

[Cite as *Williams v. Gonzalez*, 2010-Ohio-3993.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

AISSA N. WILLIAMS, : APPEAL NO. C-090483
Plaintiff-Appellant, : TRIAL NO. DR-0301504

vs. : *DECISION.*

CHRISTOPHER GONZALEZ, :
Defendant. :

AISSA N. WILLIAMS, : APPEAL NO. C-090484
Plaintiff-Appellant, : TRIAL NO. DR-0702121

vs. :

DEONDRE LAMAR WILLIAMS, JR., :
Defendant. :

Civil Appeals From: Hamilton County Court of Common Pleas, Domestic Relations
Division

Judgments Appealed from Are: Affirmed in Part, Reversed in Part, and Cause
Remanded in C-090483; Affirmed in C-090484

Date of Judgment Entry on Appeal: August 27, 2010

William F. Oswald, Jr., and Stephan D. Madden Co., LPA, for Plaintiff-Appellant,

Kacy C. Eaves, for Aissa Kinnett, Third-Party Movant-Appellee.

Please note: This case has been removed from the accelerated calendar.

CUNNINGHAM, Presiding Judge.

{¶1} In these consolidated appeals, plaintiff-appellant Aissa N. Williams (“Aissa”) appeals the judgments of the Hamilton County Court of Common Pleas, Domestic Relations Division, granting custody of Aissa’s four children to third-party movant Aissa Kinnett (“Kinnett”), the maternal grandmother of the children.

{¶2} Aissa contends that the domestic relations court lacked jurisdiction to enter a custody order related to her son Jeremiah, who is not a child of her marriages terminated by the court. She also argues that the domestic relations court abused its discretion by admitting into evidence testimony concerning events that had occurred before the entry of the prior custody decrees and by failing to retain her designation as the residential parent of her children.

{¶3} We reverse the trial court’s judgment with regard Jeremiah, but we affirm the trial court’s judgment with regard to Aissa’s other three children.

I.

{¶4} Aissa and Christopher Gonzalez were married in March 2001. Adriana Marie Gonzalez was born on June 18, 2001. The Gonzalezes’ marriage was tumultuous and was often marked by infidelity and domestic violence. Kinnett was supportive of her daughter and helped to care for Adriana. During the marriage, Aissa gave birth to Jeremiah Gonzalez, who is not the biological child of Gonzalez but is, according to Aissa, the child of an unnamed Mexican man.

{¶5} Aissa and Gonzalez separated in early 2003, and she filed for divorce in June 2003. Aissa’s marriage to Gonzalez was terminated on October 5, 2004, and in the decree she was named the residential parent and legal custodian of Adriana.

{¶6} Before the divorce was finalized, Aissa met Deondre Lamar Williams Sr. Aissa gave birth to Williams's son, Deondre Williams Jr., a.k.a. Isaiah Gonzalez, on July 22, 2004. The relationship between Aissa and Williams was a violent one, yet they married on February 4, 2005. The violence continued during the marriage, often necessitating police and court intervention. More than ten actions were filed against Williams as a result of his violence.

{¶7} In a January 9, 2006, petition for a domestic-violence civil protection order in the case numbered DV-0600040, Aissa made serious allegations against Williams: "He hit me in the leg and threatened to beat me up all day the next day until I got my daughter back from my mom. He also said if my mom tried to take my kids from me he would shoot me, my mom, my dad, my brother, and himself in the face. He has also beat me several times before, even to where I had to go to the hospital. I've pressed charges on him in the past for domestic violence." The court issued an ex parte civil protection order as a result of Aissa's petition, but Aissa failed to appear for the full hearing, and this resulted in the dismissal of the petition. Aissa then returned to Williams with the children, who had witnessed the violence and were afraid of Williams. This cycle was repeated many times.

{¶8} The Hamilton County Department of Job and Family Services ("JFS") became involved in investigating the children's well-being. In April 2007, Aissa signed a "voluntary agreement for care," and the three children were placed with Kinnett as part of a safety plan implemented by JFS. Aissa had supervised visits under the plan.

{¶9} After the safety plan was implemented, Aissa allowed Williams to move back into her home. On October 7, 2007, Williams and Aissa, who was then pregnant with Williams's child Amariah, became involved in a physical altercation

over a trivial matter. Williams repeatedly struck Aissa with a table leg, breaking her wrist and causing other injuries, and allegedly kept her in a bathroom by threatening to kill her and her children. Williams was arrested, charged with domestic violence and kidnapping, and incarcerated at the Hamilton County Justice Center pending a trial.

