COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1660 **Cir. Ct. No. 2006PA4493**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN RE THE PATERNITY OF J.M.G.

STATE OF WISCONSIN,

PETITIONER,

V.

APRIL GRIFFIN,

RESPONDENT-APPELLANT,

MATTHEW K. SEBULIBA,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL D. GOULEE, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. April Griffin appeals from an order that awarded Matthew Sebuliba sole legal custody and primary physical placement of the parties' son, Jesse. She also challenges the ruling changing Jesse's name and a contempt ruling that occurred during the custody proceedings. For the reasons discussed below, we conclude that the contempt ruling is now moot and affirm the rest of the circuit court's decisions.

BACKGROUND

¶2 The State initiated the underlying paternity action to establish that Sebuliba was Jesse's father. After genetic testing and acknowledgment by both parents, a court commissioner entered a judgment of paternity, directed the appointment of a guardian ad litem to consider custody issues, and issued a temporary order awarding primary physical placement to Griffin, with supervised visitation for Sebuliba. The commissioner also changed Jesse's name from Jesse Moses Peter Emmanuel Griffin to Jesse Moses Sebuliba-Griffin, based on a partial oral stipulation that if the last name were to be hyphenated, it should be Sebuliba-Griffin. After Griffin failed to comply with the temporary visitation provisions, the court commissioner slightly amended the temporary order and warned Griffin that interference with a placement order could become a factor in future custody decisions.

¶3 Griffin sought a de novo hearing on the custody and placement decisions, and also sought to reinstate Jesse's original name including the additional middle names. She and two of her sisters each testified that Sebuliba had attacked Griffin while she was pregnant and had threatened to take Jesse to Africa. Griffin also claimed that Sebuliba had ignored a breathing problem Jesse had during his one supervised placement and otherwise neglected him.

¶4 Sebuliba filed a cross-motion for a de novo hearing on both the custody and name change issues, requesting that the child's name be changed to Jesse Moses Griffin-Sebuliba. At the hearing, Sebuliba denied committing any abuse against Griffin or Jesse and provided police reports backing up his claim that Griffin had actually been the one arrested for attacking him and damaging his property. He also denied neglecting Jesse or threatening to take him to Africa, other than a plan to visit his mother at some point in the future after the child was five or older, and testified about Griffin's efforts to block his attempts at exercising his visitation rights. The testimony of the responding police officer at the domestic incident and the visitation supervisor who had monitored Sebuliba's placement both supported Sebuliba's version of events rather than Griffin's.

¶5 After hearing the testimony, the trial court rejected Griffin's claims of abuse and stated that it intended to grant joint legal custody and shared physical placement. However, it noted that it needed additional information on the home situations of the parties before setting a visitation schedule. It granted Sebuliba's request to change the child's name to Jesse Moses Griffin-Sebuliba, commenting that Jesse Moses Peter Emannuel Griffin was "too many names." When the guardian ad litem pointed out that she could not complete her investigation until Griffin gave her a home address, the court ordered Griffin to give the GAL her address so that a home study could be conducted, or in the alternative, to produce the child the following day so that he could be placed in foster care or with the father. After Griffin repeatedly refused to provide her address or produce the child, the court held her in contempt.

¶6 At a series of hearings held over the next few days, the court repeatedly advised Griffin, both in person and through newly appointed counsel, that she could purge her contempt at any time by producing the child. The court

also entered a written order to that effect, as well as an order and a warrant directing law enforcement to find the child and turn him over to Sebuliba with notification to child services. A month later, when Griffin had still not produced the child, Sebuliba moved for a written order granting him sole legal custody and primary placement to assist law enforcement agencies in finding the child. In response, the court issued a written decision stating in relevant part that "the court hereby orders that sole legal custody and primary physical placement of the child at issue, Jesse Moses Griffin-Sebuliba, shall be with the Respondent father Matthew K. Sebuliba," and that the "Respondent mother April H. Griffin is granted supervised periods of placement, which must be supervised through an independent agency." It is that order that Griffin appeals.[1]

DISCUSSION

¶7 As a threshold matter, Sebuliba challenges this court's jurisdiction over the appeal on the ground that the written order granting him sole legal custody and primary physical placement is not a final, appealable document. He contends that the order is not final because the trial court has at various times explicitly contemplated granting Griffin periods of physical placement if and when she ever purges herself of contempt.

[1] Although the notice of appeal gives the date of the order as June 19, 2007 — the day on which the hearing on Sebuliba's motion for a written order was held — it is apparent from the description of the order in the notice of appeal that Griffin is challenging the written custody and placement order entered on June 25, 2007, following the hearing, as well as prior oral contempt rulings.

