WESTLAW

Original Image of 192 So.3d 544 (PDF)

192 So.3d 544
District Court of Appeal of Florida,
Fourth District.

Moore v. Yahr
District Court of Appeal of Florida, Fourth District. May 11, 2016 192 So.3d 544 41 Fla. L. Weekly D1132 *(Approx. 4 pages)*

Michael Joseph **MOORE**, Appellant,

v.

Lauren Ashley **YAHR**, Appellee.

No. 4D15–1757.
May 11, 2016.

Synopsis

Background: Paternity action was brought. The Seventeenth Judicial Circuit Court, Broward County, Timothy L. Bailey, J., entered final judgment of paternity that required unmarried father's timesharing with minor child to be supervised. Father appealed.

Holdings: The District Court of Appeal, Gerber, J., held that:
1 trial court could not order supervised timesharing without setting forth the specific steps by which father could establish unsupervised timesharing, and
2 trial court could not make father solely responsible for the costs of supervision.

Affirmed in part, reversed in part, and remanded with directions.

West Headnotes (3)

Change View

1 **Child Custody** Judgment
Trial court could not enter paternity judgment that required unmarried father's timesharing with minor child to be supervised without setting forth the specific steps by which father could establish unsupervised timesharing; trial court was required to provide father with the key to reconnecting with his child.

2 **Child Custody** Supervised visitation
Child Support Expenses and financial strain
Trial court that ordered that unmarried father's timesharing with minor child be supervised could not make father solely responsible for the costs of supervision; costs of supervision were a part of the childrearing expenses that needed to be addressed as part of the parties' child support obligations, and order implicitly, and improperly, conditioned father's timesharing on his payment of the timesharing supervisor.

3 **Child Custody** Supervised visitation
Child Support Expenses and financial strain
The trial court should normally treat the costs of supervision of timesharing as part of the child support calculations.

**544* Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Timothy L. Bailey, Judge; L.T. Case No. FMCE 14–007369.

Attorneys and Law Firms

SELECTED TOPICS

Child Custody

Visitation
Parent Weekend Visitation of Child

Alimony, Allowances, and Disposition of Property

County Respecting Custody of Minor Child of Divorced Parents

Secondary Sources

P270 QUALIFIED DOMESTIC RELATIONS ORDERS

The 401(k) Hdbk. ¶270

...A primary goal of the Employee Retirement Income Security Act of 1974 (ERISA) is to increase the security of retirement plans so that, when an employee retires, the benefits promised may be delivered. ...

Denial or restriction of visitation rights to parent charged with sexually abusing child

1 A.L.R.5th 776 (Originally published in 1992)

...This annotation collects and discusses the cases where the courts have considered the question whether a parent's visitation rights should be denied or restricted on the basis of an allegation, and any...

P2020 STATE LAWS

Mandated Health Benefits - COBRA Guide ¶2020

...The state of Alabama currently has no law that requires group health policies to offer continuation coverage. The state of Alaska currently has no law that requires group health policies to offer conti...

See More Secondary Sources

Briefs

Brief for Respondent on the Merits

1965 WL 115591
Lucy C. SIMONS, Petitioner, v. MIAMI BEACH FIRST NATIONAL BANK, As Executor of the Estate of Sol Simons, Deceased, Respondent.
Supreme Court of the United States
Feb. 23, 1965

...At the threshold, it is imperative to bring this case into precise and proper focus. This is not a case of a sister state refusing to recognize, contrary to the constitutional requirements of full fait...

Brief of the Domestic Violence Project Inc./Safe House (Michigan); the Pennsylvania Coalition Against Domestic Violence, Inc.; the Florida Coalition Against Domestic Violence, the Iowa Coalition Against Domestic Violence, and the Missouri Coalition A gainst Domestic Violence as Amici Curiae in Support of Respondent.

1999 WL 1186737

Supreme Court of the United States
Dec. 13, 1999

...FN*Counsel of Record for Amici Curiae[Additional Counsel Listed Inside] Amici are comprised of various non-profit state organizations and coalitions dedicated to addressing the legal and societal probl...

Brief for the Petitioner

Gerald W. Adams of Florida Family Law Clinic LLC, Fort Lauderdale, for appellant.

Catherine L. Roselli, Fort Lauderdale, for appellee.

Opinion

GERBER, J.

The father appeals from the circuit court's final judgment of paternity in which the court ordered that the father's timesharing with his child be supervised. The father argues that the order is deficient in four respects: (1) it fails to set forth specific steps by which the father may establish unsupervised timesharing; (2) it improperly delegates to the supervisor the choice of location for the supervised timesharing; (3) it improperly makes him solely responsible for the costs of supervision; and (4) it is not based upon competent, substantial evidence.

On the second and fourth arguments, we affirm without discussion. On the first and third arguments, we reverse, as discussed below.

1 **545* On the father's first argument, we recently reversed a similar judgment "insofar as it failed to provide the specific steps required for the wife to reestablish contact with her child beyond supervised timesharing." *See Witt–Bahls v. Bahls,* No. 4D14–152, 193 **So.3d** 35, 37, 2016 WL 1587413, at *1 (Fla. 4th DCA Apr. 20, 2016). We reasoned:

> The failure to set forth any specific requirements or standards for the alleviation of timesharing restrictions is error. This applies to both the prevention of timesharing altogether and to restrictions. "Essentially, the court must give the parent the key to reconnecting with his or her children. An order that does not set forth the specific steps a parent must take to reestablish time-sharing, thus depriving the parent of that key, is deficient...." *Grigsby v. Grigsby,* 39 **So.3d** 453, 457 (Fla. 2d DCA 2010)....
>
> ....
>
> We do not mean to suggest that the trial court was obligated to set out every minute detail of the steps to reestablish unsupervised timesharing. However, if the trial court determines that anger management therapy or a substance abuse program, for example, would be more appropriate than merely general counseling, it must so specify, along with a timeframe. The requirement is for the [parent] to walk out of the courtroom knowing that if [he or] she satisfactorily accomplishes relatively specific tasks, [he or] she will be able to reestablish unsupervised timesharing. "[A]bsent such benchmarks being identified by the trial court, the 'temporary' nature of the suspension of the [parent's] timesharing will become illusory." *Grigsby,* 39 **So.3d** at 457 n. 1.

Witt–Bahls, **192 So.3d** at 39, at *3–4 (other internal citations and quotation marks omitted).

Consistent with *Witt–Bahls,* we reverse the final judgment here and remand for the circuit court to amend the final judgment to provide the father with the specific steps required to establish unsupervised timesharing. As no transcript exists of the hearing which led to the final judgment, another hearing on this issue may be necessary. *Cf. id.* at ——, *4 ("We believe that modification of the order is possible from the record alone and do not suggest that a new trial is necessary.").

2 3 On the father's third argument, the mother concedes that "[u]nder Florida law, the [father] is correct that the trial court should normally treat the costs of supervision as part of the child support calculations." We agree with that statement, which is consistent with our sister court's holding in *Perez v. Fay,* 160 **So.3d** 459 (Fla. 2d DCA 2015):

> Also troubling is the portion of the amended supplemental final judgment that requires the Mother to be solely responsible for the costs of her supervised time-sharing, thus tying her visitation with her daughter to her financial status. As this court has stated, a parent's visitation rights may not be conditioned on the payment of the parent's financial obligations. Instead, *the expenses of visitation are part of the parties' childrearing expenses that must be addressed as part of the parties' child support obligations.*
>
> Here, the amended supplemental final judgment implicitly conditions the Mother's time-sharing on her payment of the time-sharing supervisor by making her solely responsible for payment of the time-sharing supervisor's charges. While the Father contends that the judgment does not directly condition time-sharing on payment, we cannot help but note that the judgment gives the time-sharing supervisor the discretion **546* to set the time-sharing schedule and to unilaterally suspend it. The reality of these two provisions is that

> the Mother's time-sharing with her daughter will simply not occur unless she pays the time-sharing supervisor. Therefore, this portion of the final judgment must also be reversed.

Id. at 466 (emphasis added; internal citations, quotation marks, and brackets omitted).

