

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

A.P.

Appellant

Court of Appeals Nos. WD-13-058
WD-13-063
WD-13-079

v.

Trial Court No. 04 JF 0174

J.Z.

Appellee

DECISION AND JUDGMENT

Decided: March 31, 2015

* * * * *

A.P., pro se.

Ann M. Baronas, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is a consolidated pro se appeal from several judgments of the Wood County Court of Common Pleas, Juvenile Division, all of which arise from the parties' ongoing dispute regarding custody of their minor child. Appellant/father, A.P., appeals from the following: the trial court's denial of his motion for a change of custody, denial

of appellant's motion for contempt filed against appellee/mother, J.Z., an order to pay partial guardian ad litem fees, denial of a motion requesting modification of an order for counseling, and a finding of contempt with sanctions. For the following reasons, the judgments of the trial court are affirmed.

{¶ 2} Litigation between the parents over custody of their minor child, K., has been ongoing in the trial court and this court since February 2004. As the trial court noted in its most recent judgment entry, since that date 57 separate substantive motions or requests for substantive relief have been filed by or on behalf of appellant father. Forty-six of those substantive motions have been filed since September 2012, when father began to appear pro se in these proceedings. Fourteen substantive motions have been filed by or on behalf of appellant mother.

{¶ 3} During the course of these proceedings, father has filed four separate appeals with this court; mother has filed two. On January 15, 2013, father filed an action against the trial court requesting removal of the guardian ad litem as well as "other relief" in the United States District Court for the Northern District of Ohio, which was dismissed on January 29, 2013. On April 15, 2013, appellant filed an affidavit of disqualification with the Ohio Supreme Court requesting the removal of the juvenile court judge; the Supreme Court dismissed the affidavit on April 22, 2013.

{¶ 4} Following the first trial in this matter in November 2006, mother was designated as the residential parent and legal custodian of the parties' minor child. A second trial was held in June 2009, after appellant father filed a motion to modify

parental rights and responsibilities. The trial court found no change in circumstances and that it was in the best interest of the child for the previous order to remain in effect.

Father filed a timely appeal and this court affirmed the judgment of the trial court in *A.P. v. J.Z.*, 6th Dist. Wood No. WD-09-063, 2010-Ohio-5502.

{¶ 5} Thereafter, in an effort to resolve further motions, the parties entered into a consent judgment entry on November 30, 2011. As a result, mother remained residential parent and legal custodian with some adjustments made to father's parenting time so that the parents had essentially equal time with the child.

{¶ 6} The third and most recent trial, held July 23 and 24, 2013, addressed 16 motions. The trial court heard testimony from father and mother, the minor child's stepfather, paternal grandparents, mother's counselor, the child's counselor, a prior co-parenting counselor for both parents, and K.'s guardian ad litem. On August 12, 2013, the trial court filed a 72-page judgment entry, again denying father's request for a change of custody and ruling on all other pending motions as well. Of note, the trial court ordered that neither party discuss the case with the child, that the child continue in counseling with the current counselor, that mother continue in counseling, and that father engage in counseling with a clinical psychologist of his choice. (The trial court's findings are discussed in more detail below.)

{¶ 7} Father filed a notice of appeal from the August 12, 2013 judgment (WD-13-058). He subsequently filed a notice of appeal from the trial court's entry of August 26, 2013, which apportioned the guardian ad litem fees 80 percent to father and 20 percent to

mother (WD-13-063), and from the November 13, 2013 entry regarding the trial court's finding of contempt against father for failure to assure the minor child attended counseling and was available for parenting time with mother (WD-13-079). Father also filed an appeal from the November 4, 2013 judgment which denied paternal grandparents' motion to intervene, terminated a prior order giving temporary custody to father and ordered father to undergo counseling (WD-13-075). Appellant's appeal in case No. WD-13-075 was dismissed sua sponte on September 16, 2014, because the subject matter was not addressed in any of the briefs filed by appellant.

{¶ 8} All appeals were consolidated by this court on April 1, 2014, under case No. WD-13-058. Father has filed three briefs, each with distinct assignments of error, which will be addressed separately below.

I. Appellant/Father's Brief Filed October 9, 2013, in Case No. WD-13-063

{¶ 9} In this brief, father sets forth the following as his sole assignment of error.

Appellant's Assignment of Error Number One:

The trial court erred and abused its discretion by not equally and fairly dividing the guardian ad litem fees.

