

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MOLLY LAMBERTUS, *Petitioner/Appellant*,

v.

LINDA FAY DAY-STRANGE, *Intervenor/Appellee*.

No. 1 CA-CV 15-0002 FC
FILED 11-19-2015

Appeal from the Superior Court in Maricopa County
No. FC2013-052939
The Honorable Gerald Porter, Judge

AFFIRMED

COUNSEL

Pangerl Law Firm, Phoenix
By Regina Pangerl

and

The Murray Law Offices, Scottsdale
By Stanley David Murray

Counsel for Petitioner/Appellant

Gregan & Associates, Mesa
By Lawton Connelly
Counsel for Intervenor/Appellee

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MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Lawrence F. Winthrop joined.

T H O M P S O N, Judge:

¶1 Petitioner/appellant Molly Lambertus (Mother) appeals from the trial court's order granting grandparent visitation to intervenor/appellee Linda Faye Day-Strange (Grandmother). For the following reasons, we affirm the decision of the trial court.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother, who was unmarried, gave birth to a daughter (Child) in August 2013. Child's father (Father) is Grandmother's son. Prior to Child's birth, Father was incarcerated; he will likely remain in prison until 2019. Mother filed a petition for paternity, legal decision making, parenting time and child support in December 2013. Grandmother filed a motion to intervene in the paternity action, which Mother did not object to and the trial court granted. In February 2014, Grandmother filed a petition for grandparent visitation and a motion for a temporary order granting her visitation with Child. Mother filed a motion to strike Grandmother's motion for temporary orders. The court appointed a Court Appointed Advisor (CAA) to investigate Mother's concerns about Grandmother and Father's concerns about Mother.

¶3 The court held an evidentiary hearing on temporary orders in April 2014. The court heard the testimony of the CAA, Mother, and Grandmother, and ruled that Grandmother would have two hours per week of visitation with Child beginning in April 2014. Mother filed a petition for special action arguing that the trial court lacked jurisdiction to grant temporary visitation to Grandmother. We granted special action jurisdiction and denied relief in August 2014. Mother filed a petition for review which was denied by our supreme court.

¶4 The trial court held an evidentiary hearing in September 2014. The CAA, Mother, Grandmother, and three other witnesses testified. In November 2014 the trial court entered an order granting Mother sole legal decision making and making her the exclusive placement for Child due to

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Father's incarceration. After considering the factors set out in Arizona Revised Statutes (A.R.S.) section 25-409 (C), (E) (Supp. 2013), the court awarded Grandmother unsupervised weekly visitation with Child for a period of three and one-half hours on Sundays. The court ordered each party to pay their own attorneys' fees and costs because although the court found that "Mother's approach to this litigation [was] abusive and unnecessary," the court also found that Mother was earning little and had no financial help raising Child. Mother timely appealed. We have jurisdiction pursuant to A.R.S. section 12-2101 (A)(1) (Supp. 2015).

DISCUSSION

¶5 On appeal, Mother first argues that the trial court abused its discretion in awarding grandmother three and one-half hours of visitation with Child per week because the court failed to take into account Mother's wishes, and because the visitation adversely impacted Child's customary activities.

¶6 We review the trial court's decision to grant or deny grandparent visitation for an abuse of discretion. *Graville v. Dodge*, 195 Ariz. 119, 128, ¶ 38, 985 P.2d 604, 613 (App. 1999). The purpose of Arizona's grandparent visitation statute is to encourage family and intergenerational relations. *Id.* at 125, ¶ 26, 985 P.2d at 610. Grandparent visitation is not automatic, even if a grandparent meets one of the statutory qualifications. *Id.* at ¶ 23. Instead, "[t]he statute permits reasonable visitation only if the trial court finds visitation to be 'in the best interests of the child.'" *Id.* (citing A.R.S. § 25-409). A.R.S. § 25-409 (E) (Supp. 2013) provides:

E. In deciding whether to grant visitation to a third party, the court shall give special weight to the legal parents' opinion of what serves their child's best interests and consider all relevant factors including:

1. The historical relationship, if any, between the child and the person seeking visitation.
2. The motivation of the requesting party seeking visitation.
3. The motivation of the person objecting to visitation.