¶8 We agree that our jurisdiction under WIS. STAT. RULE 809.10(4) (2005-06)[2] is limited to final judgments and final orders. However, we disagree that the custody and placement order at issue here is not final. A judgment or order is final when it disposes of the entire matter in litigation as to one or more of the parties. WIS. STAT. § 808.03(1); *see also* ***Tyler v. Riverbank***, 2007 WI 33, ¶17, 299 Wis. 2d 751, 728 N.W.2d 686. Here, the matters in litigation on the circuit court's de novo review were the parties' competing requests for sole legal custody and physical placement, and their dispute over the child's name. The court's order granted sole legal custody and primary physical placement to Sebuliba, and also implicitly resolved the name change issue by referring to the child as Jesse Moses Griffin-Sebuliba. The fact that the order did not specify a current visitation schedule for Griffin but allowed the possibility that Griffin could petition for unsupervised visitation in the future does not alter the fact that, on its face, the order disposed of the issues which were before the court at the time the order was entered. We are therefore persuaded that we have jurisdiction over the appeal as of right. We are further persuaded that we have jurisdiction to consider the court's contempt ruling within the context of the present appeal as "derivative of and attached to" the underlying action. *See* ***State ex rel. James L.J. v. Circuit Court***, 200 Wis. 2d 496, 507-11, 546 N.W.2d 460 (1996) (discussing relationship of contempt rulings to underlying actions in context of judicial substitution requests).

¶9 Griffin raises seven issues on appeal. We will address each in turn.

[2] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶10 First, Griffin claims that the court lacked personal jurisdiction over her because she was never served with a summons and petition, only a motion regarding the custody issues. However, the record contains an affidavit of service, showing that the State did, in fact, serve Griffin with the summons and petition for the underlying paternity action. The custody proceedings were part of that action under the paternity statute, and did not require a separate summons and complaint. *See* WIS. STAT. § 767.89(3)(b). There is therefore no factual basis in the record for Griffin's personal jurisdiction claim on appeal. Furthermore, because Griffin never challenged the service affidavit or otherwise raised the issue of personal jurisdiction in the circuit court, she waived any lack-of-personal-jurisdiction claim. *See* ***L.R.E. v. R.E.J.***, 168 Wis. 2d 209, 213, 483 N.W.2d 588 (Ct. App. 1992).

¶11 Second, Griffin contends that the trial court failed to consider relevant statutory factors for custody and placement under WIS. STAT. § 767.41(2) and (5), focusing primarily on her own allegations that Sebuliba had engaged in domestic abuse against her and had failed to take any interest in the child.[3] However, the trial court explicitly rejected her testimony regarding those allegations. Instead, the trial court accepted the testimony of Sebuliba, the police officer, and the social worker that Griffin herself had been the one to engage in assaultive behavior during the domestic incident, and that Sebuliba had not been able to engage in a relationship with Jesse because Griffin had sabotaged Sebuliba's attempted visitation. Credibility determinations by a trial court acting

[3] Griffin also seems to contend in this section of her brief that the trial court should have applied a presumption in her favor because the court was actually changing the de facto placement which had been in effect prior to the paternity determination. She provides no legal support for this position.

as the fact-finder are not reviewable by this court. ***State v. Oswald***, 2000 WI App 3, ¶47, 232 Wis. 2d 103, 606 N.W.2d 238.

¶12 The circuit court did not expressly discuss all of the custody and placement factors under WIS. STAT. § 767.41(2) and (5). However, the parties did not present evidence as to each factor. Consequently, the court necessarily based its decision on the information that it had before it. The court's discussions at several hearings make plain that it believed the best interest of the child was to maintain a relationship with both parents, and that Griffin's actions demonstrated that she would undermine Sebuliba's relationship with Jesse if she could. The court then cited WIS. STAT. § 767.41(5)(am)11. — "whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party" —as the primary basis in its written decision for awarding sole legal custody and primary physical placement to Sebuliba. The determination of legal custody and placement issues are committed to the circuit court's discretion and we will reverse only when there was an erroneous exercise of discretion. ***Brandt v. Witzling***, 98 Wis. 2d 613, 618, 297 N.W.2d 833 (1980). It was well within the trial court's discretion to determine that Griffin's custodial interference and inability to cooperate were the overriding statutory factors in this case.