{¶ 10} Father argues that the fees should be divided equally and complains that mother has not paid her portion. Father challenges one of the trial court's orders regarding guardian ad litem fees in which he was ordered to pay 80 percent of the fees approved because, as the trial court noted, father had filed in excess of 80 percent of the motions and notices before the court which had necessitated the involvement of a

guardian. The trial court also indicated that it had considered testimony as to the respective incomes of the parties in issuing the order.

{¶ 11} A trial court is granted broad discretion with respect to guardian ad litem appointments and orders for payment of their fees. *Gabriel v. Gabriel*, 6th Dist. Lucas No. L-08-1303, 2009-Ohio-1814, ¶ 15; Juv.R. 4(G). Therefore, a trial court's appointment of a guardian ad litem and award of fees must be upheld absent an abuse of that discretion. *Id.* An abuse of discretion occurs when the trial court's judgment is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 12} We have reviewed the record and find no abuse of discretion evident in the trial court's orders regarding the parties' respective responsibilities for payment of the guardian's fees. Accordingly, father's sole assignment of error as set forth in his brief filed October 9, 2013, case No. WD-13-063, is not well-taken.

II. Appellant/Father's Brief Filed February 4, 2014, in Case No. WD-13-079

{¶ 13} In this brief, father sets forth the following two assignments of error:

Plaintiff-Appellant's Assignment of Error Number One:

The trial court erred and abused its discretion by holding plaintiff-appellant in contempt relating to the minor child's first counseling session with AJA Behavioral is against the manifest weight of the evidence.

Plaintiff-Appellant's Assignment of Error Number Two:

The trial court erred and abused its discretion by holding plaintiff-appellant in contempt relating to the defendant-appellee's visitation time with the minor child is against the manifest weight of the evidence.

{¶ 14} It is unclear from father's arguments in this brief exactly which of many judgment entries he is appealing. Father refers at one point to a November 4, 2013 judgment entry that was issued in response to paternal grandparents' motion to intervene and father's objection to a temporary custody order. However, according to father's notice of appeal in this case, he is actually appealing from a judgment entry filed November 14, 2013. In that judgment entry, following oral hearing on the matter, the trial court found father in contempt of the court's November 4, 2013 order for failing to have the child attend a November 7 counseling appointment of which he was aware, and for failing to have the child ready to comply with mother's school pick-up time without reasonable cause. The trial court stated that it was "painfully clear that father will try anything, claim any technicality, profess any misunderstanding, and blame the wishes of the child, any reason, to prevent visitation with the natural mother."

{¶ 15} In support of his first assignment of error in this brief, father asserts that he did not willfully violate the court's order. Father argues that he did not have sufficient notice of the date scheduled for the child's counseling session and was ill on that day. Father also states that he was confused as to which order he was to follow with regard to visitation. He further claims that K. had refused to visit with mother for several reasons

and states that to force K. to go with mother would be “against any health professional’s recommendation.” Father discusses at length what he perceives as K.’s deteriorating relationship with mother and asserts that he has been acting to protect the safety of the child and should be “afforded, in certain limited circumstances, the privilege to refuse a court-ordered visitation.”

{¶ 16} An appellate court reviews a trial court’s contempt rulings for an abuse of discretion. *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 75, 573 N.E.2d 62 (1991).

{¶ 17} We are unable to find that the trial court’s findings of contempt as set forth in its November 13, 2013 judgment entry were unreasonable, arbitrary or unconscionable and therefore an abuse of discretion. Accordingly, father’s first and second assignments of error in this brief are not well-taken.

III. Appellant/Father’s Brief Filed February 4, 2014, in Case No. WD-13-058

{¶ 18} In this brief, father sets forth five assignments of error.

Plaintiff-Appellant’s Assignment of Error Number One:

The trial court erred and abused its discretion by ruling that the best interest of the child is for the defendant-appellee to remain the legal custodian of the minor child and is against the manifest weight of the evidence.

Plaintiff-Appellant’s Assignment of Error Number Two:

The trial court erred and abused its discretion to disregard correcting the errors made by the trial court.

Plaintiff-Appellant's Assignment of Error Number Three:

The trial court erred and abused its discretion by ordering that the best interest for the child was for the current counselor, Cyd Laurel, remain as counselor and refusing to appoint the minor child's previous counselor Sandra Tebbe is against the manifest weight of the evidence and not in the best interest of the child.

Plaintiff-Appellant's Assignment of Error Number Four:

The trial court erred and abused its discretion by ordering plaintiff-appellant to see a psychologist is against the manifest weight of the evidence and his religion.