Consistent with *Perez,* because the final judgment here implicitly conditions the father's timesharing on his payment of the timesharing supervisor by making him solely responsible for payment of the timesharing supervisor's charges, we also must reverse this portion of the final judgment, and remand for the circuit court to amend the final judgment accordingly. Again, as no transcript exists of the hearing which led to the final judgment, another hearing on this issue may be necessary.

Affirmed in part, reversed in part, and remanded with directions.

STEVENSON and LEVINE, JJ., concur.

All Citations

192 So.3d 544, 41 Fla. L. Weekly D1132

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Original Image of 210 So.3d 227 (PDF)

210 So.3d 227
District Court of Appeal of Florida,
Second District.

Munoz v. Munoz
District Court of Appeal of Florida, Second District. February 3, 2017 210 So.3d 227 42 Fla. L. Weekly D306 *(Approx. 4 pages)*

Airol MUNOZ, Appellant,

v.

Paulina MUNOZ, Appellee.

Case No. 2D16–1604
Opinion filed February 3, 2017

Synopsis

Background: Ex-husband filed petition to modify a default final judgment, which had awarded ex-wife sole parental responsibility and timesharing with children. In response to the modification petition, ex-wife filed a petition to establish child support and retroactive child support. The Circuit Court, Hillsborough County, Nick Nazaretian, J., modified timesharing and established child support and arrears, and ex-husband appealed.

Holding: The District Court of Appeal, Lucas, J., held that court improperly vested the decision-making authority as to when ex-husband could visit children with a therapist.

Affirmed in part, reversed in part, and remanded.

West Headnotes (3)

Change View

1 **Child Custody** Record
Although there was no transcript, there were errors that were plain on the face of the trial court's order modifying timesharing, and as such, appellate court was compelled to reverse those portions of the trial court's order.

2 **Child Custody** Visitation
Progressive, three-phase daytime timesharing schedule the circuit court fashioned, in modification proceeding, to reintegrate ex-husband in his daughters' lives improperly vested the decision-making authority as to when ex-husband could proceed into the second and third phases solely with a therapist, and order also gave ex-wife sole discretion, at any time, to choose to replace this therapist, which was also an improper delegation of the court's authority.

3 **Child Custody** Decision and findings by court
Child Custody Modification
Trial court's order modifying time sharing failed to resolve whether ex-husband would be entitled to overnight, unrestricted timesharing with his minor children, if or when he completed the third phase of the progressive, three-phase daytime timesharing schedule, and this error, taken together with court's improperly vesting the decision-making authority as to when ex-husband could proceed into the second and third phases solely with therapist, constituted reversible error.

Appeal from the Circuit Court for Hillsborough County, Nick Nazaretian, Judge.

Attorneys and Law Firms

SELECTED TOPICS

Modification of Child Custody

Child Custody

Appeal or Judicial Review
Custody Case of Children

Secondary Sources

APPENDIX IV GUIDANCE AND TECHNICAL ASSISTANCE MANUALS

ADA Compliance Guide Appendix IV

...Under the Americans with Disabilities Act of 1990 (the "ADA"), an employer may ask disability-related questions and require medical examinations of an applicant only after the applicant has been given ...

P230 ORDER OF BENEFIT DETERMINATION RULE 2: CHILD COVERED UNDER MORE THAN ONE PLAN

Coordination of Benefits Handbook ¶230

...The second order of benefit determination rule deals with children covered under more than one plan, who are always covered as a dependent under each of their parents' plans. Originally, the rule deali...

APPENDIX II - FEDERAL STATUTES

Coordination of Benefits Handbook Appendix II

...For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was receiv...

See More Secondary Sources

Briefs

Brief for Petitioner-Appellee

2012 WL 3781257
Nurettin OZALTIN, Petitioner-Appellee, v. Zeynep Tekiner OZALTIN, Respondent-Appellant.
United States Court of Appeals, Second Circuit.
Aug. 22, 2012

...Article 1 of the Convention states that the Convention's goals are (a)to secure the prompt return of children wrongfully removed to or retained in any contracting State; and (b)to ensure that rights of...

Brief of Respondent

1980 WL 340076
Leah Lynn Parrish WEBB, Petitioner, v. James Thomas WEBB, Respondent.
Supreme Court of the United States
Oct Term 1980

...The Petitioner's statement of the case is substantially accurate insofar as it goes. Some supplementation is necessary, however, to ensure that the Court's attention is directed to all relevant factors...

Corrected Brief for Petitioner-Appellee

2012 WL 4201909
Nurettin OZALTIN, Petitioner-Appellee, v. Zeynep Tekiner OZALTIN, Respondent-Appellant.
United States Court of Appeals, Second Circuit.
Sep. 07, 2012

Lawrence J. Hodz of Cortes Hodz Family Law & Mediation, P.A., Tampa, for Appellant.

Jessica C. Tien of Tien Law Group, Tampa, for Appellee.

Opinion

LUCAS, Judge.

Airol Munoz, the former husband, appeals the circuit court's orders modifying timesharing and establishing child support and arrears concerning his minor children, *228 A.M. and C.M. Mr. Munoz came before the circuit court on his supplemental petition to modify a default final judgment entered on January 8, 2008, which had awarded Paulina Munoz, his former wife, sole parental responsibility and timesharing with A.M. and C.M.[1] In response to the modification petition, Ms. Munoz filed a petition to establish child support and retroactive child support against Mr. Munoz. A trial was held on both petitions before the circuit court on February 5, 2016. The court entered its orders on March 2, 2016, and Mr. Munoz timely appealed.

1 2 3 Although the absence of a transcript from the trial prevents us from addressing many of the issues Mr. Munoz raises on appeal, because there are errors that are plain on the face of the order modifying timesharing, we are compelled to reverse those portions of the circuit court's order. See Ivanovich v. Valladarez, 190 **So.3d** 1144, 1147 (Fla. 2d DCA 2016) (citing Soto v. Soto, 974 So.2d 403, 404 (Fla. 2d DCA 2007)). The progressive, three-phase daytime timesharing schedule the circuit court fashioned to reintegrate Mr. Munoz in his daughters' lives improperly vests the decision-making authority as to when Mr. Munoz can proceed into the second and third phases solely with a therapist. The order also gives Ms. Munoz sole discretion, at any time, to choose to replace this therapist, which was also an improper delegation of the court's authority. Third, and perhaps most troubling, the order fails to resolve whether Mr. Munoz will ever be entitled to overnight, unrestricted timesharing with his minor children, if or when he completes the third phase of this schedule. Taken together, these errors, which are clear from the face of the order, constituted reversible error.

As we explained in Grigsby v. Grigsby, 39 **So.3d** 453, 456–57 (Fla. 2d DCA 2010):

> "Although termination of visitation rights is disfavored, ... the trial court has discretion to restrict or deny visitation when necessary to protect the welfare of the children." Hunter v. Hunter, 540 So.2d 235, 238 (Fla. 3d DCA 1989). However, when the court exercises this discretion, it must clearly set forth the steps the parent must take in order to reestablish time-sharing with the children. Id.; see also Ross v. Botha, 867 So.2d 567, 571 (Fla. 4th DCA 2004). Essentially, the court must give the parent the key to reconnecting with his or her children. An order that does not set forth the specific steps a parent must take to reestablish time-sharing, thus depriving the parent of that key, is deficient because it prevents the parent from knowing what is expected and prevents any successor judge from monitoring the parent's progress. See Ross, 867 So.2d at 571.
>
> ....
>
> "Moreover, it is the trial court's responsibility to ensure that an appropriate relationship is maintained between a parent and his or her children, and that responsibility cannot be abdicated to any parent or expert." McAlister v. Shaver, 633 So.2d 494, 496 (Fla. 5th DCA 1994); see also Letourneau v. Letourneau, 564 So.2d 270, 270 (Fla. 4th DCA 1990). Thus, a reasonable time-sharing schedule based on the parent's individual circumstances must be created based on the exercise of the *court's discretion*, not the other parent's. Letourneau, 564 So.2d at 270.

