows could cause harm to the child. *See Bates v. Bates*, No. 03A01–9412–CH–00426, 1995 WL 134907, at *3 (Tenn. Ct. App. March 30, 1995) (trial court's order prohibiting visitation in the presence of the paramour was reversed for there was no showing of harm to the child); *see also Smith*, 1996 WL 591181, at *3 (the record contained evidence the father's cigarette smoking had jeopardized the child's physical well-being).

Id. at 252-54 (emphasis added).

IN CONCLUSION

The judgment of the trial court is vacated and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the parties equally.

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FRANK G. CLEMENT JR., P.J., M.S.