

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

In re A.G.

Court of Appeals No. OT-11-003

Trial Court No. 20630010

DECISION AND JUDGMENT

Decided: November 2, 2012

* * * * *

Howard C. Whitcomb, III, for appellant.

Timothy W. Hallett and Eric K. Nagel, for appellee.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, A.G., appeals from a decision of the Ottawa County Court of Common Pleas, Juvenile Division, granting her father, appellee, unsupervised visitation.

For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} A.G. was born in December 1995. Her parents divorced in 2001. On September 14, 2009, father filed a motion seeking unsupervised visitation with A.G.

A.G. filed her own motion on October 14, 2009, to terminate all visitations with her father. The court granted father's motion and denied A.G.'s motion. She now appeals setting forth the following assignments of error:

I. In denying A.G.'s request to attend and participate in the trial proceedings, the trial court violated her due process rights as guaranteed by the 14th Amendment of the U.S. Constitution and Article 1, Section 16, of the Ohio Constitution.

II. The trial court abused its discretion in ordering unsupervised visitation between A.G. and her father as said order was contrary to the best interests of the minor child, A.G. and was against the sufficiency and/or manifest weight of the evidence adduced at trial.

III. The minor child was deprived the due process of the law in that the court-appointed guardian ad litem failed to zealously represent the best interests of A.G. pursuant to the requirements of R. 48 of the Ohio Rules of Superintendence.

IV. The trial court denied A.G. the protections afforded by R.C. Chapter 2151 and Superintendence Rule 48 by denying her request to re-appoint a different guardian ad litem to represent her best interests.

{¶ 3} In her first assignment of error, A.G. contends that the court violated her due process rights when denying her motion to attend the hearing for her father's motion for unsupervised visitation. In support, A.G. cites Juv.R. 27(A)(1) which states in pertinent

part: “the court may exclude the general public from any hearing, but may not exclude either of the following: (a) persons with a direct interest in the case[.]” A.G. naturally contends that, as the subject of the motion, she is a person with a direct interest.

{¶ 4} However, Juv.R. 1(C)(4) states that the Juvenile Rules of Procedure do not apply “in proceedings to determine parent-child relationships * * *.” A proceeding to determine parent-child relationships includes the determination of custody and visitation rights. *Hook v. Gahris*, 2d Dist. No. 2011-CA-36, 2011-Ohio-6491. Thus, appellant’s reliance on Juv.R. 27 is faulty.

{¶ 5} In *Hanna v. Hanna*, 177 Ohio App.3d 233, 2008-Ohio-3523, 894 N.E.2d 355 (10th Dist.), a minor child filed his own objections to a magistrate’s decision regarding a shared parenting matter after his father withdrew his objections. In finding that the trial court did not err in failing to rule on the child’s objections, the court stated:

The question is not whether the minor child has a personal interest in the proceedings relating to custody modification; without question, the minor child has an interest in proceedings that involve such significant matters as where the child resides or spends his time. * * * According to the plain language in R.C. 3109.04(E)(1)(b), only plaintiff and defendant, as the minor child’s parents, could invoke the court’s continuing jurisdiction to modify a prior custody decree and grant shared parenting. The right of action is not in the child; it is in his parents and is jurisdictional. *Id.* at ¶ 13-14.

{¶ 6} In this case, A.G. was represented by an attorney who conveyed her wishes and she was able to express her wishes to the court in an in-camera interview. She also was scheduled to testify at the hearing. For all of the foregoing reasons, we find that the trial court did not err in denying her motion to be present at the hearing. A.G.'s first assignment of error is found not well-taken.

{¶ 7} In her second assignment of error, A.G. contends that the court erred in granting her father's motion for unsupervised visitation. A.G. contends that the decision was contrary to her best interest and was against the sufficiency and/or manifest weight of the evidence.