Here, the order modifying timesharing violated the strictures of *229 Grigsby, 39 **So.3d** at 456–457; see also Perez v. Fay, 160 **So.3d** 459, 466 (Fla. 2d DCA 2015).

Accordingly, we reverse those portions of the order modifying timesharing that delegated decision-making to a therapist of Ms. Munoz's sole approval, and that failed to describe what, if any, timesharing Mr. Munoz would be entitled to upon completion of the third phase. On remand, the court shall render an order on Mr. Munoz's petition consistent with this opinion and that sets forth requisite findings and rulings concerning what, if any, timesharing Mr. Munoz will have with A.M. and C.M. upon completion of any reunification schedule the court may fashion. In all other respects, we affirm the orders below.

Affirmed in part; reversed in part; and remanded.

NORTHCUTT and KHOUZAM, JJ., Concur.

All Citations

210 So.3d 227, 42 Fla. L. Weekly D306

Footnotes

1 Mr. Munoz's motion to set aside that default judgment has not been heard by the circuit court. Accordingly, we express no opinion as to its merits.

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Original Image of 633 So.2d 494 (PDF)

633 So.2d 494
District Court of Appeal of Florida,
Fifth District.

McAlister v. Shaver
District Court of Appeal of Florida, Fifth District. March 4, 1994 633 So.2d 494 19 Fla. L. Weekly D492 *(Approx. 12 pages)*

Ronald **McALISTER**, Appellant,

v.

Wanda L. **SHAVER**, Appellee.

No. 92–2960.
March 4, 1994.

Synopsis

Father filed petition to modify final judgment of dissolution of marriage to provide for visitation with child. Petition was denied by the Circuit Court, Orange County, Richard F. Conrad, J., and father appealed. The District Court of Appeal, Peterson, J., held that: (1) father's unilateral expectations of visitation could not form basis of substantial change in circumstances required in modification proceedings, but (2) since focus of proceeding was on original court's failure to address father's right of visitation, lower court should have corrected this omission by making initial determination of father's visitation rights.

Reversed and remanded.

Thompson, J., filed a dissenting opinion in which Griffin, J., concurred.

West Headnotes (8)

Change View

1 **Parent and Child** Rights, Duties, and Liabilities Concerning Relation
Parent has constitutionally protected inherent right to meaningful relationship with children.

1 Case that cites this headnote

2 **Child Custody** Welfare and best interest of child
Only limitation on natural legal right of parent to enjoy custody, fellowship and companionship of children is that, between parent and child, ultimate welfare of child must be controlling.

1 Case that cites this headnote

3 **Child Custody** Behavior of parties in general
Visitation with child should never be denied as long as visiting parent conducts himself or herself, while in presence of child, in manner which will not adversely affect child's morals or welfare.

1 Case that cites this headnote

4 **Child Custody** Visitation
Child Custody Behavior of parties in general
Child Custody Agreements, contracts, or stipulations
It is duty of trial judge to consider relationships between parents and child in marriage dissolution action and to address visitation rights in an order when sole parental responsibility is awarded, and court's responsibility to the child cannot be abdicated to any parent or expert, and court is not bound by agreement between the parents. West's F.S.A. § 61.13(2)(b) 2 b.

SELECTED TOPICS

Constitutional Law

Substantive Due Process Rights of Foster Children

Child Custody

Child Visitation Provision of Divorce Decree

Child Support

Child Support Provision of Property Settlement Agreement

Secondary Sources

EQUITABLE DISTRIBUTION

DR FL-CLE 7-1

...Brotman **v.** Brotman, 528 **So.2d** 550 (Fla. 4th DCA 1988) "After the parties were separated but before dissolution, [husband] received severance pay and 'earned vacation' pay upon his termination of his em...

PARENTAL RESPONSIBILITY

DR FL-CLE S-8-1

...Costa **v.** Costa, 429 **So.2d** 1249 (Fla. 4th DCA 1983) "After the decision of the trial court in this case, the Florida Legislature enacted [the Shared Parental Responsibility Act]. . . . The declaration o...

APPENDIX I: TEXT OF LAW AND REGULATIONS

Fam. and Med. Leave Hdbk. Appendix I

...Sec. 2601. Findings and purposes. Sec. 2611. Definitions. Sec. 2612. Leave requirement. Sec. 2613. Certification. Sec. 2614. Employment and benefits protection. Sec. 2615. Prohibited acts. Sec. 2616. I...

See More Secondary Sources

Briefs

Appellant's Initial Brief

2009 WL 6845143
Sally SCHMACHTENBERG n/k/a Sally McHugh, Appellant, **v.** Lee C. SCHMACHTENBERG, Appellee.
District Court of Appeal of Florida, Third District.
May 01, 2009

...There was one (1) child born of the parties' marriage, Justin, born XX/XX/1976, who was thirty two (32) years of age as of the date of the parties' trial. Justin is disabled and has been diagnosed with...

BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, COUNCIL OF STATE GOVERNMENTS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, AND U.S. CONFERENCE OF MAYORS AS AMICI CURIAE IN SUPP ORT OF PETITIONERS

1999 WL 1034462
In re Visitation of Natalie Ann Troxel, Isabelle Rose Troxel, Minors, Jenifer Troxel, Gary Troxel **v.** Tommie Granville; National Conference of State Legislatures
Supreme Court of the United States
Nov. 12, 1999

...FN* Counsel of Record for theAmici Curiae Amici are organizations whose members

2 Cases that cite this headnote

5 **Child Custody** Divorce or dissolution settlements
Child Support Duty and authority of court
Trial court has authority to decline to follow settlement agreement between parties to marriage dissolution action relating to child custody, visitation and support.

1 Case that cites this headnote

6 **Child Custody** Visitation
Fact that former husband's unilateral expectations of visitation with child were disappointed following dissolution of marriage could not form basis of substantial change of circumstances required to be shown in order to satisfy extraordinary burden in modification proceedings seeking to establish visitation.

7 **Child Custody** Issues, proof and variance
Though former husband's petition seeking visitation with child was termed petition for modification, and no substantial change of circumstances was shown, where focus of proceeding was on original court's failure to address father's right of visitation, trial court should have corrected this omission by making initial determination of father's visitation rights. West's F.S.A. § 61.13(2)(b) 2 b.

8 **Child Custody** Res judicata
Child Support Res judicata
When court fails to address such matters as child support, custody and visitation rights in final dissolution judgment, it is questionable whether such matters are finally adjudicated for res judicata purposes because they might have been presented and determined in the first suit. West's F.S.A. RCP Rule 1.110(d); West's F.S.A. § 61.13.

Attorneys and Law Firms

**495* Charles E. Gordon, Winter Park, for appellant.

Robert A. DuChemin of DuChemin & DuChemin, P.A., Orlando, for appellee.

EN BANC

PETERSON, Judge.

Ronald A. **McAlister** appeals a final order denying his petition to modify a final judgment of dissolution of his marriage to Wanda L. **Shaver** to provide for reasonable and specific visitation with his four-year-old daughter. We reverse and remand for further proceedings.

The parties were married on September 9, 1988 but separated just three months later. In early February, 1989, Wanda filed her petition for dissolution of marriage alleging that she was pregnant and expected to deliver the parties' child in late June. At first, Ronald denied that he was the father of the child, but, after the child was born, the parties entered into a marital settlement agreement which required Ronald to pay $119.14 per month child support until the child's emancipation. It also required Ronald to pay the medical expenses Wanda incurred during her pregnancy which were not covered by insurance. The agreement provided that Wanda would have sole parental responsibility and that she could change the surname of the expected child. The agreement was totally silent as to any visitation rights or waivers of visitation.

On August 8, 1990 the court entered a judgment of dissolution which incorporated by reference the terms of the settlement agreement. The terms of the child support were specifically repeated in the judgment, but, like the settlement agreement, the judgment did not address the issue of visitation. Ronald later testified that on several occasions he did ask his lawyer about visitation rights but was told not to worry; he would have visitation rights.[1] He testified that he **496* attempted to see his child by visiting Wanda's residence several months after the child was born and again several months after the first effort. Wanda would not allow access to her home or to the child either time. Ronald briefly saw the child only on two occasions, once through the door of Wanda's residence as she was

include state, county, and municipal governments and officials throughout the United States. Amici have a compelling inte...

