Third District Court of Appeal

State of Florida

Opinion filed June 26, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1313
Lower Tribunal No. 16-25724

Mera Pierre,
Appellant,

vs.

Kirenia Bueven,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge.

Law Office of Christina A. McKinnon, P.A., and Christina A. McKinnon (Miramar), for appellant.

No Appearance, for appellee.

Before EMAS, C.J., and SCALES and LINDSEY, JJ.

SCALES, J.

Mera Pierre, the petitioner/counter-respondent below, appeals a May 29, 2018 final judgment establishing paternity, parental responsibility, time-sharing and child support for the parties' minor child. Pierre challenges only those portions of the trial court's final judgment determining parental responsibility and time-sharing. We review these determinations for an abuse of discretion. See Winters v. Brown, 51 So. 3d 656, 658 (Fla. 4th DCA 2011) ("An appellate court will not disturb the trial court's custody decision unless there is no substantial, competent evidence to support the decision.").

"[T]he best interest of the child shall be the primary consideration" for establishing parental responsibility and creating a time-sharing schedule. § 61.13(3), Fla. Stat. (2017). "The determination of the best interests of the child is made by evaluating over twenty factors affecting the welfare and interests of the child" that are set forth in section 61.13(3)(a)-(t). Winters, 51 So. 3d at 658. While it is not necessary for the trial court to address each factor independently, the trial court must make an express finding – either on the record or in the final judgment – that its parental responsibility and time-sharing determinations are in the child's best interests. Id.

Because there is no transcript of the final hearing, this Court is unable to determine whether there was competent, substantial evidence presented below that permitted the lower court to properly evaluate the section 61.13(3)(a)-(t) factors

when it made its parental responsibility and time-sharing determinations. See J.N.S. v. A.M.A., 194 So. 3d 559, 561 n.3 (Fla. 5th DCA 2016) (citing Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979)). Similarly, because there is no final hearing transcript, this Court is unable to determine whether the trial court stated, on the record, that unsupervised visitation with Pierre was in the child's best interests. See Lightsey v. Davis, 267 So. 3d 12, 15 (Fla. 4th DCA 2019) (citing Applegate). Reversal is, therefore, not warranted as to the trial court's parental responsibility and time-sharing determinations.

Because, however, the final judgment fails to provide Pierre with the specific steps he must undertake in order to obtain unsupervised time-sharing with the minor child, we reverse that portion of the final judgment and remand to allow the trial court to identify those specific steps Pierre must undertake to obtain unsupervised time-sharing. See Solomon v. Solomon, 251 So. 3d 244, 246 (Fla. 3d DCA 2018) ("Where a final judgment fails to set forth what steps a parent must take in order to establish unsupervised timesharing, the final judgment must be reversed and remanded for the trial court to identify such steps.").

Affirmed in part, reversed in part, and remanded with instructions.[1]

[1] We note that the final judgment also contains what appears to be two typographical errors that should be corrected on remand. Specifically, in dividing the cost of uncovered medical expenses for the minor child between the parties, the final judgment fails to assign a specific percentage of responsibility to each party.