Plaintiff-Appellant's Assignment of Error Number Five:

The trial court erred and abused its discretion by not holding defendant-appellee in contempt concerning the court orders relating to the minor child's activities and is against the manifest weight of the evidence.

{¶ 19} We will first address father's second assignment of error as set forth in this brief wherein he appears to assert that the trial court erred in 2011, when the parties entered into a consent agreement concerning custody of their child, by not appointing an attorney for the child in addition to the guardian ad litem already appointed. However, this issue was not raised prior to the consent agreement. Furthermore, by the time of the most recent trial (the subject of this appeal) K. was represented by counsel. Father has failed to identify any error on the part of the trial court with respect to this issue or show

how the child's rights were not protected. Accordingly, this argument is without merit and father's second assignment of error set forth in this brief is not well-taken.

{¶ 20} In support of his third assignment of error in this brief, father argues that the trial court abused its discretion by ordering that the child continue treatment with Cyd Laurel, the current counselor. Father asserts that the child should have been permitted to treat with Sandra Tebbe, the previous counselor, in accordance with the child's wishes. Father states that K. complained about Laurel and that Laurel was having a negative effect on the child. Father also claims that Laurel exhibited a bias toward him which was "tearing down" his relationship with his child.

{¶ 21} The trial court addressed this issue in its August 12, 2013 judgment entry, noting that in the consent entry filed in November 2011, both parents agreed to have Laurel serve as the child's counselor. Laurel testified at length about her therapeutic relationship with K., which was going well until early July 2013, when K. reported that she wanted to sever her relationship with Laurel. The counselor testified that K. appeared to be very anxious and conflicted, which Laurel believed was a result of having significant access to paternal information. Laurel added that the therapeutic relationship would improve if the parents would stop talking to K. about their adult beliefs and interpretations and if father would not share with K. information about court proceedings and contents of the court orders. The trial court found that there was no substantive evidence presented at the July 2013 hearing that Laurel had exhibited any bias toward either parent, and concluded that any claim of bias made by father was based on Laurel's

not agreeing with everything the child and father wanted. The trial court further concluded that Laurel's testimony at the hearing focused on "what really matters here – [the child]." Our review of the testimony from the hearing as to this issue revealed nothing more than a few brief comments from father and his father regarding K.'s having expressed a preference for the original counselor. There was no evidence of Laurel's unsuitability or of any bias toward father on her part. Further, the record reflects that both parents agreed to discontinue the original counselor's services in July 2011, and to begin ordered services with Cyd Laurel. It appears to this court that the trial court carefully considered this issue and, accordingly, we find father's third assignment of error not well-taken.

{¶ 22} In support of his fourth assignment of error in this brief, father argues that the trial court erred by ordering him to see a psychologist. Father asserts that there was no evidence before the court that he "has any issues" related to the child or appellee, that he is the only party trying to cooperate with everyone, and that he has followed all orders of the trial court. Further, father states that "psychology is against [his] religion and faith."

{¶ 23} After hearing extensive testimony from both parties, the trial court found that there was no evidence presented as to whether father was actively participating in counseling. Father had stated, in fact, that he would participate in counseling only with a counselor acceptable to him and to the child. The trial court noted that by the terms of the November 30, 2011 judgment entry by consent, both parents had recognized the need

for successful counseling and agreed to immediately engage in communication/co-parenting counseling with Dr. David Cislo. The trial court further found that Dr. Cislo had diagnosed both parents with adjustment disorder with mixed features. The doctor testified, however, that he had difficulty scheduling appointments with father and some degree of difficulty keeping father on task as to the relevant topics being discussed. After a relatively brief period of time, Dr. Cislo reported that no progress was being made and terminated the counseling as unsuccessful. The trial court found that father presented no evidence that he was taking “voluntary, ongoing, appropriate, proactive steps” to deal with the mental health issues associated with this case.

{¶ 24} In its 72-page judgment entry filed August 12, 2013, the trial court ordered both parents to contact counselor Laurel to “schedule as many sessions for [the child] as well as with Father and/or Mother as Ms. Laurel feels are appropriate to facilitate a prompt ‘reunification’ between the child and mother.” Further, the trial court ordered that “both Plaintiff/Father and Defendant/Mother shall continue or engage in individual counseling with a clinical psychologist of their choosing for purposes of dealing with their diagnosed conditions and the ongoing parenting situation at hand.”

{¶ 25} We find that this order reflects the parties’ prior consent to counseling and is a result of the trial court’s reasonable efforts to address K.’s best interest. Accordingly, father’s fourth assignment of error in this brief is not well-taken.