Brief for Appellees Organization of Foster Families for Equality and Reform, etc., et al.

1977 WL 205078
Henry SMITH, etc., et al., Appellants-Defendants, **v.** ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM, etc., et al., Appellees. Bernard SHAPIRO, etc., et al., Appellants-Defendants, **v.** ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM, etc., et al., Appellees. Naomi RODRIOUEZ, etc., et al., Appellants-Intervenors, **v.** ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM, etc., et al., Appellees. Danielle and Eric GANDY, etc., et al.,
Supreme Court of the United States
Feb. 11, 1977

...The named appellees in this civil rights class action are individual foster parents and an organization of foster parents. Together they filed suit on their own behalf and on behalf of the foster child...

See More Briefs

Trial Court Documents

Hamm v. Hamm

2010 WL 8741114
In re: the Former Marriage of: David G. HAMM, Former Husband, **v.** Rita R. Hamm, Former Wife.
Florida Circuit Court
Apr. 05, 2010

...THIS MATTER came to be heard before Diane M. Kirigin in her capacity as a General Magistrate pursuant to the Florida Family Law Rules Of Procedure, Rule 12.490, for Non-Jury Trial on April 13, 2009 at ...

Quets v. Needham

2011 WL 7785050
Allison QUETS, Plaintiff, **v.** Kevin NEEDHAM Denise Needham, Defendants.
Florida Circuit Court
May 06, 2011

...This matter came before this Court upon the Defendant's Motion for Summary Judgment, filed on November 30, 2010. This Court has jurisdiction over both the parties and subject matter of this action. Hav...

Doe v. United States of America

2015 WL 10571522
Jane DOE, Petitioner, **v.** UNITED STATES OF AMERICA, Respondent.
United States District Court, N.D. California.
May 29, 2015

...JOHN GLEESON, United States District Judge: Jane Doe filed an application on October 30, 2014, asking me to expunge her thirteen-year old fraud conviction because of the undue hardship it has created f...

See More Trial Court Documents

closing it and by chance when he saw Wanda and the child walk in front of his car as he waited in line at the drive-in window of a fast food restaurant.

Finally, in April, 1992, Ronald filed a Supplemental Petition for Modification. In this petition, Ronald alleged the final judgment awarded his former wife "sole parental responsibility without addressing [his] visitation rights and the best interest of the child." Ronald asked for an order modifying the final judgment to provide for shared parenting and specific and reasonable visitation. Ronald also prayed for attorney's fees and an award of other relief the "court deems just and proper under the circumstances." The trial court denied modification after Ronald presented his case-in-chief finding that no change of circumstances was shown to have occurred between the time of the final judgment and the modification hearing. Subsequently the court entered a final judgment denying the petition. In this appeal Ronald asserts the trial court erred in denying his "modification" petition in which he sought specific and reasonable visitation rights, where the original judgment of dissolution failed to mention visitation at all.

1 2 3 We address first, generally, a parent's right of visitation. A parent has a constitutionally protected "inherent right to a meaningful relationship with his children." *Schutz v. Schutz,* 581 **So.2d** 1290, 1293 (Fla.1991). It is a basic proposition that a parent has a natural legal right to enjoy the custody, fellowship and companionship of an offspring. *Kent v. Burdick,* 591 **So.2d** 994, 996 (Fla. 1st DCA 1991). The only limitation to this rule of parental privilege is that between parent and child, the ultimate welfare of the child must be controlling. *Id.* Visitation with a child should never be denied as long as the visiting parent conducts himself or herself, while in the presence of the child, in a manner which will not adversely affect the child's morals or welfare. *Yandell v. Yandell,* 39 **So.2d** 554, 555 (Fla.1949).

4 5 Section 61.13(2)(b) 2.b requires that in a dissolution proceeding a "court shall order 'sole parental responsibility, with or without visitation rights, to the other parent when it is in the best interests' of the minor child." It is the duty of a trial judge to consider the relationships between parents and child in a dissolution action and to address visitation rights in an order when sole parental responsibility is awarded. § 61.13(2)(b)2.b, Fla.Stat. (1991). The court's responsibility to the child cannot be abdicated to any parent or expert. A court is not bound by any agreement between parents. *Lane v. Lane,* 599 **So.2d** 218, 219 (Fla. 4th DCA 1992); *Bolton v. Gordon,* 201 **So.2d** 754 (Fla. 4th DCA 1967); *Sedell v. Sedell,* 100 **So.2d** 639 (Fla. 1st DCA 1958). A trial court has the authority to decline to follow a settlement agreement between the parties relating to child custody, visitation, and support. *Holland v. Holland,* 458 **So.2d** 81 (Fla. 5th DCA 1984).

In *Johnston v. Boram,* 386 **So.2d** 1230 (Fla. 5th DCA 1980), the mother appealed a final judgment of dissolution awarding custody of her two minor children to their father and failing to award any visitation to her. The custody award to the father was affirmed, but the matter was remanded to the trial court for an order granting reasonable visitation rights to the mother. In doing so, this court held that:

> [t]he noncustodial parent should be granted reasonable visitation with a child unless there is proof of extreme circumstances, or the trial court finds that the visitation will adversely affect the welfare of the child. *Chaffin v. Grigsby,* 293 **So.2d** 404 (Fla. 4th DCA 1974).

Johnston at 1230.

Having noted that Ronald had an inherent right as a parent to a meaningful relationship with his child through visitation and that a trial court has the obligation to consider the right of visitation in light of the child's best ***497*** interests, we turn now to the manner in which Ronald sought his inherent right of visitation after failing to appeal the original judgment of dissolution. Ronald attempted to gain visitation by filing a "Supplemental Petition for Modification" two years after the original judgment was entered. Ronald contended that, based upon his attorney's advice, he expected to have visitation rights after the final judgment of dissolution. He argued that the denial of visitation subsequent to the entry of judgment was a change in circumstances because he had expected to be able to visit when the final judgment was silent on the matter.

6 7 We agree with the trial court that Ronald's unilateral expectations of visitation could not form the basis of the substantial change of circumstances required to be shown in order to satisfy the extraordinary burden in modification proceedings. *Zediker v. Zediker,* 444 **So.2d** 1034 (Fla. 1st DCA 1984); *see also McGregor v. McGregor,* 418 **So.2d** 1073 (Fla. 5th DCA 1982). The trial court erred, however, in not correcting the original final

judgment's failure to address visitation. Although the husband's petition was termed a petition for modification, the focus of the proceeding was on the original court's failure to address Ronald's right of visitation. The court should have corrected this omission by making an initial determination of the father's visitation rights. *See Evans v. Evans,* 595 **So.2d** 988, 990 (Fla. 1st DCA 1992) (where original final judgment contained no child support award, and husband in modification proceeding raised issue of this omission, court should have looked at modification petition as initial petition for support).

8 The mother's answer concedes that the original judgment failed to address the important issue of visitation and the mother never argued that Ronald's request for visitation was barred by the doctrine of *res judicata.* Further, even if she had raised the affirmative defense of *res judicata* pursuant to Rule 1.110(d), Florida Rules of Civil Procedure, it is doubtful that the doctrine would have applied in this case with respect to the visitation question. A dissolution action involving the parents' rights and responsibilities *vis a vis* their children is unlike a tort or contract action where a party that does not raise particular causes of action or defenses is barred from raising them in a subsequent suit. Section 61.13 imposes an affirmative duty to declare the parties' child support obligations and custody and visitation rights. Where a court fails to address such matters in the final judgment it is questionable whether such matters are finally adjudicated because they "might have been presented and determined in the first suit." *Reynolds v. Reynolds,* 117 **So.2d** 16, 20 (Fla. 1st DCA 1959).

