

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

In the matter of: Pedro R. III

Court of Appeals No. L-04-1017

Trial Court No. 96007803

**DECISION AND JUDGMENT ENTRY**

Decided: February 11, 2005

\* \* \* \* \*

Jill E. Wolff, for appellant.

\* \* \* \* \*

SINGER, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Juvenile Division, which denied a father's motion for conveyance from prison to attend a hearing on a change of custody motion for his son. Because we conclude that the trial court did not err, we affirm.

{¶ 2} On February 22, 2001, Juana R., Pedro R. III's paternal grandmother, obtained custody of him. Appellee, Sandra W., is Pedro R. III's biological mother. On January 27, 2003, appellee moved to regain legal custody of the boy. A hearing on the motion was set for September 16, 2003.

{¶ 3} Appellant, Pedro R. Jr., is Pedro R. III's biological father. On May 28, 2003, appellant moved to be conveyed from prison in order to attend the hearing on appellee's motion. The trial court denied the motion.

{¶ 4} Counsel for appellant did, however, attend the hearing. Through counsel, appellant renewed his motion to convey. The trial court reaffirmed its denial of appellant's motion to convey, and the hearing proceeded despite appellant's absence. At the hearing, counsel for appellant cross-examined appellee, who was the only witness to testify. After considering all the testimony and evidence presented, the trial court returned legal custody of Pedro R. III to appellee.

{¶ 5} Appellant now appeals the trial court's order denying conveyance, and sets forth the following assignment of error:

{¶ 6} "The trial court erred in denying appellant's motion to be conveyed, thus denying him his due process rights."

{¶ 7} In his sole assignment of error, appellant contends that the trial court's refusal to convey him from prison in order to testify at the hearing prejudiced his rights and prevented him from arguing against appellee's motion to regain legal custody of Pedro R. III.

{¶ 8} A trial court has discretion to decide whether to proceed with a custody hearing absent an incarcerated parent. *State ex rel. Vanderlaan* (1994), 96 Ohio App.3d 235, 236; See, also, R.C. 2317.06(B). Thus, an appellate court will not reverse a trial court's decision absent an abuse of that discretion. An abuse of discretion is "more than

an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Calderon v. Sharkey* (1982), 70 Ohio St.2d 218, 219-220, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157-158.

{¶ 9} A transfer of legal custody does not divest a parent of his fundamental parental rights; and such a parent remains free to petition the courts for a custody modification at any time. *In re Hockstok* (2002), 98 Ohio St.3d 238, 246, 2002-Ohio-7208. Accordingly, due process does not mandate that a parent be present at a hearing to change legal custody of a child. See *In the matter of Holewinski*, (May 14, 1993), 6th Dist. No. L-92-216. Finally, when a parent's interests are adequately represented by his attorney, it is not an abuse of discretion to deny a motion to convey that parent from prison and proceed with a legal custody hearing in the parent's absence. *Id.*

{¶ 10} In the instant action, the trial court granted appellee's motion to regain legal custody of Pedro R.III. As such, appellant's fundamental parental rights were not terminated, and he is free to petition the courts for a custody modification at any time. In addition, counsel for appellant was present at the hearing, and appellant's counsel fully cross-examined appellee regarding appellee's motion to regain legal custody of Pedro R. III. Finally, the trial court made a full record of the proceedings, and any additional testimony that appellant wished to present could have been presented by deposition pursuant to R.C. 2317.06(B). Accordingly, we find that appellant's due process rights were not violated when the trial court proceeded in his absence. Appellant's assignment of error is not well-taken.

{¶ 11} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Court costs of this appeal are assessed to appellant pursuant to App. R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

George M. Glasser, J.  
CONCUR.

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JUDGE

Judge George M. Glasser, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.