Third District Court of Appeal

State of Florida, January Term, A.D. 2008

Opinion filed April 9, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D07-1369
Lower Tribunal No. 05-19027

Elio Chang,
Appellant,

vs.

Julia Chang,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Joel H. Brown, Judge.

Gonzalez & Alvarez, and Silvia Gonzalez, for appellant.

Kenneth M. Kaplan, for appellee.

Before RAMIREZ, and SALTER, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

Affirmed.

concluding that there was no abuse.

On February 14, 2005, the trial court conducted a hearing on the motion. Our record contains no hearing transcript. On March 16, 2005, the trial court entered a temporary order changing primary residential custody from Ms. Maras to Mr. Still. The order also called for a social services investigation, modified visitation, and terminated Mr. Still's child support obligation. The order did not address Mr. Still's request for appointment of a guardian ad litem.

Ms. Maras argues that she did not retain counsel for or present witnesses at the hearing on Mr. Still's motion because she had no notice that the trial court might take primary custody away from her. After entry of the order, Ms. Maras promptly filed a motion for rehearing arguing that she was denied due process. The trial court denied that motion.

" 'The trial court cannot modify a custody order unless the court's subject matter jurisdiction has been properly invoked by appropriate pleadings, proper service of process has been had and there is given proper notice and opportunity to be heard on that issue.' " *Busch v. Busch*, 762 So. 2d 1010, 1011 (Fla. 2d DCA 2000) (quoting *Richmond v. Richmond*, 537 So. 2d 1039, 1040 (Fla. 5th DCA 1988)). In *Busch*, the trial court granted custody of the parties' children to the mother. *Id.* at 1010-11. Later, the father filed a motion seeking to keep the mother out of the former marital home. *Id.* at 1011. At the hearing on the motion, the father sought custody of the children and presented testimony about the wife's character and fitness as a parent. *Id.* The trial court gave primary custody to the father. *Id.* We reversed.

> [The mother] was given no warning that the custody of her children was at stake. She appeared at the hearing unrepresented by counsel and was unprepared to rebut the unfavorable evidence presented against her. Because she received no notice and was denied a meaningful opportunity to respond to the [father's] evidence, the trial court erred in ordering the change of custody.

Id.

Similarly, Ms. Maras had no warning that the primary residential custody of her child was at stake. Like the mother in *Busch*, Ms. Maras was unrepresented and unprepared to rebut the unfavorable evidence presented against her. Accordingly, we must reverse the trial court's temporary order.

We note that the trial court's temporary order was entered more than a year ago. We assume that the comprehensive investigation ordered by the trial court has been completed. We are confident that, upon remand, the trial court will conduct further proceedings, hopefully on an expedited basis, so as to ensure that the child's best interests are protected.

Reversed and remanded. (SALCINES and LaROSE, JJ., Concur.)

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927 So.2d 1088 **31 Fla. L. Weekly D1392e**

Dependent children—Record supported trial court's determination that maintaining protective supervision was in children's best interests—Error to require continued visitation with maternal grandmother after child had been returned to mother's custody

T.M., the Mother, Appellant, v. DEPARTMENT OF CHILDREN AND FAMILIES, Appellee. 4th District. Case No. 4D05-3878. May 17, 2006. Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; John B. Bowman, Judge; L.T. Case No. 03-3677 DP. Counsel: Kenneth M. Kaplan, Miami, for appellant. Charles J. Crist, Jr., Attorney General, Tallahassee, and Tricia D. Brissett, Assistant Attorney General, Fort Lauderdale, for appellee.