In the judgment of dissolution when the court ordered "sole parental responsibility" to the mother without addressing the visitation rights of the noncustodial father, it acted in contravention of section 61.13(2)(b)2.b, Florida Statutes, which directs a court to "order 'sole parental responsibility, with or without visitation rights, to the other parent when it is in the best interests of ' the minor child." Because no determination has yet been made as to the father's visitation rights, we remand the case to the trial court for an initial determination of this sole issue. On remand the trial court shall give the parties an opportunity to present evidence as to the best interests of the child. We also suggest but do not require that the trial court appoint a guardian ad litem to represent the child's interest in this matter. Section 61.401, Fla.Stat. (1993); *see Cortina v. Cortina,* 108 **So.2d** 63 (Fla. 2d DCA 1958).

REVERSED; REMANDED.

HARRIS, C.J., and DAUKSCH, COBB, W. SHARP, GOSHORN and DIAMANTIS, JJ., concur.

THOMPSON, J., dissents with opinion, in which GRIFFIN, J., concurs.

THOMPSON, Judge, dissenting
I respectfully dissent.

There are three reasons for my dissent: 1) there was no procedural error in the ruling by the trial judge at the modification hearing; 2) this court is requiring written findings for a determination of visitation when none are required by ***498** section 61.13(2)(b)2.b, Florida Statutes (1991); and, 3) **McAlister** is seeking to use the modification hearing as a belated appeal.

ADDITIONAL FACTS

In order to fully develop the events that support the reasons for my dissent, I add these additional facts to show the historical development of this case. So that there will be no attempt at judicial petit theft, i.e. taking portions of the trial record out of context, the trial record will be quoted extensively. **McAlister** and **Shaver** were married on 9 September 1988. They separated on 30 November 1988 and never lived together after that date. In paragraph "5." of her petition for dissolution of marriage filed on 6 February 1989, **Shaver** alleged:

> No children have been born of this marriage, however, one is expected. The Wife is currently pregnant and expects to deliver a child on or about June 24, 1989. The Husband is the father of said expected child. Wife is a fit and proper person for taking full responsibility for the child, and **it will be in the best interest of the child that its primary physical residence be with the Wife. Shared parental responsibility would be detrimental to the child because the Husband has disassociated himself from the Wife during her pregnancy and has little or no contact with her** (emphasis supplied). Husband has not called or inquired as to the pregnancy or the well being of the Wife or fetus. Shared parental responsibility would result in Wife having to "confer" as to

"major decisions affecting the welfare of the child" with an individual who has neither the desire nor the capacity to determine what is in the best interest of the child.

McAlister filed his answer on 6 March 1989 and responded to paragraph "5." of **McAlister's** petition. He wrote in paragraph "3." of his answer:

> Admits the allegations contained in paragraph 5 as to Wife being pregnant **but denies the remainder of said paragraph.**

He denied that he was the father of the child. He expounded on this denial in his counter petition filed on 10 March 1989. In paragraph "5." he wrote:

> There have been no children born of this marriage, however the Petitioner/Counter Respondent is pregnant but the Husband **is not the Father of the unborn child** (emphasis supplied).

Shaver responded in her answer and affirmative defenses filed on 17 March 1989:

1. The Petitioner is pregnant and expects to deliver a child on June 24, 1989 and the period of human gestation is 280 days, therefore conception occurred subsequent to the marriage of the parties raising the presumption that the Respondent is the father.

2. The Respondent, RONALD A. **McALISTER**, moved in with the Petitioner on or about July 31, 1988 and from that date until the parties separated on or about November 30, 1989 [sic], the parties hereto had frequent acts of sexual intercourse.

3. During the months of July, August, September, October, November and December, 1989 [sic], the Petitioner did not have sexual intercourse with any person other than Respondent.

There were no other actions taken until after the child was born in July of 1989. After the child, B.N.M., was born, **Shaver** filed an amended petition for dissolution of marriage. She alleged the general prayer for relief, but she specifically brought several matters to the attention of the trial judge. First, that the child had lived with **Shaver** since birth and second, that there was a marital settlement agreement that resolved all of the issues between the two parties including "sole parental responsibility, primary physical residence, child support and all issues of property settlement." She asked that the court incorporate "by reference into the Final Judgment the terms of the Marital Settlement Agreement giving full force and effect to said Agreement."

McAlister accepted the terms of **Shaver's** amended petition on 17 July 1990 by his answer and:

> his waiver of all notice of the final hearing in this cause, and submitting to the personal jurisdiction of this Court. **The Husband** **499* **enters his general admission to the Petition and requests this Court to grant the Petition for Dissolution of Marriage and enter a Final Judgment of Dissolution of Marriage which incorporates the parties' Marital Settlement Agreement** (emphasis supplied).

The final judgment was signed and filed on 8 August 1990. The marital settlement agreement was incorporated by reference into the final judgment "as if fully set forth herein." Approximately two years later, on 1 May 1992, **McAlister** filed a supplemental petition for modification of the final judgment. He alleged that the final judgment did not address the issue of visitation. He requested "shared parenting and specific, reasonable, and liberal" visitation with the minor child "B.N.M. (d/o/b 7–3–89)" since it was in her best interest. [1]

Shaver responded on 21 May 1992 and denied the allegations that visitation would be in the best interest of the child. She went on to state:

5. The minor child, B.N.S., was born on July 2, 1989. The child is now nearly three years old and the former husband has never made any real attempt to visit the child. In October of 1991 the former wife indicated by letter to former husband's attorney, that she was willing, at that time, to initiate some limited and supervised visitation, however, the former husband neglected to respond. At this late date, the child has no recollection of her father and to impose visitation on the minor child at this time would not be in her best interest. The former husband has failed to timely pursue visitation, permitted the child's name to be changed, and should not now be allowed to visit the child.

6. The former husband has failed to comply with the terms of the Marital Settlement Agreement entered by the parties and incorporated in the Court's Final Judgment of Dissolution of Marriage in the following:

a. The former husband has failed to pay child support payments on a regular basis as ordered by this court; and

b. The former husband has failed to pay the former wife's uncovered medical expenses, incurred due to the birth of the minor child, as contemplated in paragraph 7 of the Marital Settlement Agreement.

The case was set for hearing and an order denying the modification was entered. That order is the subject of this appeal.

THE TRIAL JUDGE MADE NO PROCEDURAL ERROR

In order for the trial court to change or modify the prior custody and visitation award, the noncustodial parent seeking to modify the award "carries an *extraordinary burden*" and must rely only on changes that have occurred after the entry of the original final judgment of dissolution since that judgment is res judicata as to all other matters involved in the case at that time. *Zediker v. Zediker,* 444 **So.2d** 1034 (Fla. 1st DCA 1984). **McAlister** testified of no changes that had occurred since the entry of the final judgment. He testified that he had tried to visit on two occasions; once prior to the entry of the final judgment and once after. **Shaver** closed the door in his face on both occasions. He had not tried to visit his daughter in the two years subsequent to his second attempt to visit. He presented no other evidence and no additional testimony. Although he could have called his former attorney, who told him not to worry about visitation, as a witness, he did not. He could have called the attorney who represented **Shaver** in the dissolution. He did not. In his own testimony, he did say that his prior attorney had told him not to worry about visitation even though it was not included in the agreement. This testimony is contradicted by express language in the agreement that "[t]here exist no representations or warranties other than those set forth herein." *See* Paragraph 21 of the agreement quoted below. Since the sole basis of the petition to change the judgment was **McAlister's** desire for visitation, the trial court was correct in denying his petition. There were ***500** no substantial changes, therefore, there could be no modifications. *McGregor v. McGregor,* 418 **So.2d** 1073 (Fla. 5th DCA 1982).

The appropriate standard of review for a modification of a custody or visitation order is not whether the trial court's decision is "reasonable," the standard from *Canakaris v. Canakaris,* 382 **So.2d** 1197 (Fla.1980), but whether the decision is supported by "competent and substantial evidence," which is a stricter standard of review. *Zediker,* 444 **So.2d** at 1037–38. The trial court's ruling denying modification on the basis that no substantial change in circumstances had been shown is supported by competent and substantial evidence and, therefore, must be affirmed.