{¶10} Shortly thereafter, Aissa filed for a divorce from Williams and retrieved her children from Kinnett in contravention of the safety plan. The Hamilton County assistant prosecutor assigned to the domestic-violence and kidnapping case suspected that Aissa was communicating with Williams in jail and bringing the children to visit him, thus compromising the state's case against Williams. The prosecutor confirmed this after subpoenaing Aissa's recorded telephone conversations with Williams and the jail's visitor log.

{¶11} As part of a plea bargain, Williams was convicted only of domestic violence in April 2008 and sentenced to two years' incarceration with credit for time served. Amariah was born in May 2008. Aissa's uncontested divorce from Williams was finalized in November 2008. Aissa was named the residential parent and legal custodian of Deondre and Amariah. But Aissa continued to communicate with Williams, who was then incarcerated at a state penal institution.

{¶12} On December 16, 2008, in the domestic relations court, Kinnett filed a third-party motion for custody of Adriana in the case numbered DR-0301504 and for custody of Deondre and Amariah in the case numbered DR-0702121. Her petition included disturbing allegations against Aissa. The court ordered a custody investigation.

{¶13} Parenting specialist Gina Iames conducted a thorough investigation that involved all four of Aissa's children, including Jeremiah. As part of her

investigation, she evaluated Aissa's and Kinnett's home environments, met with the children, and interviewed and observed both Aissa and Kinnett with the children. James listened to many of the recorded telephone conversations between Aissa and Williams. She determined that Aissa "lacks parenting skills, * * * does not seem to understand the children's development needs and is focused on herself [rather] than on the children's best interest." She concluded that "[i]f the children continue to remain under her care, the children are at grave risk emotionally, mentally, and educationally. Furthermore, it is likely that [Aissa] will resume her violent and dysfunctional relationship with Mr. Williams as soon as he is released from prison." Thus, she "strongly recommended that the children be placed under the custody of their maternal grandmother, Mrs. Kinnett, as soon as possible."

{¶14} James, Aissa, Kinnett, and several others testified at a two-day custody hearing held in June 2009. Kinnett presented as evidence recordings of over 100 telephone conversations between Aissa and Williams made while Williams was incarcerated. In these conversations, Aissa had phone sex with Williams, possibly in the presence of her children; pervasively used abusive, sexually charged, violent, and profane language when communicating with the children or with others in the presence of the children; fostered the relationship between Williams, herself, and the children; and revealed her willingness to break the law, to lie, and to have others lie for her to avoid any adverse consequences.

{¶15} The last recorded conversation took place on December 3, 2008, at 10:42 p.m. Aissa's young children were awake with her.

{¶16} Kinnett also presented as evidence Aissa's MySpace page, where she was known as "sexy nurse Williams." Aissa's children were depicted in images with an "oral aura," and these pictures were placed in a slide show with two sexually

explicit graphics, one of which was labeled “real men suck pussy.” According to Middletown, Ohio, Police Detective Fred Shumake, Kinnett’s expert on “social networking, MySpace, and [the] risk to children regarding sexual matters,” the images of Aissa’s children were displayed in a “sexualize[d] manner,” creating a “pedophile’s dream.”

{¶17} Aissa testified that she was working full time as a nurse’s aide; was residing in an adequately sized apartment; was providing for the children, who were receiving passing grades in school; was attending church; and was no longer addressing the children with vulgar language. She claimed that someone else had posted the “nasty stuff” on her MySpace page.

{¶18} Aissa acknowledged accepting over 100 telephone calls from Williams and visiting him with the children while he was incarcerated. But she claimed that she never had any intention of resuming her relationship with Williams. She contended that she had last spoken to Williams on Thanksgiving in 2008 and that she had voluntarily ended that communication.

{¶19} But Aissa was repeatedly impeached on cross-examination. She admitted that she had spoken to Williams after Thanksgiving and that her telephone service had been disconnected in December 2008 because she could not afford to pay her delinquent bill. Moreover, the witnesses that Aissa presented to support her claim for retaining custody were also repeatedly impeached.

{¶20} After reviewing the evidence, the trial court found that a change in circumstances had occurred, and that a modification was necessary to serve the best interests of the children. The court “adopted” the report of parenting specialist James. The court placed Adriana and Jeremiah in the custody of Kinnett in the case numbered DR-o301504; the court placed Deondre and Amariah in the custody of

Kinnett in the case numbered DR-07002121; and in both cases, the court allowed Aissa supervised visitation with the children following a two-month period of separation.

II.