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4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.
5. If one or both of the child's parents are deceased, the benefit in maintaining an extended family relationship.

¶7 Here, the trial court acknowledged that Mother “vehemently oppose[d]” visitation for Grandmother. The court also found that “Grandmother loves [Child] and historically has had significant contact with [Child] until Mother and Father’s relationship ended,” and that Grandmother sought to foster a relationship between Child and her half-sister (Father’s child by another mother), a relationship which otherwise would not be possible in light of animosity between Mother and the half-sister’s mother. The court further found:

Grandmother requests a minimal amount of grandparent visitation. The visitation will not in any way impede on Mother’s time with the child or any of the child’s needs. Father supports Grandmother’s contact with the child and such contact will allow for minimal contact (phone only) between Father and child. To deny Grandmother’s very reasonable request would effectively end the relationship the child should have with her Father’s family and equally as important, with her half-sister This Court finds that child will benefit by continued contact with Grandmother that may pave the way for future reunification with Father should Father appropriately address drug, alcohol and other issues that have put Father in prison to 2019. It will also insure that the child has an opportunity to more fully develop her relationship with her half-sister and others in Father’s family.

The trial court properly made findings pursuant to A.R.S. § 25-409 based on the evidence presented, and awarded Grandmother visitation in an amount (three and one-half hours) which would not adversely impact Child’s customary activities. The trial court did not fail to give weight to Mother’s opinion about whether visitation was in Child’s best interests just because

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the court, after considering all of the relevant factors, decided to award visitation. We find no abuse of discretion.

¶8 Mother next argues that the trial court improperly delegated its authority to the CAA. The trial court's findings here about the relevant statutory factors and the reasons why its decision was in Child's best interests pursuant to A.R.S. § 25-409 were detailed and specific. *See Nold v. Nold*, 232 Ariz. 270, 273, ¶ 13, 304 P.3d 1093, 1096 (App. 2013). There is no indication that the court failed to make an independent judicial decision just because the court adopted many of the CAA's recommendations. We find no abuse of discretion.

¶9 Mother also argues that the trial court failed to adequately address the discovery issues she raised prior to trial. The trial judge noted in his ruling on visitation that the court had held a discovery hearing several months prior to trial in July 2014, and that at that time nearly all records had been produced or were expected shortly thereafter. The record on appeal evidences such and Mother does not say on appeal what discovery she was unable to obtain.¹ We find no abuse of discretion.

¶10 Mother further argues that the trial court denied her request to continue the trial, limited the time for her deposition of the CAA to one hour, denied her petition for contempt against the CAA, and limited her cross-examination of the CAA. The trial court has broad discretion over the management of trial and may place reasonable time limits on trial proceedings. *Gamboa v. Metzler*, 223 Ariz. 399, 402, ¶ 13, 224 P.3d 215, 218 (App. 2010). We find no abuse of discretion.

¶11 Finally, Mother argues that the trial court abused its discretion in failing to award her attorneys' fees. The trial court specifically found that Mother's approach to the litigation was "abusive and unnecessary," but declined to award attorneys' fees to Grandmother because of Mother's lack of financial resources. *See* A.R.S. § 25-324 (Supp. 2013). We find no abuse of discretion in the trial court's decision not to award Mother attorneys' fees.

¹ Even still, at the discovery hearing the trial court ordered the parties to select a discovery master to address any alleged outstanding discovery issues, and, in its November 2014 ruling the court gave both sides the opportunity to have the discovery master address any discovery issues the party believed to be outstanding after trial.

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¶12 Both parties request their attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324. In our discretion, we decline to award attorneys' fees on appeal. Because she is the successful party on appeal, Grandmother is entitled to her costs upon her compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶13 The decision of the trial court is affirmed.



Ruth A. Willingham - Clerk of the Court

FILED : ama