In attempting to have this court apply the *Canakaris* reasonableness standard of review rather than the *Zediker* competent and substantial evidence standard, **Shaver** argues, **McAlister** actually seeks an initial determination of visitation rights rather than a modification. In so doing, **Shaver** indirectly raises a novel argument on appeal: that the petition should be taken as an initial petition for visitation since the agreement incorporated into the final judgment did not address the issue of visitation. This argument lacks merit.

The agreement was signed by the parties after it was drafted and reviewed by their respective attorneys. It was, in fact, drafted by **McAlister's** attorney. The agreement is thorough and complete; covering 11 pages and 27 paragraphs. Did the parties mean it to be their full understanding of their relationship one to the other as it relates to the dissolution? Obviously, they did. Perhaps, the most telling evidence is the language of the agreement that was signed by the parties:

5. *Pending or Imminent Action for Dissolution.* The Wife has filed an action to dissolve the marital bonds of her marriage to the Husband in the Circuit Court of the Ninth Judicial Circuit of Florida.... This Agreement is intended to be a full and complete settlement of all matters arising or which could have been brought in that action, including a division of marital assets, provision for support of either Party, provision for the support and care of the Parties' minor children [sic], equitable distribution of the Parties' marital assets and debts, attorney's fees and all other issues raised by or in the Petition for Dissolution of Marriage filed by the Wife in the above-styled cause. **This agreement is intended to be introduced into evidence in that dissolution of marriage action and to be incorporated in the Final Judgement of Dissolution of Marriage. However, the**

Parties do not intend for it to be merged in the Final Judgment. Rather, they wish it to survive the Judgment and be binding on the Parties for all time (emphasis supplied).

8. *Sole Parental Responsibility.* **Sole parental responsibility for the minor child shall be awarded to the Wife** (emphasis supplied).

19. *Review and Assent.* Each party fully understands the facts and terms of this Agreement and understands his or her legal rights or obligations pursuant to the laws of Florida and this Agreement. **Each party is signing this Agreement freely and voluntarily, intending to be bound by it** (emphasis supplied). Each party recognizes that each provision of this Agreement may be enforced by the contempt powers of the Court.

21. *Full Agreement.* Each party agrees that this Agreement constitutes the entire marital settlement agreement of the parties. This Agreement supersedes any prior understandings or agreements between them, whether or not the matters were covered in this Agreement. This Agreement also supersedes any prior orders of this Court, insofar as the parties' respective rights of enforcement thereunder are concerned. There exist no representations or warranties other than those set forth herein. The parties acknowledge that this Agreement constitutes the full, complete and final settlement of all alimony rights, property rights, liabilities and other responsibilities by or between the parties. This Agreement is a full, complete and final settlement of all claims of any nature whatsoever that either party may have **501* against the other, now or in the future, except as expressly provided for herein (emphasis supplied throughout).

This court offers two reasons for allowing **McAlister** a hearing on visitation: 1) a parent's inherent right to visitation and 2) the trial court's error in not correcting the original judgment when it did not specifically mention visitation. The record clearly establishes that at the time of the entry of the final judgment, **McAlister** denied the child was his and accepted those portions of the marital settlement agreement that awarded **Shaver** sole parental responsibility. He waived appearance at the final hearing and never appealed or attempted to have the final judgment corrected to include the issue of visitation. The trial judge wrote, after the modification hearing, that **McAlister** had also allowed **Shaver** to change the child's last name from **McAlister** to **Shaver**. There is no evidence or testimony that the final judgment contained an error. It is clear that **McAlister** wanted nothing to do with the child including having the child take his last name. For these reasons, the trial judge's order should be affirmed because he made no procedural errors. There is competent evidence to support the ruling that **McAlister** waived visitation with the minor child. *See Kent v. Burdick,* 573 **So.2d** 61, 63 (Fla. 1st DCA 1990).

SECTION 61.13(2)(B) 2.B DOES NOT REQUIRE WRITTEN FINDINGS

This court adopts the position that visitation is so important that it can not be waived in a marital settlement agreement unless the parties include a provision specifically addressing visitation. **McAlister** notes that the Florida legislature has modified the Florida Statutes to mandate frequent and continuing contact with both parents after the parents have separated or dissolved their marriage. Section 61.13(b)(1), Fla.Stat. (1991). The argument being advanced is that where a final judgment (or a marital settlement agreement incorporated into a final judgment) does not provide for visitation, the trial court has the responsibility to clarify the issue of visitation. *See, e.g., Lane v. Lane,* 599 **So.2d** 218 (Fla. 4th DCA 1992). Unfortunately, this court never provides authority for the proposition that an agreement that was the result of negotiations between the parties; that was entered into freely and voluntarily without any evidence presented that it was the result of overreaching, fraud or duress; that was signed by both parties, each of whom was represented by an attorney; and that was accepted without an attempt at modification, until two years after it was entered, can be revisited to include a provision for visitation.

Additionally, this novel position implies that a trial judge can not accept a marital settlement agreement that includes sole parental responsibility with no mention of visitation, but the trial judge must have a contested hearing to make such a determination. This implication is neither accurate nor is it logical. Section 61.13(2)(b)(2) 2.b allows a judge to determine if shared parental responsibility is in the best interest of the child. If it is not, then sole parental responsibility is to be ordered. This fact is one the court can find at a contested hearing or the parties can stipulate to in an agreement. The same is true for visitation. Just as the court can decline to accept a marital settlement agreement because the terms for visitation and custody are not in the best interest of the child, the court can accept a marital

settlement agreement once the court is satisfied that the terms are in the best interest of the child. *Holland v. Holland*, 458 **So.2d** 81, 82 (Fla. 5th DCA 1984). In the case *sub judice*, the court did accept the marital settlement agreement and incorporated the terms into the final judgment at the request of the parties and their attorneys. The court found the agreement to be in the best interests of the parties and their minor child. The judge wrote in the final judgment

> 3. The Marital Settlement Agreement was executed by the parties and entered into by the parties after a full disclosure and **is in the best interest of the parties and of the minor child** (emphasis supplied). The Marital Settlement Agreement is incorporated by reference into this Judgment as if fully set forth herein.

Based upon the terms and conditions of the marital settlement agreement and the judge's finding that the contents were in the ***502** best interest of the parties and the minor child, the judge complied with section 61.13(2)(b) 2.b. No specific finding needs to be written by the trial judge in addition to the content of the marital settlement agreement and the final judgment. Section 61.13(2)(b) 2.b does not require the trial court to make specific factual findings regarding the best interest of the child. *See Murphy v. Murphy*, 621 **So.2d** 455 (Fla. 4th DCA 1993) (ultimate factual finding that custody with one or another parent is in the best interest of the child is sufficient under § 61.13(3), which does not require written factual findings on factors considered; whenever in ch. 61 the legislature wanted to require written factual findings, it explicitly said so, e.g., § 61.075(3), . 08(1), .30(1)(a), Fla.Stat. (1991)), *review granted,* No. 82, 019 (Fla. Dec. 20, 1993). This fact is especially true if no party complains of the oversight for two years.

MCALISTER IS SEEKING A BELATED APPEAL

McAlister wants to modify the original judgment long after the time for review by the trial court and for appeal has expired. Pursuant to Fla.R.Civ.P 1.530, **McAlister** could have filed a motion for rehearing or a motion to alter or amend the final judgment within ten days of the entry of the judgment. He did not, even though he testified that **Shaver** would not allow him to see the child. **McAlister** could have moved the court for relief from the judgment to correct an error or mistake in the judgment up to one year after the entry of the judgment if he was concerned about liberal visitation. *See* Fla.R.Civ.P. 1.540. He did not. Finally, **McAlister** could have appealed the judgment of the trial court within 30 days if he was not satisfied with the trial court's handling of the issue of visitation. *See* Fla.R.App.P. 9.030 & 9.110. He did not. At this juncture, this court should be unwilling to assist **McAlister** in achieving his goal of perfecting a belated appeal. We have no jurisdiction to hear his attempt for a belated appeal.

