DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2007

DEPARTMENT OF CHILDREN & FAMILIES, STATE OF FLORIDA; GUARDIAN AD LITEM PROGRAM,
Petitioners,

v.

S.T., as mother of E.T. and C.K.; and **C.K.**, the father,
Respondents.

No. 4D07-1798

[August 15, 2007]

FARMER, J.

A party calling itself the "Guardian ad Litem Program" (GALP) has filed a petition for certiorari seeking extraordinary review of a nonfinal order granting a mother's motion for reunification entered in a pending child dependency proceeding. The Department of Children and Families of the State of Florida (DCF) has filed a response joining in the petition. Because DCF has joined in this petition, we set aside any doubts we may harbor about GALP's standing or authority in its own name—rather than through the party represented by a guardian ad litem—to seek review of orders in these proceedings. We find certiorari inappropriate under the facts of this case.

In this case, these two older children had been adjudicated dependent as to both parents on account of multiple incidents of domestic violence committed in their presence. Initially they were left in the mother's custody under the supervision of DCF. After yet another incident, these two children and the mother's new infant all were placed in the custody of the paternal grandparents. The trial court accepted a case plan as to the two older children with the goal of reunification.

After barely a month, the mother moved for reunification because she had begun to work on all of the tasks of her case plan and had completed one or more of them. After hearing evidence the court announced that it would order the children returned to the mother—conditioned on her passing a home study by DCF. Although the trial court also announced orally that she was "making no findings," in her handwritten order she

M A N D A T E

from

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This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable GEORGE A. SHAHOOD, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

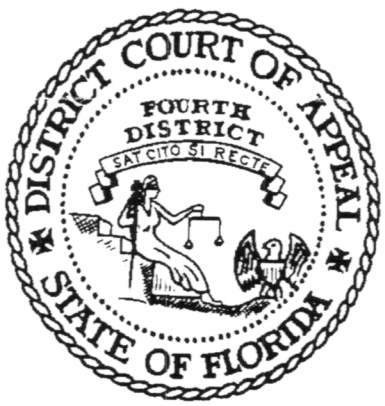
DATE: August 31, 2007

CASE NO.: 4D07-1798

COUNTY OF ORIGIN: Broward

T.C. CASE NO.: 20067625CJDP

STYLE: GUARDIAN AD LITEM PROGRAM v. DEPT. OF CHILDREN & FAMILIES, ET AL.



Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

ORIGINAL TO: Howard Forman, Clerk

cc:
Patricia M. Propheter
Roger Ally
Attorney General - Fort Laud
Kenneth M. Kaplan

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visitation between Appellant and the parties' minor child. We affirm the trial court's decision to not hold appellee in contempt, but reverse the portion of the order improperly construing the spring break provision.

The construction of a judgment is not permitted if the language contained therein is plain and unambiguous. *McCann v. Walker*, 852 So. 2d 366, 367 (Fla. 5th DCA 2003). Absent any ambiguity, the language of the judgment must be given its literal meaning. *Id.* Ambiguity exists where more than one literal interpretation is reasonable. *Id.*

The amended final judgment in this case provides that in odd-numbered years, Appellant is entitled to spring break visitation from "the time Leon County public schools close for the Spring recess until the morning the Leon County public schools reopen." The trial court construed the clause to provide a five-day visitation period beginning on Monday and ending on Friday.

We conclude that the trial court properly construed the portion of the final judgment defining when spring break visitation *begins* because there is more than one reasonable interpretation of that clause. We also agree with the trial court's determination that spring break visitation begins on Monday. Leon County public schools do not close on Friday for spring break, but for observance of the weekend, during which schools are customarily not in session. Instead, the schools "close" in observance of spring break on Monday, the weekday that customarily begins the school week.

The trial court erred, however, in concluding that spring break visitation ends on Friday. The judgment provides that spring break continues "until the morning the Leon County public schools reopen." Because this portion of the final judgment is not ambiguous, the trial court should have given the clause its literal meaning. *See McCann*, 852 So. 2d at 366. Requiring that the child be returned on Friday would be contrary to the express language of the final judgment because the public schools do not "reopen" on Friday. Based on the express language, it is clear that Appellant's visitation extends through the weekend until school reopens on the following weekday.