{¶ 26} In his fifth assignment of error in this brief, father asserts that the trial court abused its discretion by failing to hold mother in contempt for violating certain court

orders relating to K.'s activities. We note that father filed many motions for contempt over a period of several years, all of which were ruled on by the trial court in the August 12, 2013 judgment entry. Father does not specify, but it appears he is arguing against the trial court's denial of contempt motions filed November 28, 2012, as well as May 17 and June 11, 2013. Apparently, father's concerns arose from mother's alleged repeated failure to transport K. to regularly-scheduled horseback riding lessons and other related activities as arranged by father.

{¶ 27} As to the November 28, 2012 motion for contempt, the trial court found there was insufficient evidence presented that mother had summarily failed to let K. participate in horseback riding activities at the time the motion was filed. As to the motions filed May 17 and June 11, 2012, the trial court noted mother had acknowledged that for a period of time from late 2012 through approximately May 2, 2013, she did not transport K. to certain horseback riding lessons that took place during her parenting time. Mother estimated that between twenty and thirty lessons may have been missed. The trial court further noted mother testified that an initial reason for not taking K. to riding lessons was the distance of approximately 70 miles each way. Mother testified that in order to arrive on time for lessons scheduled on a school night, K. would have to do her homework and eat in the car and would not return home until late in the evening. Therefore, mother determined it was not in K.'s interest to attend every lesson. The trial court also noted that father eventually moved K.'s riding lessons to a more convenient location. The evidence suggested that once that occurred, K. was able to attend more

lessons. The trial court concluded that, based on the evidence presented and the overall circumstances existing at the time, there was no clear and convincing evidence that appellee had failed to comply with certain orders of the court to an extent constituting contempt of court.

{¶ 28} An appellate court reviews a trial court's contempt rulings for an abuse of discretion. *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 75, 573 N.E.2d 62 (1991). Based on the extensive testimony heard by the trial court as to problems surrounding K.'s transportation to the riding lessons, we find that the trial court's denial of father's three motions to find mother in contempt was not unreasonable, arbitrary or unconscionable and therefore not an abuse of discretion. Accordingly, father's fifth assignment of error in this brief is not well-taken.

{¶ 29} Lastly, we consider father's first assignment of error in this brief in which he asserts that the trial court's denial of appellant's motion for a reallocation of parental rights and responsibilities constituted an abuse of discretion.¹ We note that in doing so, the trial court ordered the resumption of all of the time-sharing provisions that were set forth in the parties' November 30, 2011 judgment entry by consent. As the trial court noted, on July 21, 2011, the parties reached an agreement on numerous issues relating to K. Both parents were represented by counsel at that time and both, under oath,

¹ In addition, the trial court denied appellant's September 14, 2012 motion for reconsideration; his September 24, 2012 supplemental memorandum in support of motion to reallocate parental rights and responsibilities, and his September 26, 2012 motion for temporary custody. The trial court also denied appellee's July 8, 2013 motion to modify parental rights and responsibilities.

acknowledged their understanding of the agreement and their willingness to abide by it. The agreement was eventually journalized through a judgment entry by consent filed on November 30, 2011. In part, the judgment entry by consent continued prior orders of the court which had named mother the residential parent and legal custodian of K. It further set forth a time-sharing plan which provided both parents with essentially equal time with K.

{¶ 30} R.C. 3109.04(E)(1)(a) establishes in relevant part,

The 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, and that the modification is necessary to serve the best interests of the child.

{¶ 31} Additionally, it is well-established that in order to be considered a requisite change in circumstances so as to trigger best interest analysis, an asserted change must be demonstrated to be, "of substance, not slight or inconsequential." *Davis v. Flickinger*, 77 Ohio St.3d 415, 674 N.E.2d 1159 (1997). Further, appellate review of disputed change in circumstances determinations is conducted on an abuse of discretion basis. Therefore, such decisions may not be reversed absent a finding that the disputed

judgment was unreasonable, arbitrary or unconscionable. *Blakemore*, 5 Ohio St.3d at 219, 450 N.E.2d 1140.

{¶ 32} In the August 12, 2013 judgment entry from which father now appeals, the trial court initially found that a change of circumstances had occurred as to K. and mother which warranted considering whether a change of residential parent status would be in K.'s best interest. Father does not challenge the change of circumstances finding. As to the best interest finding, father now asserts that K.'s relationship with her mother had been deteriorating for quite some time and that the child did not wish to reside with her mother. Father asserts that K. has been verbally berated by mother and was physically assaulted, events which father claims are common. He argues that K. does not feel safe with her mother.