CONCLUSION

The final judgment, which includes the trial judge's findings of fact and conclusions of law, comes to the appellate court with a presumption of correctness. *Zinger v. Gattis*, 382 **So.2d** 379 (Fla. 5th DCA 1980). The trial court must be sustained if correct for any reason. *Terry v. Conway Land, Inc.*, 508 **So.2d** 401 (Fla. 5th DCA 1987), *approved,* 542 **So.2d** 362 (Fla.1989). This precedent applies to the order on appeal before us as well as to the original judgment of 8 August 1990. There is ample evidence in the record that **McAlister** initially denied this child was his own and never wanted to be involved in her life. He presents himself as a natural father deprived of the companionship of his minor child; yet the record shows that he never offered **Shaver**, the child's mother, emotional or financial support during her pregnancy. He denied the child was his on two occasions in court documents. He negotiated to have the child's name changed from **McAlister** to **Shaver**. When offered the opportunity in writing by **Shaver** to visit the child, he never responded. In her initial pleadings in the dissolution in February of 1989, **Shaver** pled that **McAlister** had

> disassociated himself from the Wife during her pregnancy and has little or no contact with her.... Shared parental responsibility would result in Wife having to 'confer' with an individual who has neither the desire nor the capacity to determine what is in the best interest of the child.

McAlister's actions since the dissolution have not improved. He still did not present facts to negate the marital settlement agreement he signed placing the child in the custody of her natural mother without visitation.

Finally, the potential problem caused by this case is that, upon remand, the trial judge will be required to hold a hearing to determine if "shared parental responsibility" or "sole

responsibility, with or without visitation rights, to the other parent" is in the best interest of the minor child. § 61.13(2), Fla.Stat. (1993). To protect the interest of the child, a guardian ad litem will need to be appointed. § 61.401, Fla.Stat. (1993). To determine the emotional or psychological impact, a child psychologist and/or psychiatrist will probably need to be appointed. Perhaps a home study of **McAlister** will be required. At the hearing, **McAlister** will be asked to explain his previous denial of paternity of the **503* child and why he allowed the child's name to be changed so that she is not known as his little **McAlister**, but as a little **Shaver** (no pun intended). He will be asked to explain why he has not taken advantage of the proffered visitation with the child. Ultimately, this hearing will have a damaging effect upon the child as she learns that she has a father who had denied her, but now seeks to re-enter her life.

The more reasonable explanation for the petition filed for modification is that **McAlister** is using the issue of visitation to compromise his obligation to pay child support. This court should not allow this belated appeal to further complicate the life of a child who has been twice denied by her father. I would affirm the order denying the petition to modify the final judgment of dissolution.

GRIFFIN, J., concurs.

All Citations

633 So.2d 494, 19 Fla. L. Weekly D492

Footnotes

1 Ronald had different lawyers representing him during the original dissolution and the modification proceedings.

1 Although the child's initials were previously B.N.M., the wife's subsequent pleadings properly refer to the child as B.N.S. because the child's name had been changed as discussed below.

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Disagreed With by Dukes v. Griffin, Fla.App. 1 Dist., October 11, 2017

Original Image of 39 So.3d 453 (PDF)

Grigsby v. Grigsby

District Court of Appeal of Florida, Second District. July 7, 2010 39 So.3d 453 35 Fla. L. Weekly D1486 *(Approx. 6 pages)*

Second District.

Lisa **GRIGSBY**, Appellant,

v.

Lonnie **GRIGSBY**, Appellee.

No. 2D09–5255.

July 7, 2010.

Synopsis

Background: Mother filed petition for dissolution of marriage. After bifurcation of the proceedings, the Circuit Court, Sarasota County, Robert W. McDonald, Jr., J., awarded sole parental responsibility for parties' four minor children to father, and suspended mother's time-sharing. Mother appealed.

Holdings: The District Court of Appeal, Villanti, J., held that:
1 trial court did not abuse its discretion by awarding sole parental responsibility to father and suspending mother's time-sharing;
2 trial court could not omit from its order a ruling on the specific steps mother was required to take to reestablish time-sharing; and
3 trial court could not delegate to father the decision of whether and when to reinitiate time-sharing.

Affirmed in part, reversed in part, and remanded.

West Headnotes (6)

Change View

1 **Child Custody** Previous interference with lawful custody or visitation
Child Custody Previous interference with lawful custody or visitation
Child Custody Physical Custody Arrangements

Trial court did not abuse its discretion in dissolution of marriage action by awarding sole parental responsibility for parties' four minor children to father and temporarily suspending mother's time-sharing, where mother actively interfered with the love and emotional ties that previously existed between father and the children by, among other things, refusing to encourage the children to participate in scheduled time-sharing with father, refusing to allow father to see the children at other times, filing unfounded report with the Department of Children and Family Services that father was sexually abusing the children, and filing unfounded police reports alleging criminal activity by father.

2 **Child Custody** Welfare and best interest of child
Child Custody Visitation Conditions
Child Custody Decision and findings by court

Although termination of visitation rights is disfavored, the trial court has discretion to restrict or deny visitation when necessary to protect the welfare of the children; however, when the court exercises this discretion, it must clearly set forth the steps the parent must take in order to reestablish time-sharing with the children.

11 Cases that cite this headnote

3 **Child Custody** Physical Custody Arrangements
Child Custody Visitation Conditions
Child Custody Judgment
When a court suspends a parent's time-sharing, the court must give the parent the key to reconnecting with his or her children; an order that does not set forth the specific steps a parent must take to reestablish time-sharing, thus depriving the parent of that key, is deficient because it prevents the parent from knowing what is expected and prevents any successor judge from monitoring the parent's progress.

10 Cases that cite this headnote

4 **Child Custody** Judgment
Trial court that awarded father sole parental responsibility for parties' four minor children and temporarily suspended mother's time-sharing could not omit from its order a ruling on the specific steps mother was required to take to reestablish time-sharing; order merely stated that it was recommended that mother seek therapy, and that her decision in that regard would be an important factor in considering whether contact with the children should be reestablished.

4 Cases that cite this headnote

5 **Child Custody** Physical Custody Arrangements
Child Custody Control by and Authority of Parties
It is the trial court's responsibility to ensure that an appropriate relationship is maintained between a parent and his or her children, and that responsibility cannot be abdicated to any parent or expert; thus, a reasonable time-sharing schedule based on the parent's individual circumstances must be created based on the exercise of the court's discretion, not the other parent's.

7 Cases that cite this headnote

6 **Child Custody** Control by and Authority of Parties
Trial court that awarded father sole parental responsibility for parties' four minor children and temporarily suspended mother's time-sharing could not delegate to father, "with input from professionals," the decision of whether and when to reinitiate time-sharing; it was trial court's non-delegable obligation to ensure appropriate contact between mother and her children, regardless of how well-intentioned and trustworthy trial court thought father might be.

Attorneys and Law Firms

*455 Marcia J. Lockwood of The Family Law Clinic, Sarasota; and Susan J. Silverman, Sarasota, for Appellant.

Leslie Telford of Leslie Telford, P.A., Sarasota, for Appellee.

Opinion

VILLANTI, Judge.

Lisa **Grigsby** appeals from the nonfinal order awarding sole parental responsibility for her four minor children to their father, Lonnie **Grigsby**, and "temporarily completely" suspending her time-sharing with the children. We have carefully reviewed the troubling record in this case in light of the six issues raised by the Mother. Based on this review, we hold that the trial court did not abuse its discretion in awarding the Father sole parental responsibility and in temporarily suspending the Mother's time-sharing with the children. However, we do find that the trial court erred by not including in its order the specific conditions the Mother must satisfy in order to reestablish time-sharing with her children and that it abused its discretion by delegating to the Father the determination of whether and when time-sharing can be reestablished. Therefore, on these two narrow issues, we reverse and remand for further proceedings.

...FN* Institutions listed for identification purposes only. We write as academics with no financial interest in the outcome of this case. We teach in the fields of conflict of laws, family law, comparati...

See More Briefs

Trial Court Documents

U.S. v. Jones

2016 WL 9778560
UNITED STATES OF AMERICA, **v.** Toby JONES.
United States District Court, N.D. Illinois.
May 18, 2016

... pleaded guilty to count(s) 1-7 of the third superseding indictment. pleaded nolo contendere to count(s) _ which was accepted by the court. was found guilty on count(s) 8-12 of the third superseding ...

