

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CU 0916

GA
JMM
FARRAH SANCHEZ, BRANDON SANCHEZ, CATHY SANCHEZ, AND
DAVID SANCHEZ

VERSUS

DARLA EASLEY

Judgment Rendered: MAR 04 2015

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Appealed from the
21st Judicial District Court
In and for the Parish of Livingston, Louisiana
Trial Court No. 134,153

Honorable Edward J. Gaidry, Ad Hoc Judge Presiding

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* * * * *

BEFORE: McDONALD, CRAIN, AND HOLDRIDGE¹, JJ.

Crain, J. Assents at amicus notations.

¹ Holdridge, J., serving as Supernumerary Judge *pro tempore* of the Court of Appeal, First Circuit, by special appointment of the Louisiana Supreme Court.

HOLDRIDGE, J.

In this domestic proceeding, the maternal grandparents of a minor child appeal a judgment denying the appointment of an attorney to represent the minor child in the proceedings, terminating grandparent visitation rights, and denying all relief sought by the maternal grandparents. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Farrah Sanchez, plaintiff-appellee, is the mother of a minor child. Darla and Ray Easley are the child's maternal grandparents. Prior to the institution of this litigation, Mrs. Sanchez appears to have had an amicable relationship with the Easleys allowing frequent and unrestricted visitation between her minor child and the Easleys. On August 10, 2011, Mrs. Sanchez, along with her husband, Brandon Sanchez, and her mother-in-law and father-in-law, Cathy Sanchez and David Sanchez, respectively, filed a petition for temporary restraining order and preliminary and permanent injunctions against Darla Easley. The parties continued litigation for approximately two more years with regards to the injunctions, as well as visitation of the minor child. A trial on the merits was held on October 28, 2013, whereby the trial court terminated the Easleys' grandparent visitation rights, and denied all other relief sought by the Easleys. A judgment reflecting the court's order was signed on December 17, 2013.

On February 12, 2014, Mrs. Easley filed a motion for appeal from the December 17, 2013 judgment. On appeal, Mrs. Easley asserts that the trial court erred in: 1) not appointing an attorney to represent the minor child in the proceedings; 2) terminating the visitation rights of the maternal grandparents and

denying any make up visitation; and 3) failing to award reimbursement to the Easleys for expenses incurred for travel for visitation, when visitation was denied.²

LAW AND ANALYSIS

The trial court is vested with vast discretion in matters of child visitation, and its determination regarding same is entitled to great weight and will not be disturbed on appeal unless an abuse of discretion is clearly shown. **Babin v. Babin**, 2002-0396, (La. App. 1st Cir. 7/30/03), 854 So.2d 403, 408, writ denied, 2003-2460 (La. 9/24/03), 854 So.2d 338, cert. denied, 540 U.S. 1182, 124 S.Ct. 1421, 158 L.Ed.2d 86 (2004).

It is well settled that an appellate court cannot set aside a trial court's findings of fact in the absence of manifest error or unless those findings are clearly wrong. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). If the findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse those findings even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Id.**

Legal Representation of Child

Mrs. Easley argues in brief that the trial court erred in denying her motion to appoint an attorney for the child. Louisiana Revised Statute 9:345 states in pertinent part:

A. In any child custody or visitation proceeding, the court, upon its own motion, upon motion of any parent or party, or upon motion of the child, may appoint an attorney to represent the child if, after a contradictory hearing, the court determines such appointment would be in the best interest of the child. In determining the best interest of the child, the court shall consider:

(1) Whether the child custody or visitation proceeding is exceptionally intense or protracted.

² We find this appeal timely under La. Code Civ. P. art. 2087A due to the fact that this matter involves a grandparent seeking visitation of a child. Louisiana Code of Civil Procedure articles 3942 and 3943 do not apply in this matter as the visitation being sought is not in conjunction with a proceeding for divorce or annulment of marriage. Accordingly, we recall the previous rule to show cause issued by this court regarding its timeliness and maintain the appeal.

