

Third District Court of Appeal

State of Florida

Opinion filed October 2, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1802
Lower Tribunal No. 09-10502

Mary E. Foreman,
Petitioner,

vs.

Thomas James,
Respondent.

On Petition for Writ of Certiorari from the Circuit Court for Miami-Dade County, Scott M. Bernstein, Judge.

Nancy A. Hass, P.A., and Nancy A. Hass (Fort Lauderdale), for petitioner.

Thomas James, in proper person.

Before SCALES, LINDSEY and LOBREE, JJ.

SCALES, J.

Petitioner Mary E. Foreman, the Mother, seeks certiorari review to quash an August 14, 2019 Order on Case Management Conference in which the trial court

required her and Thomas James, the Father, to participate in a Family Bridges Workshop to address the alienation of the parties' daughter toward the Father. We deny the petition for writ of certiorari for the reasons set forth in this opinion.

Procedural Background

The child was born in 2005. The parties were not married when she was born and have not lived together as a family, the Mother having obtained the sole decision-making and primary parenting duties in a 2010 Paternity Settlement Agreement.

In recent years, the Father has sought to achieve a closer relationship with his daughter. In 2018, he filed with the trial court a petition to modify the 2010 Paternity Settlement Agreement and to obtain, among other things, shared parental responsibility. On December 27, 2018, the trial court ordered the appointment of a reunification therapist.

At a case management conference, held on July 2, 2019, the reunification therapist advised the trial court that she had observed "alienating behaviors." Although the reunification therapist was uncertain whether the Mother was acting in an intentional or unintentional manner, she did state that the Mother appeared to be alienating her daughter from the Father. The trial court, while not making a finding of whether alienation was intentional or unintentional, found that the child was being alienated from the father. In the course of a discussion at the July 2, 2019 hearing

about the need for an expert psychological evaluation, the reunification therapist advised the trial court of a program called Family Bridges. The trial court expressed the view that such an advanced reunification program should be ordered soon if the then current course of reunification – consisting primarily of conferences with the court-appointed reunification therapist – proved unsuccessful and signs of alienation continued. Counsel for both the Mother and the Father agreed to explore the efficacy of Family Bridges or a similar therapeutic reunification program, and the trial court, after expressing both the urgency of, and harm associated with, the alienation problem, ordered counsel to explore appropriate “next step” options. A follow-up case management conference was scheduled and noticed for August 13, 2019.

At this August 13, 2019 case management conference, the reunification therapist advised the trial court that reunification between the Father and daughter was proceeding slowly; and the Mother was not supportive of the reunification efforts and, therefore, purposely or not, was undermining it. As a result, the reunification therapist recommended the Family Bridges Workshop. She explained to the trial court that Family Bridges was not a local program, that the Father and daughter would travel to a location where a “facilitator” was available, and that the Workshop lasted four days, followed by a ninety-day period in which the Mother would not be allowed any contact with her daughter.

The Mother was given an opportunity to address the trial court and advised the court regarding the Mother's efforts to assist in the reunification process. Specifically, the Mother told the trial court about conversations she has with the child regarding the Father. Additionally, the Mother's counsel reported to the trial court that he had, as ordered, investigated and explored the Family Bridges program.¹

The trial judge, however, expressed his exasperation with the reunification efforts and announced his intention to order the parties to participate in the Family Bridges program, with the Mother initially to pay for the program, subject to taxation of costs at the end of the case.² The trial judge expressed how the child's alienation from the Father was causing long-term emotional damage to the child.³

At the hearing, the Mother objected to the trial court ordering her daughter to attend the Workshop on several grounds: (i) the ninety-four day separation would

¹ The Mother's counsel characterized this program as one intended for children whose alienation was more severe than that of the minor child in this case.

² The record reflects that the trial court will be holding subsequent hearings to determine whether the Mother has the ability to pay the costs associated with the program. Our record does not contain information regarding such hearings.

³ We note that the record reveals the trial judge has presided over this case for approximately ten years, has had the opportunity to mark the child's progress under the parenting plan, is familiar with the Father's acknowledged absence from the child's life and his effort now to re-establish himself as a participating parent, and understands the Mother's heartfelt devotion to a child she has raised mostly alone.

represent a modification of timesharing; (ii) the trial court had not made a finding of alienation to justify the separation; and (iii) the Mother could not afford the cost of the program, estimated to be between \$21,000 and \$40,000. Nonetheless, the next day the trial court entered an order that started into motion the parties' participation in the Family Bridges Workshop. This petition ensued.

Analysis

The remedy of certiorari is limited to circumstances where: (i) the harm resulting from the challenged order cannot be remedied on post-judgment appeal, (ii) the order results in material injury for the remainder of the case, and (iii) the order departs from the essential requirements of law. A.H. v. Dep't of Children & Families, 44 Fla. L. Weekly D1717 (Fla. 3d DCA July 3, 2019). Because we find that the first two jurisdictional prongs of certiorari review are satisfied, see Chessler v. All Am. Semiconductor, Inc., 225 So. 3d 849, 852 (Fla. 3d DCA 2016), we focus our analysis on the third prong, i.e., whether the trial court's August 14, 2019 order departed from the essential requirements of law.

The Mother argues that, by ordering the parties to participate in the Family Bridges reunification program, the trial court essentially modified the terms of the parties' existing timesharing without providing the Mother essential due process protections. Indeed, "[w]hen a trial court modifies a parent's visitation *without notice and an opportunity to be heard*, the parent may seek certiorari review on the

basis that the court departed from the essential requirements of law” Weissman v. Weissman, 102 So. 3d 718, 721 (Fla. 2d DCA 2012)(emphasis added). Our review of the record, though, reveals that the Mother was afforded notice and given an opportunity to be heard prior to the entry of the challenged order.

As for notice, the Mother and her counsel attended both the July 2, 2019 and the August 13, 2019 case management conferences. The trial court plainly and without equivocation notified the parties of the urgency in resolving the child’s alienation by the Mother. The Mother and her counsel knew from the July 2, 2019 case management conference that a main purpose for the trial court’s re-assembling the participants six weeks later was to authorize a program such as Family Bridges, or a similar alternative the parties might propose, to address the child’s alienation from her Father. At the July 2nd hearing, counsel for both the Mother and the Father stipulated to exploring, and were ordered to explore, these options themselves; and the record plainly reflects that counsel for both parents actually investigated the Family Bridges program in anticipation of the August 13th case management conference. The record also reflects that the trial court afforded the Mother ample opportunity to speak at this August 13th hearing, where the Mother outlined her efforts to assist in reunification and admitted that her efforts, even with the assistance of the court-appointed reunification therapist, were not having the desired results. We, therefore, conclude that the Mother both received adequate notice and was

afforded an opportunity to be heard, prior to the trial court entering the August 14th order.

We also note that, for us to grant certiorari relief, the alleged departure from the essential requirements of law requires a violation of a *clearly established* principle of law. B.G. v. Dep't of Children & Families, 207 So. 3d 333, 335-36 (Fla. 3d DCA 2016). Essential to the Mother's due process argument in this case is her characterization of the challenged order as a modification of the parties' timesharing agreement. While it certainly can be argued that requiring a child to attend a four-day, out-of-state workshop, followed by ninety days of no-contact with one parent, constitutes a modification of timesharing, we found no clearly established legal principle that a court-ordered, temporary remedy to address what the trial court has concluded is an urgent situation of parent-child alienation either equates to, or triggers the due process protections that must accompany, a formal timesharing modification.

Petition denied.