{¶ 8} In determining whether the trial court's determination, that the best interests of the children would be served by a modification of visitation, was against the manifest weight of the evidence, a reviewing court "does not undertake to weigh the evidence and pass upon its sufficiency but will ascertain from the record whether there is some competent evidence to sustain the findings of the trial court." *Ross v. Ross*, 64 Ohio St.2d 203, 204, 414 N.E.2d 426 (1980). The juvenile court has broad discretion as to visitation issues. *In re S.K.G.*, 12th Dist. No. CA2008-11-105, 2009-Ohio-4673, ¶ 21. The juvenile court's decision, therefore, is subject to reversal only where there is an abuse of discretion. *In re A.M.*, 12th Dist. No. CA2005-11-492, 2006-Ohio-5986, ¶ 8. Thus, a reviewing court may not merely substitute its judgment for that of the trial court absent a showing that the decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 9} R.C. 3109.051 governs matters of visitation. *Braatz v. Braatz*, 85 Ohio St.3d 40, 44-45, 706 N.E.2d 1218 (1999). Therefore, when ordering a modification of visitation the court must consider the enumerated factors in R.C. 3109.051(D) as well as any other factor in the child's best interest. R.C. 3109.051(D). R.C. 3109.051(D) states, in pertinent part:

In determining whether to grant parenting time to a parent pursuant to this section or [other sections], * * * in establishing a specific parenting time or visitation schedule, the court shall consider all of the following factors: prior interrelationships with parents and relatives; the geographical distance between parents; the available time of both the child and parent(s); age of the child; child's adjustment to home, school and community; wishes and concerns of the child; health and safety of the child; child's time with other siblings; mental and physical health of all parties; each parent's willingness to reschedule missed parenting time; whether the residential parent has denied the other parent's rights to parenting time; whether either parent is establishing a residence outside the state; and any other factor in the best interest of the child.

{¶ 10} A.G. contends that the court, in awarding unsupervised visitation, ignored evidence of her unhealthy relationship with her father and ignored her father's mental health issues. We disagree.

{¶ 11} The record reflects a long, contentious history between the parents involving the custody of their daughter. The trial court in this case meticulously detailed this history in a 63 page judgment entry. To summarize, A.G. has shifted back and forth between her parents during her life and has even spent some time in foster care. Both parents, on separate occasions, have absconded with A.G. to foreign countries in an attempt to circumvent whatever custody order was in place at the time. Both parents have faced legal consequences in the past as a result of their actions.

{¶ 12} In 2002, father moved to North Carolina. A.G. sometimes expressed an interest in moving to North Carolina and sometimes maintained that she did not want to go at all. The record shows that father, throughout A.G.'s life, has consistently made an effort to stay in touch with her, despite impediments created by mother and appellant's stepfather. As for father's mental health issues, the court considered the various psychological evaluations done of father over the years. Generally, he was found to be mistrustful. He was found to have good intentions but very insecure about his relationship with his daughter. He tends to see himself as the victim in this matter. He has anger issues and exhibits a strong need to control situations.

{¶ 13} The guardian ad litem ("GAL") in this case noted that A.G. could not cite any reason why she did not want to visit her father. She further noted that A.G. exhibits no fear of her father.

{¶ 14} James Bedra, a retired social worker experienced in issues involving minors, testified that in 2009, he was appointed by a magistrate to be a supervisor for

visitation between A.G. and her father. Each visitation period was approximately eight hours long. He was compensated for his time by A.G.'s father and mother. Appellant was 13 years old at this time. They went on an out of town trip, went shopping and rode go-carts for the three visits he supervised. He testified that A.G. and her father appeared to engage in positive interaction. Though A.G. sometimes seemed reluctant to participate in the visits, Bedra testified that in his opinion, she was exhibiting normal teenage girl behavior. Her demeanor generally became more agreeable as the visits wore on. Bedra testified that A.G. did not seem to fear her father and he testified that he saw nothing inappropriate in the way father acted towards A.G. He, in fact, found him to be a loving father and he did not believe A.G. was at risk in father's presence. Bedra testified that after the three visits, he saw no need for their visits to be further supervised and he thought it would be unethical to accept any more money to supervise their visitations.

{¶ 15} Stephanie Skrbina, a social worker, testified that she also acted as a supervisor during A.G.'s visitations with her father. Before her first visit with A.G. and father, she met with appellant's mother and stepfather. They told Skrbina that father was dangerous, that there was domestic violence between father and mother, and they believed he had hired a hit man. They also told her that appellant's stepfather wanted to adopt A.G.

{¶ 16} Despite obstacles in scheduling supervised visits, obstacles Skrbina attributed to mother, Skrbina accompanied A.G. and father on two visits. In her opinion, these visits showed evidence of a positive relationship between father and daughter.