(2) Whether an attorney representing the child could provide the court with significant information not otherwise readily available or likely to be presented to the court.

(3) Whether there exists a possibility that neither parent is capable of providing an adequate and stable environment for the child.

(4) Whether the interests of the child and those of either parent, or of another party to the proceeding, conflict.

(5) Any other factor relevant in determining the best interest of the child.

B. The court shall appoint an attorney to represent the child if, in the contradictory hearing, any party presents a prima facie case that a parent or other person caring for the child has sexually, physically, or emotionally abused the child or knew or should have known that the child was being abused.

The trial court's oral reasons for judgment found no prima facie case of abuse; therefore, it was completely within the court's discretion whether to appoint an attorney to represent the child. The trial court in this case found that the best interest of the child did not require appointment of an attorney to represent the child. After reviewing the record, we find that the trial court's determination is well-founded. The evidence of record does not support the presence of any of the factors which would tend to weigh in favor of the appointment of an attorney for the child as set out in La. R.S. 9:345.

Visitation

A grandparent may be granted reasonable visitation rights if the court finds that it is in the best interest of the child. La. Civ. Code. art. 136B. In determining the best interest of the child, the court shall consider the following five factors:

- (1) The length and quality of the prior relationship between the child and the relative.
- (2) Whether the child is in need of guidance, enlightenment, or tutelage which can best be provided by the relative.
- (3) The preference of the child if he is determined to be of sufficient maturity to express a preference.

(4) The willingness of the relative to encourage a close relationship between the child and his parent or parents.

(5) The mental and physical health of the child and the relative.

La. Civ. Code. art. 136D.

Mrs. Easley argues that the trial court erred in “terminating” her visitation rights. (We note that our review of the record shows no previous executed judgment of visitation between Appellant and Appellees that this judgment terminated; however, we note that there was an agreement between the parties that Mrs. Easley would have visitation with the minor child one Saturday per month for approximately six hours.) After review of the record, we find that the trial court did not abuse its discretion in denying or terminating Mr. and Mrs. Easley’s visitation with the minor child.

The first factor, the length and quality of the prior relationship between the child and the relative, is clearly established by the record. It is undisputed that from the time the minor was born, until around the age of four, there was frequent and unrestricted contact between the minor child and the Easleys. The child and Mrs. Sanchez even lived with Mrs. Easley for a time, during which Mrs. Easley provided stability, financial support, and a good home for the child. Based on the evidence whereby Mrs. Sanchez continued to allow the child to visit and vacation with Mrs. Easley, up until the point of this litigation, there was a healthy relationship and bond between grandparents and grandchild.

In analyzing the second factor, we find no basis in the record before us, that the child is in need of guidance, enlightenment, or tutelage which can best be provided by the grandparents. Furthermore, the third factor, the preference of the child is inapplicable due to the young age of the child at issue.

The fourth factor, the willingness of the relative to encourage a close relationship between the child and her parents is the most problematic factor in light of the facts of this case. The trial court's comments regarding this factor after hearing the testimony from all the witnesses is quite telling. The court stated that "considering the tension and stress that exists between [Mrs. Sanchez] and [Mrs. Easley]" it was not in the child's best interest to continue visitation with the Easleys, but in fact was detrimental to the child. The record reflects that prior to Mrs. Sanchez's marriage to her husband, she enjoyed a fairly amicable relationship with the Easleys, and their active involvement in the minor child's life was welcomed by Mrs. Sanchez. However, at some point during Mrs. Sanchez's relationship with her husband, Mr. Sanchez, certain events occurred which caused Mrs. Sanchez and Mrs. Easley's relationship to deteriorate rapidly, culminating in Mrs. Sanchez's refusal to allow Mrs. Easley visitation with the minor child. The record reveals two poignant events that led to the current animosity between the parties.

