

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

T.M.

Court of Appeals Nos. L-11-1242
L-11-1285

Appellee

Trial Court No. JC08177645

v.

J.H.

DECISION AND JUDGMENT

Appellant

Decided: June 1, 2012

* * * * *

Dennis P. Strong for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, J.H., the father of A.H., appeals orders of the Lucas County Court of Common Pleas, Juvenile Division concerning visitation by her mother and maternal grandparents. Because we conclude that necessary hearings on grandparent visitation were held for the maternal grandfather, but not conducted for the maternal grandmother, we reverse, in part, and affirm, in part.

{¶ 2} This matter is a continuation of a contentious and unusually litigious custody dispute between unmarried parents over their now five-year-old daughter. *See T.M. v. J.H.*, 6th Dist. No. L-10-1014, 2011-Ohio-283, *appeal not accepted*, 129 Ohio St.3d 1409, 2011-Ohio-3244, 949 N.E.2d 1004. *See also State ex rel. T.M v. Fornof*, 6th Dist No. L-09-1192, 2009-Ohio-5618, *aff'd*, *State ex rel. Mosier v. Fornof*, 126 Ohio St.3d 47, 2010-Ohio-2516, 930 N.E.2d 305.

{¶ 3} Appellant father is now designated the residential parent and legal custodian of A.H. A.H.'s maternal grandfather, Stephen Mosier, was awarded supervised grandparent visitation in 2010. On April 29, 2011, appellant moved to suspend maternal grandfather's visitation.

{¶ 4} On June 10, 2011, A.H.'s maternal grandmother, Linda Mosier, moved pro se to intervene and requested visitation independent of the maternal grandfather. On June 16, the maternal grandfather moved to terminate supervised visitation in favor of unsupervised visitation. Appellant opposed maternal grandfather's motion, principally on the grounds that the trial court lacked jurisdiction to rule while earlier facets of the case were on appeal.

{¶ 5} In orders dated July 28, 2011, but for whatever reason not journalized until September 16, 2011, the trial court granted maternal grandfather's motion for unsupervised visitation, granted maternal grandmother visitation and denied appellant's motion to suspend grandparent visitation. On September 27, 2011, appellant appealed these orders.

{¶ 6} In an order dated September 16, 2011, but not journalized until October 3, the court confirmed Health Connections as a place where A.H's mother could have supervised visitation, on condition that Health Connection's operator, Ross Chaban, acknowledged responsibility for preventing the mother from absconding with the child. Appellant appealed this order on October 12, 2011.

{¶ 7} We have consolidated these appeals. Appellant sets forth the following assignments of error:

A. The trial court erred in issuing the Judgment Entry [ies] of September 16, 2011[,], without holding a hearing to obtain testimony and evidence for consideration by the court to rule in the best interests of the minor child.

B. The trial court's failure to conduct a hearing on the grandparents' motions denied Appellant his due process rights.

{¶ 8} Appellee filed no brief in either appeal.

{¶ 9} Appellant's basic argument is that, since the trial court failed to hold a hearing on the grandparents' requests for visitation, it could not possibly have considered the sixteen factors mandated in R.C. 3109.051(D). Moreover, he insists, the lack of a hearing of these motions denied him the opportunity to be heard, a fundamental tenet of due process.

{¶ 10} R.C. 3109.051(C) provides that, when determining visitation rights to a grandparent, the court shall consider all relevant factors, including those enumerated in

R.C. 3109.051(D). After having considered these factors, the court has broad discretion with respect to visitation issues and will not be reversed absent an abuse of that discretion. *Harrold v. Collier*, 9th Dist. No. 06CA0010, 2006-Ohio-5634, ¶ 6, citing *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). An abuse of discretion is more than an error of law or judgment, the term connotes an attitude that is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶ 11} Although there is no specific requirement that a court hold a hearing antecedent to a determination of grandparent visitation, it is certainly preferable and it would be difficult to understand how a court could consider the mandatory factors without a hearing. *Cassidy v. Wagner*, 12th Dist. No. CA2011-03-006, 2011-Ohio-5868, ¶ 24.

{¶ 12} Appellant maintains that there was no hearing on either maternal grandparent's motion for visitation. The record does not entirely support this assertion. The judgment permitting maternal grandfather Stephen Mosier visitation states that the decision is based on an October 1, 2010 hearing. Moreover, the time for appealing such a judgment is long since passed. App.R. 4(A).

{¶ 13} Maternal grandmother, Linda Mosier, is another matter. Her motion to intervene and for visitation was not entered until June 10, 2011. There is no reference to a hearing on the motion in the record, nor does the judgment entry state that the court's decision was based on a hearing. Absent a record of a hearing or some statement in the

judgment as to the manner in which the statutorily mandated factors were considered, we must conclude that no such consideration was had and that visitation was granted in error. Accordingly, to the extent that appellant complains that a grant of grandparental visitation to Linda Mosier was erroneous, that portion of his first assignment of error is well-taken.

{¶ 14} The trial court's approval of a supervised visitation site, the change of maternal grandfather's visitation from supervised to non-supervised and the denial of appellant's motion to withdraw maternal grandfather's visitation privileges are matters either outside the scope of R.C. 3109.051 or do not require a complete revalidation of the issue. We have carefully reviewed the record in this matter and conclude that the trial court acted within its discretion in reaching these decisions. Accordingly, the remainder of appellant's first assignment of error and his second assignment of error are found not well-taken.

{¶ 15} On consideration whereof, the judgments of the Lucas County Court of Common Pleas, Juvenile Division, are affirmed, in part, and reversed, in part. This matter is remanded to said court to conduct a hearing on maternal grandmother's motion for visitation if the matter has not already been resolved. It is ordered that appellee pay the costs of this appeal, pursuant to App.R. 24.

Judgment affirmed, in part,
and reversed, in part.

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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

Arlene Singer, P.J.

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

JUDGE

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