U.S. v. Magsino

2016 WL 9778553
UNITED STATES OF AMERICA, **v.** Frederick MAGSINO.
United States District Court, N.D. Illinois, Eastern Division.
Mar. 17, 2016

... pleaded guilty to count(s) thirteen of the superseding indictment. pleaded nolo contendere to count(s) _ which was accepted by the court. was found guilty on count(s) _ after a plea of not guilty. T...

U.S. v. Jones

2016 WL 8468052
UNITED STATES OF AMERICA, **v.** Kelsey JONES.
United States District Court, N.D. Illinois.
Nov. **30**, 2016

...Date of Original Judgment: 11/14/2016 (Or Date of Last Amended Judgment) Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2)) Reduction of Sentence for Changed Circumstances (Fed. R. Crim....

See More Trial Court Documents

The Mother and Father were married in 1991, and they separated in 2003. In 2004 the Mother filed a petition for injunction for protection against domestic violence on behalf of the parties' four minor children, alleging that the Father was using inappropriate corporal punishment to discipline the children. While the circuit court granted this petition and entered the injunction, it nevertheless also permitted the Father to have regular unsupervised visitation with the children. The Father exercised this visitation, apparently without incident, and the Mother subsequently had the injunction dissolved in July 2006.

For reasons not apparent from the record, shortly after having the injunction dissolved the Mother began a campaign to alienate the Father from the children. Then, in December 2006, she filed her petition for dissolution of marriage. In that petition, the Mother sought sole parental responsibility for the children. The Father filed a counterpetition in which he sought sole parental responsibility for the children. In his counterpetition, the Father also requested that the court "determine an appropriate parenting schedule and contact schedule which provides the children with meaningful access to their mother taking into consideration the mother's active attempts to alienate the minor children from their father." The Father also requested that the court "determine if temporary measures are necessary to normalize the relationship between the father and the children and to enter that temporary relief to normalize those relationships."

The trial court bifurcated the dissolution proceedings and addressed the parental responsibility and time-sharing issues during a four-day evidentiary hearing. At that hearing, the evidence established that after the injunction was dissolved the Mother refused to encourage the children to participate in scheduled time-sharing, and she refused to allow the Father to see the children at other times. When the Father attended the children's school functions **456* and sports activities, the Mother threatened to obtain a new injunction against him. After the petition for dissolution was filed, the Mother refused to comply with the court's temporary order regarding time-sharing. Instead, she reported to the Department of Children & Family Services that the Father was sexually abusing the children. The Department determined this report to be unfounded, but the Mother's actions succeeded in preventing the Father from seeing the children for a period of time. Along similar lines, the evidence showed that the Mother filed various police reports alleging criminal activity by the Father, including a report that the Father should be investigated in connection with a high-profile case involving the disappearance of a young girl from her home in Northport. All of the complaints underlying these police reports were determined to be unfounded.

In addition, during the pendency of the dissolution case, the Mother refused to cooperate with the parenting coordinator appointed by the court. She also filed complaints with the state against the licenses of the psychologists and social workers appointed by the court to assist it in determining the parental responsibility and time-sharing issues, contending that these professionals were biased and acting unethically. These complaints were also determined to be unfounded.

After hearing four days of testimony and observing the demeanors of both parents, the trial court found that the Mother had "actively interfered with the love and emotional ties that previously existed between the Father and the children." The court characterized the Mother's actions as the worst case of parental alienation that it had ever seen. Based on the Mother's egregious behavior, the trial court assigned sole parental responsibility for all four children to the Father and completely suspended the Mother's time-sharing with the children. While the trial court designated the suspension of the Mother's time-sharing as temporary, the court's order did not set forth what steps the Mother could take to reestablish time-sharing with the children. Instead, the court ordered that the Father, after consultation with "professionals," could determine when the Mother's time-sharing would be reinstated.

1 In this appeal, the Mother argues that the trial court abused its discretion by awarding sole parental responsibility for the children to the Father and by suspending her time-sharing with them. However, the record supports the conclusion that the Mother illegitimately used every tactic available to a parent who is legitimately concerned about the safety of her children in an effort to gain a tactical advantage in this custody case. Accordingly, we cannot agree that the trial court abused its discretion in awarding the Father sole parental responsibility and in suspending the Mother's time-sharing.

2 3 However, despite facts fully justifying the trial court's decision to completely suspend the Mother's time-sharing, case law requires that we reverse the trial court's order to the extent that it omits a ruling on the specific steps the Mother must take to reestablish time-sharing and to the extent that it delegates the decision of whether and when to

reinitiate time-sharing to the Father. "Although termination of visitation rights is disfavored, ... the trial court has discretion to restrict or deny visitation when necessary to protect the welfare of the children." *Hunter v. Hunter,* 540 So.2d 235, 238 (Fla. 3d DCA 1989). However, when the court exercises this discretion, it must clearly set forth the steps the parent must take in order to reestablish time-sharing with the children. ***457** *Id.; see also Ross v. Botha,* 867 So.2d 567, 571 (Fla. 4th DCA 2004). Essentially, the court must give the parent the key to reconnecting with his or her children. An order that does not set forth the specific steps a parent must take to reestablish time-sharing, thus depriving the parent of that key, is deficient because it prevents the parent from knowing what is expected and prevents any successor judge from monitoring the parent's progress. *See Ross,* 867 So.2d at 571.

4 Here, the order at issue does not identify what steps or actions the Mother must take to reestablish time-sharing with her children. Instead, the order states only that "[t]he Court recommends to the Mother that she seek therapy to address the issues of her delusional thinking and interactions with the children. Her decision in this regard will be an important factor in considering whether contact with the children should be reestablished." The utter lack of identification of the concrete steps that the Mother must take to reestablish time-sharing with her children deprives her of the key to reconnecting with her children and renders the trial court's order erroneous.

5 Moreover, it is the trial court's responsibility to ensure that an appropriate relationship is maintained between a parent and his or her children, and that responsibility "cannot be abdicated to any parent or expert." *McAlister v. Shaver,* 633 So.2d 494, 496 (Fla. 5th DCA 1994); *see also Letourneau v. Letourneau,* 564 So.2d 270, 270 (Fla. 4th DCA 1990). Thus, a reasonable time-sharing schedule based on the parent's individual circumstances must be created based on the exercise of *the court's* discretion, not the other parent's. *Letourneau,* 564 So.2d at 270.

6 In this case, however, the trial court's order provides that "the Father, with input from professionals" shall make the determination of when changes in the Mother's conduct are sufficient to allow her to reestablish contact with the children. This ruling impermissibly delegates the court's obligation to ensure appropriate contact between the Mother and her children to the Father and various unidentified "professionals." However well-intentioned and trustworthy the trial court may believe the custodial parent to be, the key to reconnecting with one's children may not be placed solely in the hands of the other parent. The trial court's ruling on this issue constitutes an abuse of discretion that requires reversal.

Accordingly, we reverse the trial court's order on parental responsibility and time-sharing to the extent that it gives the Father sole possession of the key to determining whether and how the Mother can reestablish time-sharing with the children. On remand, the trial court must set forth the specific steps that the Mother must take in order to reestablish time-sharing, and it must provide guidance concerning what proof of parental rehabilitation it is seeking from the Mother.[1] Further, the trial court must reserve jurisdiction to consider the Mother's progress and may not delegate to the Father and unidentified "professionals" the determination of whether and when the Mother is sufficiently rehabilitated to have time-sharing with ***458** her children. In all other respects, the court's order is affirmed.

Affirmed in part, reversed in part, and remanded.

SILBERMAN and MORRIS, JJ., Concur.

All Citations

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Footnotes

1 We recognize that this will likely require the trial court to consider input from the psychologists and social workers who have been involved with the family and who are in the best position to assist the trial court in identifying benchmarks against which the Mother's progress may be measured. We also recognize that this may be a slow process. However, absent such benchmarks being identified by the trial court, the "temporary" nature of the suspension of the Mother's time-sharing will become illusory.

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