In July, 2011, Mrs. Easley contacted the Department of Children and Family Services in order to investigate potential claims of child abuse by Mr. Sanchez. There was no finding of abuse, and visitation between Mrs. Easley and the minor child ceased for a period of almost a year. An agreement for visitation was made between the parties in May of 2012.

The exchanges of the minor child between the Easleys and the Sanchezes became more tense, culminating in the attempted exchange on December 29, 2012. On that date, Mrs. Easley became upset when Mrs. Sanchez did not come to the exchange, but instead sent her mother-in-law, Cathy Sanchez, and Mr. Sanchez in her place, and Mrs. Easley did not allow the child to go with the Sanchezes as their agreement required. Instead, Mrs. Easley proceeded to take the child to several

hospitals, because she alleged the child was in pain and requested to be taken. At the hospitals, Mrs. Easley would imply that the child may be suffering from abuse. After more findings of no abuse, Mrs. Easley contacted the child's biological father, who took custody of the child and returned the child to Mrs. Sanchez.

Having considered the foregoing factors, we find no error in the trial court's judgment terminating the visitation rights of Darla and Ray Easley with this child. Although the Easleys may have played a positive and significant role in the child's early life, the record reveals that circumstances have changed. Most significantly, the relationship between Mrs. Easley and Mrs. Sanchez deteriorated to such an extent that it is no longer in the best interest of the child to continue a relationship with the Easleys. Therefore, we find no error in the trial court judgment terminating the Easleys' grandparent visitation rights.

Reimbursement Claims

Mrs. Easley's last issue is reimbursement she claims is due to her for amounts spent on visitation when visitation was attempted but denied. The trial court ruled, based on the parties' testimony as well as the evidence before the court, that no prior judgment regarding visitation between the Easleys and the minor child existed. Although the parties attempted to operate under an oral agreement, there was no legal obligation for Mrs. Sanchez to allow visitation to occur if she did not so desire. Because no obligation existed, no claims can come from its alleged violation. Thus, we find that the trial court did not err in finding that the Easleys were not entitled to reimbursement from Mrs. Sanchez for expenses resulting from visitation which was attempted but denied.

CONCLUSION

Having found no error below, and that continued visitation with Darla and Ray Easley is not in the best interest of the minor child at issue, we affirm the

judgment of the trial court denying the Easleys' motion to appoint an attorney on behalf of the minor child, terminating the Easleys' grandparent visitation rights, and denying all other relief sought by the Easleys.

All costs of this appeal are to be assessed to Darla Easley.

AFFIRMED.

**FARRAH SANCHEZ, BRANDON
SANCHEZ, CATHY SANCHEZ,
AND DAVID SANCHEZ**

**STATE OF LOUISIANA
COURT OF APPEAL**

VERSUS

FIRST CIRCUIT

DARLA EASLEY

2014 CU 0916

CRAIN, J. dissents.



I respectfully disagree with the majority's finding that the appeal is timely. Louisiana Code of Civil Procedure article 3943 is not limited to the appeal of a visitation or custody order rendered in conjunction with a proceeding for a divorce or annulment of marriage. *See State, In Interest of Skinner*, 342 So. 2d 1129, 1129-30 (La. App. 2 Cir. 1977) (appeal from judgment maintaining grandparents' custody was untimely under Article 3943); *Richard v. Comeaux*, 11-620 (La. App. 3 Cir. 7/13/11), 2011WL2714190, p. 1 (appeal from judgment awarding sole custody to grandparents was untimely under Article 3943); *Beagle v. Beagle*, 95-168 (La. App. 3 Cir. 5/31/95), 657 So. 2d 422, 423 (appeal from judgment granting visitation to grandparents was untimely under Article 3943). I see no reason to create a distinction between grandparents seeking custody or visitation outside of a divorce proceeding and a parent seeking custody or visitation within a divorce proceeding. The shortened appeal period provides stability for the child, and that need is present regardless of whether the dispute is between two parents or between a grandparent and a parent. For this reason, I would dismiss the appeal as untimely.