{¶ 33} In making its determination as to the child's best interest, the trial court noted that K., then 11 years old, had expressed to the court in two separate in-camera interviews before the most recent hearing that she wished to reside primarily with her father. The trial court further noted that K.'s preferences were clearly aligned with father's preferences and concluded from the evidence presented that father had, directly and indirectly, a significant amount of influence over K.'s feelings. The trial court found that K. distrusts her guardian ad litem, as does father.

{¶ 34} In his report and through his testimony, K.'s guardian pointed out—correctly, in the trial court's estimation—that the child is “lost in the battle which Father has waged and trapped in the history of his anger about the failures of the system

to give him what he believes is best for his child.” The guardian concluded that it was not best for the child to be estranged from her mother or have her life “book-ended in never-ending court battles.” The guardian recommended that mother remain K.’s residential parent and expressed his belief that K. and her mother should resume contact as promptly as possible. (K. had been in father’s care temporarily for several weeks at the time of the hearing.)

{¶ 35} The trial court found, based on the testimony, that for most of her life K. has resided with and interacted with her mother and mother’s family and that to disregard the positive impact mother has had on the child would be to ignore common sense. The court also noted the testimony of the child’s counselor, who stated that K.’s relationship with her mother was “connected and loving.” As to the child’s relationship with father, the trial court found that the interaction and relationship “can best be described as intense.” The court concluded that a credible argument could be made that father’s intense interaction with K. and the ongoing litigation primarily pursued by father has in part resulted in K.’s belief that living with father would be best for her.

{¶ 36} The trial court also considered at length K.’s relationships with her stepfather, her half-brother, her paternal grandparents, and her performance in school. The trial court noted K.’s counselor’s testimony that K. possesses what the counselor referred to as “an unusual amount of paternally driven opinions – opinions which for the most part support Father’s positions.”

{¶ 37} The trial court found it significant that, while mother had voluntarily engaged the services of a counselor, there was no evidence presented that father was participating in any active counseling. The trial court noted that, rather than taking voluntary and appropriate steps to deal with mental health issues involved in this case, father took the position that he would participate in counseling only with a counselor acceptable to him and to the child. Father’s litigious behavior in multiple courts “with no established legal or factual basis” in this matter also was reviewed by the trial court.

{¶ 38} According to the trial court, father’s rationale that his efforts are needed to protect K. from what he sees as an endless number of allegedly corrupt, unprofessional and biased individuals and entities involved in this case—i.e., anyone who has disagreed with father’s position—“simply is not true and stands as a sad excuse by Father to pursue his ongoing litigation.”

{¶ 39} Finally, the trial court found that father had presented insufficient credible evidence to justify a finding that any harm likely to be caused by a change of environment at this time would be outweighed by the advantages of the change of environment. To change the current residential parent status at this point, the trial court reasoned, given what had been factually established, “would only intensify [K.’s] and Father’s wrongly developed opinion that [K.’s] and/or Father’s wishes at any given moment should be determinative of all issues.” The trial court therefore found that the current residential parent order of the court—modified to allow for a transition period

monitored by a mental health professional—was in K.’s long-term best interest given the facts presented at the hearing.

{¶ 40} The summary set forth above represents the most salient points found in the trial testimony and the court’s lengthy decision. We have carefully considered the record of proceedings from below to determine if there is any indication that the trial court’s finding that modification of the prior custody decree would not be in K.’s best interest constitutes an abuse of discretion. Contrary to father’s arguments, we find that the trial court thoughtfully and meticulously considered all evidence relevant to custody of K. In its detailed and well-reasoned decision, the trial court considered and applied, where relevant, each and every factor set forth in R.C. 3109.04(F)(1)(a)-(j). We find nothing in the record or in the August 12, 2013 judgment entry to indicate that the trial court’s decision was unreasonable, arbitrary or unconscionable. Accordingly, appellant/father’s first assignment of error in this brief is not well-taken.

{¶ 41} On consideration whereof, the following judgments of the Wood County Court of Common Pleas, Juvenile Division, entered on the following dates, are affirmed: August 12, 2013, WD-13-058; August 26, 2013, WD-13-063; and November 14, 2013, WD-13-079. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgments affirmed.

A.P. v. J.Z.
C.A. Nos. WD-13-058
WD-13-063
WD-13-079

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

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.