Accordingly, we reverse the trial court's ruling to the extent that it modifies spring break visitation to end on Friday. We otherwise affirm the trial court's ruling. Upon remand, the trial court should enter an order consistent herewith.

AFFIRMED, in part, REVERSED, in part, and REMANDED. (ERVIN, DAVIS and THOMAS, JJ., CONCUR.)

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923 So.2d 1195 31 Fla. L. Weekly D803b

Dissolution of marriage—Child support—Trial court did not err in refusing to apply special calculation where noncustodial parent has overnight visitation for at least forty percent of nights per year—Evidence supported court's finding that visitation actually exercised by former husband was less than that provided in written schedule and fell below forty percent threshold provided by statute

IGNACIO M. FONT, Appellant, vs. DOLORES M. MASTRAPA-FONT, Appellee. 3rd District. Case No. 3D05-1077. L.T. Case No. 04-14454. Opinion filed March 15, 2006. An Appeal from the Circuit Court for Miami-Dade County, Eugene J. Fierro, Judge. Counsel: Elena de Socarraz and Lizbeth Michel-Greenberg, for appellant. James D. Keegan, for appellee.

(Before COPE, C.J., and SHEPHERD and SUAREZ, JJ.)

(COPE, C.J.) The former husband, Ignacio M. Font, appeals a final judgment of dissolution of marriage. We affirm.

We first address the former husband's claim that the trial court erred in its child support calculation. The former husband contends that the trial court erroneously refused to provide him the benefit of the forty percent rule contained in the child support statute. *See* § 61.30(11)(b), Fla. Stat. (2004). The statute provides a special calculation where the noncustodial parent has the children for overnight visitation for at least forty percent of the nights per year. *See id.* § 61.30(11)(b)10.

In this case the parties agreed on a liberal visitation schedule which was incorporated into the final judgment. The former husband calculates that under the terms of the written visitation schedule, the children stay with him overnight for forty percent of the nights per year. The former husband maintains that the trial court erred by ruling that the forty percent rule does not apply here.

We conclude that the trial court's ruling was correct based on the testimony of the parties. In order to qualify for the forty percent rule, the noncustodial parent must be actively exercising overnight visitation for at least forty percent of the nights per year. *See id.*

The written visitation schedule included visitation with the former husband on alternating weekends beginning Thursday after school until Sunday at 8:00 p.m. Under this schedule, each week the husband would have the children Thursday evening, Friday evening, and Saturday evening for overnight visitation. When those overnight stays are added to all of the former husband's other visitation days, the former husband is correct that this amounts to forty percent of the overnight stays per year.

However, at the final hearing the parties testified that when the former husband had alternating weekend visitation, his visitation began on Friday, not Thursday. This resulted in an omission of twenty-six Thursdays per year. The court was correct in saying that the visitation actually exercised by the former husband was less than that provided in the written schedule and fell below the forty percent threshold provided by the statute. Thus, the trial court was correct in ruling that the forty percent threshold had not been met.

We affirm the trial court's remaining rulings as being supported by the record and within the trial court's discretion. *See Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980). We have carefully considered the former husband's arguments on appeal, but are not persuaded that any reversible error occurred.

Affirmed.

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923 So.2d 1198 31 Fla. L. Weekly D804e

Dependent children—Default—Trial court abused discretion by failing to grant continuance and by ordering default judgment and consent to adjudication of dependency as against natural father

J.J., Appellant, vs. DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Appellee. 3rd District. Case No. 3D05-1687. L.T. Case No. 04-15608. Opinion filed March 15, 2006. An Appeal from the Circuit Court for Miami-Dade County, John Schlesinger, Judge. Counsel: Kenneth M. Kaplan, for appellant. Calianne P. Lantz, for appellee.

(Before FLETCHER and SUAREZ, JJ., and SCHWARTZ, Senior Judge.)

(PER CURIAM.) J.J., the minor child's natural father, appeals from a default order of dependency. We find that the trial court abused its discretion by failing to grant a continuance and by ordering a default judgment and consent to an adjudication of dependency as against the natural father. We reverse and remand for further proceedings at which the court shall allow the natural father to be present and to make his defense.

Reversed and remanded.

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