(STEVENSON, C.J.) T.M.'s two sons, J.L.1 and J.L.2, were adjudicated dependent on June 5, 2003, and placed with their maternal grandmother. When the children were returned to T.M.'s custody, the grandmother initially had an "understanding" with T.M. for visitation privileges. Following a hearing on June 13, 2005, the General Master filed a report stating visitation was "NA-Children are in the home." A subsequent report was filed on July 11, 2005, requiring that the grandmother continue to have the visitation she had prior to the June 13, 2005 hearing and stating that it was not in the children's best interests for the court to terminate protective supervision. T.M. now appeals the trial court's order denying termination of supervision and requiring continued visitation for the grandmother. We affirm the continuation of protective supervision as the record supports the trial court's determination that maintaining protective supervision is in the children's best interests. We reverse, however, the visitation order.

"Generally, a grandparent is entitled to reasonable visitation with a grandchild who has been adjudicated dependent and taken from the physical custody of the parent." *In re S.D.*, 869 So. 2d 39, 40 (Fla. 2d DCA 2004) (referencing § 39.509, Fla. Stat.). However, as we stated in *L.B. v. C.A.*, 738 So. 2d 425, 427 (Fla. 4th DCA 1999), those visitation rights terminate "when a child has been returned to the physical custody of a parent or others." Accordingly, we agree that once the children were returned to T.M.'s custody, the trial court erred in ordering her to provide the grandmother with visitation. In light of our reversal of this portion of the trial court's order, we need not reach the merits of the final issue raised.[1]

Affirmed in part and Reversed in part. (GUNTHER and TAYLOR, JJ., concur.)

[1]In her final point on appeal, the mother challenges the constitutionality of section 39.509, Florida Statutes, which provides that grandparents are entitled to reasonable visitation with a grandchild who has been adjudicated dependent and taken away from the physical custody of the parent. This issue, now moot, was not raised in the trial court and therefore was not properly preserved for appeal. *See State v. Turner*, 224 So. 2d 290 (Fla. 1969).

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927 So.2d 1087 **31 Fla. L. Weekly D1393a**

Dissolution of marriage—Alimony—Modification—Jurisdiction—Foreign judgments—Florida court has jurisdiction to modify alimony provisions of foreign judgment only after it has been established as a Florida judgment

BRENDA MANI, Appellant, v. JAMES J. MANI, Appellee. 4th District. Case No. 4D05-3928. May 17, 2006. Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Catherine M. Brunson, Judge; L.T. Case No. 502005DR009412XXMB. Counsel: Martin L. Haines, III of Haines & Hodas Chartered, Lake Park, for appellant. Adam S. Gumson of Jupiter Law Center, Jupiter, for appellee.

(PER CURIAM.) Brenda and James Mani were divorced by a New Jersey final judgment in 2002. The judgment required Brenda to pay James $610 per week in alimony, "subject to modification in accordance with New Jersey law upon the occurrence of [James's] cohabitation with any member of the opposite sex not related to defendant by blood or marriage."

After the entry of the judgment, both James and Brenda became residents of Palm Beach County, Florida. Brenda filed a petition for modification and/or enforcement of the final judgment in the circuit court. The court granted James's motion to dismiss, citing *Spalding v. Spalding*, 886 So. 2d 1075 (Fla. 5th DCA 2004).

Brenda disagrees with the dismissal, contending that this was not an action brought under the Uniform Interstate Family Support Act, Chapter 88, Florida Statutes (2004), the statute applied in *Spalding*. *See* § 88.2051(6), Fla. Stat. (2004). Brenda contends that the wife "chose to enforce the terms of the [New Jersey] judgment under common law." Section 88.1031, Florida Statutes (2004) provides that the UIFSA remedies "are cumulative and do not affect the availability of remedies under other law."

The trouble with Brenda's argument is that a Florida court has jurisdiction to modify the alimony provisions of a foreign judgment only after it has been established as a Florida judgment. *See* § 61.14(1)(a), Fla. Stat. (2004); *Sackler v. Sackler*, 47 So. 2d 292, 295 (Fla. 1950); *Haskin v. Haskin*, 781 So. 2d 431 (Fla. 4th DCA 2001); *Serko v. Serko*, 385 So. 2d 1117 (Fla. 4th DCA 1980); *Muss v. Muss*,