Skrbina testified that she saw no signs of mental illness in father and that A.G. did not appear to fear her father. They went shopping and they went to a recreational water park. Like Bedra, Skrbina noted that A.G. was withdrawn at the beginning of the visits but she gradually let her guard down and fully participated. She further noted that father was very patient with A.G. when the girl acted defiant or accused her father of being cheap or even when she called him a jerk. Skrbina concluded that after supervising two visits, she felt there was no more need for supervised visitation.

{¶ 17} Adrienne Finley, a social worker, testified that she supervised a seven hour visit with A.G. and father. They took a boat ride and played games at a pizza arcade. Like the other two witnesses before her, Finley testified that A.G. was initially withdrawn but later opened up and talked with her father. Finley testified that she seemed to enjoy the visit and that there was no indication that she feared her father. She also testified that father's behavior towards A.G., even when she was being standoffish, was appropriate.

{¶ 18} In the judgment entry granting father's motion for unsupervised visitation, the judge noted that A.G. was 15 years old and that the last order designating mother as the residential parent was issued when A.G. was 10 years old. The court recognized that A.G. had expressed an unwillingness to foster a relationship with her father, however, the court pointed out that in the past, she has demonstrated love and affection for her father which can be seen in the drawings A.G. gave to her father when she was younger and by the many photographs of the two together. As of 2009, A.G. and her father have not

talked on the phone, nor has there been any face-to face contact between the two. The court further stated:

A large portion of the evidence presented at this 2010 trial was a rehashing of the events that occurred from 1995 through 2005. It is time to put these matters to rest. It would be in [A.G.'s] best interest that she has a relationship with each of her parents that is encouraged by [mother, father and stepfather]. This court is not without empathy for [A.G.]. She is an only child caught in a web of parental hostility and ongoing conflict. It is this court's belief that she has been influenced by her mother's fear and paranoia, her father's need to control, and her stepfather's full acceptance of mother's position with no intent of acting as a conciliatory intermediary. Each of these parents is responsible for the conflict they have created for themselves, and particularly, for their child. Unfortunately, due to the inability of these parents to work out their own differences, this court must impose its judgment upon this family.

{¶ 19} After a thorough review of the record, especially the testimony presented at the hearing, we cannot conclude that the trial court abused its discretion in its visitation determination. Accordingly, A.G.'s second assignment of error is found not well-taken.

{¶ 20} A.G.'s third and fourth assignments of error will be addressed together. A.G. contends that the GAL failed to honestly and zealously represent her best interests. As such, the court erred in denying her motion to discharge the GAL.

{¶ 21} The GAL testified that from the beginning of her involvement in this case she was very concerned about A.G.'s well-being. This was because of the extreme allegations that both of A.G.'s parents had made and because of the kidnapping history. She therefore spoke to as many people who knew the parties as she possibly could so she could get an accurate grasp of the situation. She spoke to A.G. many times and A.G. was always adamant that she hated her father and did not want to see him. However, A.G. was never able to give a reason as to why she hated her father. The GAL testified that before she could recommend that the relationship between A.G. and her father be severed, she needed something more concrete than just A.G.'s blanket statements of hatred that the GAL did not find credible. The GAL testified that in her opinion, both father and mother believe they are justified in their positions but as a consequence, they are forcing A.G. to choose sides, something the GAL did not believe A.G. should have to do. The GAL did not exonerate either father or mother from fault but she concluded, based on the success of the supervised visits; it appeared to her that there was a relationship between A.G. and her father that was worth rekindling.

{¶ 22} The role of the GAL is to investigate the child's situation and then ask the court to do what the guardian feels is in the child's best interests. *In re Baby Girl Baxter*, 17 Ohio St.3d 229, 232, 479 N.E.2d. 257 (1985). "Because a guardian ad litem owes his or her principal duty to the court, a guardian may properly reject the child's expressed wishes and support a contrary position, one that the guardian believes is in the child's best interests." *In re Alfrey*, 2d Dist. No. 01 CA0083, 2003-Ohio-608, ¶ 18.

{¶ 23} We find nothing in the record to suggest that the GAL failed to adequately protect A.G.'s best interests. Rather, the record shows that after a thorough investigation, the GAL reached a different conclusion than A.G. would have liked. This does not constitute reversible error. A.G.'s third and fourth assignments of error are found not well-taken.

{¶ 24} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas, Juvenile Division, is affirmed. It is ordered that appellant pay the costs of this appeal, pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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