¶13 Third, Griffin contends that the trial court failed to follow the proper statutory procedures before imposing the contempt sanction. Intentional disobedience of a court order constitutes contempt of court. *See* WIS. STAT. § 785.01(1)(b). A contempt finding may result in a punitive sanction designed to punish the offending person in order to uphold the authority of the court and/or a remedial sanction imposed for the purpose of terminating a continuing contempt. WIS. STAT. § 785.01(2) and (3). The court may impose a punitive contempt sanction of up to thirty days confinement in a summary manner based upon

conduct which occurs before it in open court. WIS. STAT. §§ 785.03(2) and 785.04(2)(b). However, a court may impose a remedial contempt sanction of up to six-months confinement only upon the motion of a person aggrieved by the contempt other than the court itself, and only after notice and an evidentiary hearing to determine that the failure to obey the court order was intentional. Sections 785.03(1)(a) and 785.04(1)(b); ***Evans v. Luebke***, 2003 WI App 207, ¶¶23-25, 267 Wis. 2d 596, 671 N.W.2d 304.

¶14 Here, Griffin's refusals to provide her address to the GAL at the de novo hearing or to produce the child the next day would each qualify as disobedience of a court order. The refusals were made in open court. The court apparently chose to impose remedial rather than punitive sanctions. However, it did so sua sponte at the de novo hearing without providing Griffin with advance notice that contempt sanctions were being sought and without holding a separate evidentiary hearing to make the requisite findings that Griffin had intentionally violated the court's orders.[4]

¶15 The court's actions do raise a number of questions as to the procedural validity of the contempt order. However, we also note that Griffin has not alleged how she was prejudiced by any procedural defects because she does not actually dispute that she intentionally violated the court's orders and does not explain what evidence she would have presented at an evidentiary hearing. In any case, recent correspondence to this court indicates that Griffin is no longer being held in jail on the contempt order. Because Griffin has already obtained release

[4] Although the court convened a series of hearings to allow Griffin opportunities to purge her contempt, it does not appear that it ever took sworn testimony or other evidence to support the requisite factual contempt findings at any of them.

from jail, we conclude that the contempt issue is now moot and we will not address it further.

¶16 Griffin's fourth claim on appeal seems to center on her assertion that "[a]n unwed father cannot win primary custody over a mother who is a good parent," in conjunction with evidence which she believes shows her to be a good parent. This claim entirely ignores Wisconsin's paternity statutes, which provide a presumption of joint custody and not only allow but require a court to provide primary placement to an unwed father when it would be in the child's best interest to do so, after considering all of the statutory factors. Furthermore, much of the evidence that Griffin claims the trial court should have considered includes information such as medical records, which were not presented at the hearing, and her own rejected testimony. We have already explained that the trial court properly applied the relevant statutory factors here, based on the information it had been provided.

¶17 Fifth, Griffin claims the trial court erred in changing her son's name from Jesse Moses Peter Emmanuel Griffin to Jesse Moses Griffin-Sebuliba because the court did not follow the procedures set forth in WIS. STAT. § 786.36 and discussed in ***State v. Charles R.P.***, 223 Wis. 2d 768, 590 N.W.2d 21 (Ct. App. 1998). As Sebuliba correctly points out, however, ***Charles R.P.*** was decided before the enactment of WIS. STAT. § 767.89(3m) — the provision under which the circuit court was acting here. *See* 2001 Wis. Act 16 § 3793m (creating name change provision in paternity statute effective Sept. 1, 2001); 2005 Wis. Act 443 § 218 (renumbering provision effective June 6, 2006). Under § 767.89(3m), a paternity judgment may include "an order changing the surname of the child to a surname that consists of the surnames of both parents separated by a hyphen," and

the provisions of § 786.36 explicitly do not apply. Therefore, the court plainly had the authority to change Jesse's last name to Griffin-Sebuliba.

¶18 Sixth, Griffin argues that the trial court erred in changing Jesse's placement less than two years after the paternity judgment was entered, without any substantial change in the parties' circumstances. *See* WIS. STAT. § 767.451(1)(a). However, the custody and placement provisions contained in the paternity judgment were clearly the temporary rulings of the court commissioner, not the final custody and placement decision by the court. Therefore, the presumption against modifying a final judgment relating to placement without a substantial change in circumstances does not apply.

¶19 Finally, Griffin argues that the trial court erred by disregarding the federal immigration and nationality act and immigration status of Sebuliba. Essentially, she claims that a U.S. court cannot grant paternity status to a father who is not a citizen of this country. However, she has not provided any relevant authority for this position. In addition, she did not raise this issue before the trial court. We will therefore not address it further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992); ***State v. Hayes***, 167 Wis. 2d 423, 425, 481 N.W.2d 699 (Ct. App. 1992).

¶20 In sum, we affirm the custody and placement decisions of the circuit court as well as the trial court's name change order.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.