

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

B.M., et al.

Court of Appeals No. WM-14-006

Appellants

Trial Court No. 20144030

v.

H.L., et al.

DECISION AND JUDGMENT

Appellee

Decided: June 19, 2015

* * * * *

James E. Hitchcock, for appellants.

Michael C. Wahl, for appellee.

* * * * *

SINGER, J.

{¶ 1} Appellants, B.M. and C.M., appeal from the judgment entered by the Williams County Court of Common Pleas, Juvenile Division. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} Appellants set forth two assignments of error:

I. The trial court improperly applied the inconvenient forum standard. The court's decision equals an abuse of discretion.

II. The court erred in its improper interpretation of the "in loco parentis" doctrine. The trial court does not have to find the parents unsuitable. The correct test is the child's best interest.

{¶ 3} On March 27, 2014, appellants B.M., the grandfather, and C.M., the step-grandmother, of child Z.J.M., who was born in November 2008, filed a complaint against H.L., the mother, and A.S., the father, requesting appellants be named the residential persons and legal custodians of Z.J.M., and for appropriate support and visitation orders. In the alternative, appellants requested a shared parenting plan, or as a second alternative, grandparent visitation with equal access to the child's school and medical records.

{¶ 4} On May 14, 2014, father submitted a "Motion of Partial Objection." On June 6, 2014, mother filed an answer and a motion for finding of inconvenient forum and stay of proceedings. Appellants filed a response to mother's motion for finding of inconvenient forum on June 16, 2014. A hearing on mother's motion was held on July 17, 2014, with mother, grandfather, and step-grandmother appearing before the magistrate.

{¶ 5} On September 15, 2014, the magistrate filed a decision finding the mother's motion to be well-taken and ordering the proceeding to be stayed pending the commencement of child custody proceedings in the state of Virginia. Appellants had 90

days to commence a custody action in Virginia, failing which the action would be dismissed at appellants' cost.

{¶ 6} On September 25, 2014, appellants filed an objection to the magistrate's decision. After an independent review of the pleadings, memoranda, and closing arguments, the trial court overruled the objection and approved, adopted, and ordered the magistrate's decision into law. It is from this judgment that appellants appeal, raising two assignments of error for our review.

{¶ 7} Unless otherwise noted, our standard of review is whether the trial court abused its discretion in adopting the magistrate's decision. A trial court's ruling on objections to a magistrate's decision will not be reversed absent an abuse of discretion. *Gobel v. Rivers*, 8th Dist. Cuyahoga No. 94148, 2010-Ohio-4493 ¶ 16.

{¶ 8} An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). "Abuse of discretion" is a term of art, describing a judgment neither comporting with the record, nor reason. *State v. Ferranto*, 112 Ohio St. 667, 676-678, 148 N.E. 362 (1925). "A decision is unreasonable if there is no sound reasoning process that would support that decision." *AAAA Ents., Inc. v. River Place Community Urban Redevelopment*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). Further, an abuse of discretion may be found when the trial court "applies the wrong legal standard, misapplies the correct legal standard, or relies on

clearly erroneous findings of fact.” *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, 892 N.E.2d 454, ¶ 15 (8th Dist.).

{¶ 9} In the first assignment of error, appellants argue the trial court abused its discretion and improperly applied the inconvenient forum standard, under R.C. 3127.21, which resulted in the finding that Ohio was an inconvenient forum to determine the custody petition. We find no merit to this argument.

{¶ 10} R.C. 3127.21(A) provides that even if a court has jurisdiction to make a child custody determination, it may decline to exercise that jurisdiction “at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more convenient forum.”

{¶ 11} In determining whether a court is an inconvenient forum, a court shall consider the relevant factors set forth in R.C. 3127.21(B):

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
- (2) The length of time the child has resided outside this state;
- (3) The distance between the court in this state and the court in the state that would assume jurisdiction;
- (4) The relative financial circumstances of the parties;
- (5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

{¶ 12} Here, the trial court found that the magistrate's decision gave due consideration to all relevant factors including the eight factors set forth in R.C. 3127.21(B). The findings of the magistrate, as adopted by the trial court, are summarized as follows:

(1) There is no evidence of domestic violence by any party prior to this action.

(2) The child lived in Ohio since birth. On February 28, 2014, he moved to Virginia, where he is currently enrolled in kindergarten.

(3) The distance between mother's home and Bryan, Ohio is approximately 675 miles. Travel time, with children, is approximately 14 hours.

(4) Although mother and father have struggled financially, things are getting better with husband working full time. Financially it would appear grandfather and step-grandmother are financially stable and the burden on them traveling to Virginia would be substantially less than the burden on

mother and child. Since father is incarcerated, mother receives no income for child and thus has the sole burden on financially providing for said child.

(5) The parties disagree as to which state should have jurisdiction over this case.

(6) As the most critical evidence in this case includes parental unsuitability of the mother, availability of other family members for support, and the child's current environment, it appears that the most critical evidence is in Virginia.

(7) There is no indication the courts in Virginia could not decide all the issues in this case expeditiously.

(8) Until this action was filed, no Ohio court had any history with this case.

{¶ 13} The magistrate also considered R.C. 3127.21(C), which requires the court to stay the proceedings on the condition that a child custody proceeding be commenced in another state. The magistrate granted appellants 90 days to commence a custody action in Virginia, or the action would be dismissed.

{¶ 14} The magistrate concluded that Ohio was an inconvenient forum and that the parties had been given sufficient time to commence a child custody proceeding in Virginia. We find no abuse of discretion on the part of the trial court in adopting the magistrate's decision, as the trial court was fully within its discretion to determine

whether it had jurisdiction and then whether it should decline to exercise that jurisdiction. Appellants' first assignment of error is therefore not well-taken.

{¶ 15} In the second assignment of error, appellants argue the trial court erred in its improper interpretation of the "in loco parentis" doctrine. Appellants contend the trial court did not have to find the parents unsuitable, as the correct test is the child's best interest.

{¶ 16} In Ohio, the finding of parental unsuitability has been recognized as a necessary step in a child custody proceeding between a parent and nonparent. *See In re Perales*, 52 Ohio St.2d 89, 346 N.E.2d 1047 (1977), syllabus. The Ohio Supreme Court removed any doubt that the best interest standard in a child custody proceeding between a parent and a nonparent applies only after a threshold determination that the child's parents are deemed unsuitable. *Id.* at 98-99.

{¶ 17} Here, the grandfather and step-grandmother, not the parents, are attempting to obtain custody of a child from a parent. We therefore do not find any error in the trial court's application and analysis of the parental unsuitability standard, as set forth in *Perales*.

{¶ 18} We find no abuse of discretion here. Appellants' second assignment of error is therefore not well-taken.

{¶ 19} On consideration whereof, the judgment of the Williams County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellants 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.

Arlene Singer, J.

Thomas J. Osowik, J.

James D. Jensen, J.
CONCUR.

JUDGE

JUDGE

JUDGE

<p>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.</p>