{¶21} In her first assignment of error, Aissa contends that the domestic relations court lacked jurisdiction to make a custody determination with regard to Jeremiah in the case numbered DR-0301504. We agree.¹

{¶22} A trial court that makes an order of custody for a minor child in a divorce action retains continuing jurisdiction over matters relating to the custody, care, and support of that child.² The continuing jurisdiction of the court is invoked by a motion filed in the original action.³

{¶23} The original order of custody in the case numbered DR-0301504 involved only Adriana. The original order of custody in the case numbered DR-0702121 involved only Deondre and Amariah. Thus, the domestic relations court had continuing jurisdiction over Adriana in case number DR-0301504 and over Deondre and Amariah Williams in case number DR-0702121. Kinnett properly invoked the domestic relations court's continuing jurisdiction over the custody of those children by filing her third-party motion to modify custody in the original actions.

{¶24} But Jeremiah was not a child of either marriage that was terminated by the divorce decrees. Thus, the domestic relations court could not and did not

¹ At oral argument, Aissa clarified that this assignment of error regarding lack of jurisdiction applied only to Jeremiah.

² *Corbett v. Corbett* (1930), 123 Ohio St. 76, 174 N.E. 10.

³ Civ.R. 75(J).

issue an order of custody pertaining to him from which it could have exercised continuing jurisdiction. And Kinnett did not include Jeremiah in either motion for custody. Rather, she filed a separate custody action in the juvenile court. Therefore, we conclude that the domestic relations court lacked continuing jurisdiction over matters relating to Jeremiah's custody.

{¶25} Accordingly, we sustain the first assignment of error, and we reverse the judgment of the court in the case numbered DR-0301504 to the extent that it purported to place Jeremiah in the custody of Kinnett.

III.

{¶26} We now address Aissa's remaining assignments of error, which challenge the change in custody affecting Adriana, Deondre, and Amariah.

{¶27} In her second assignment of error, Aissa argues that the trial court failed to properly limit the change-in-circumstances inquiry for a custody modification under R.C. 3109.04(E)(1)(a). This statute provides, in relevant part, that "[t]he court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree."⁴

{¶28} The prior decrees implicated by the statute in this case were the 2003 divorce decree awarding custody of Adriana to Aissa and the 2007 divorce decree awarding custody of Deondre and Amariah to Aissa. The trial court allowed testimony concerning facts that had arisen before those prior decrees in considering how to make its change-in-circumstances determination. We find no error by the

⁴ R.C. 3109.04(E)(1)(a).

court in doing so because custody was uncontested in both of Aissa's divorces, and the challenged facts therefore were not known to the court at the time of the prior decrees. Accordingly, R.C. 3109.04(E)(1)(a) did not prohibit the court from considering those facts. We overrule the second assignment of error.

{¶29} In her third assignment of error, Aissa argues that the trial court's decision not to retain her as residential parent of the children was contrary to the manifest weight of the evidence and was therefore an abuse of discretion. According to Aissa, the record contains "overwhelming" evidence that she is a good mother and that the children are progressing in school without any disciplinary problems.

{¶30} Decisions concerning the change of custody of minor children will not be reversed absent a showing that the trial court abused its discretion.⁵ In this case, the record contains ample evidence, based on facts that were unknown to the trial court at the time of the prior decrees naming Aissa as the residential parent and legal custodian for Adriana, Deondre, and Amariah, that a significant change had occurred in the circumstances of the children and Aissa. The court learned not only that Aissa had resumed her relationship with the violent former spouse who had beaten her in front of her children, but also that she had exposed her children to sexually inappropriate situations, encouraged violence between the children, and, at a minimum, verbally abused her children.

{¶31} Likewise, the record contains ample evidence that a modification was in the best interest of the children, and that the harm likely to be caused by a change of environment was outweighed by the advantages of the change of environment to the children. The court followed the conclusions and recommendations of the

⁵ *Perz v. Perz* (1993), 85 Ohio App.3d 374, 375-376, 619 N.E.2d 1094, citing *Miller v. Miller* (1988), 37 Ohio App.3d 71, 523 N.E.2d 846.

parenting specialist. On this record, we cannot say that the trial court abused its discretion by terminating Aissa's designation as the residential parent and legal custodian of Adriana, Deondre, and Amariah, and by committing these children to the custody of Kinnett. Accordingly, we overrule the third assignment of error and affirm the judgment of the trial court in the case numbered DR-0702121.

IV.

{¶32} In the appeal numbered C-090483, we affirm that part of the trial court's judgment in case number DR-0301504 awarding custody of Adriana to Kinnett. But we reverse the judgment to the extent that it determines Jeremiah's custody and remand this case to the trial court for a modification of its judgment consistent with the terms of this decision. In the appeal numbered C-090484, we affirm the trial court's judgment in case number DR-0702121 awarding custody of Deondre and Amariah to Kinnett.

Judgment accordingly.

SUNDERMANN and HENDON, JJ., concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.