



Lucas v. Byers

2024-Ohio-1341 (2024) | Cited 0 times | Ohio Court of Appeals | April 9, 2024

IN THE COURT OF APPEALS OF OHIO ELEVENTH APPELLATE DISTRICT LAKE COUNTY

JASON C. LUCAS,

Plaintiff-Appellant,

- vs -

LINDSAY N. BYERS,

Defendant-Appellee. CASE NO. 2023-L-093

Civil Appeal from the Court of Common Pleas, Juvenile Division

Trial Court No. 2016 CV 00054

O P I N I O N

Decided: April 9, 2024 Judgment: Affirmed

Kenneth J. Cahill, Dworken & Bernstein Co., LPA, 60 South Park Place, Painesville, OH 44077 (For Plaintiff-Appellant).

Joseph G. Stafford and Nicole A. Cruz, Stafford Law Co., L.P.A., North Point Tower, 1001 Lakeside Avenue, Suite 1300, Cleveland, OH 44114 (For Defendant-Appellee).

Cory R. Hinton, Hanahan & Hinton, LLC, 8570 Mentor Avenue, Mentor, OH 44060 (Guardian Ad Litem).

MATT LYNCH, J.

{¶1} Plaintiff-appellant, Jason Lucas, appeals from the judgment of the Lake

County Court of Common Pleas, Juvenile Division, modifying its order of supervised



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visitation. For the following reasons, we affirm the judgment of the lower court.

{¶2} In January 2016, Lucas filed a complaint requesting allocation of parental

rights and responsibilities of the parties D.L., born in 2015. Defendant-

appellee, Lindsay Byers, was designated residential parent in January 2017. {¶3} Following a trial on Lucas subsequent motion for custody, the court issued

a December 31, 2019 order, finding that by

designating Lucas as sole residential parent and legal custodian, noting that Byers had taken the child to various doctors based upon a belief of abuse by the father and, although the allegations were found to be unsubstantiated, continued to take the child for treatment. It ordered that Byers have parenting time for a minimum of six hours per week to be supervised by Anna Tyrrell and paid for by Byers. It ordered that the parties attend joint therapy to address communication issues. It required Byers to complete an intensive

It further provided: 27, 2020, Mother shall have parenting time pursuant to Lake County Ohio Juvenile Rule

This judgment was affirmed by this court in Lucas v. Byers, 11th Dist. Lake Nos.

2020-L-110, et al., 2021-Ohio-246. The court subsequently issued a nunc pro tunc entry

on November 24, 2020, adding the text in bold If the foregoing conditions [relating

to therapy and treatment] are complete as of August 27, 2020, Mother shall have

parenting time pursuant to Lake County Ohio Juvenile Rule V

Lucas v. Byers, 11th Dist. Lake No. 2020-L-122, 2021-Ohio-2467.

{¶4} On April 9, 2022, Byers filed a Motion to Modify Parenting Time. A trial

commenced on the motion on September 12, 2022. The following pertinent testimony



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and evidence were presented:

{¶5} , testified that she met with both

parents on one occasion. She testified that Byers answered all questions and complied

Byers She testified that she needed at least one additional meeting with the parents and another contact with the visitation supervisor, Anna Tyrrell.

{¶6} Byers testified that she attended joint therapy with Dr. Neuhaus on several

occasions. Since the last joint session, she had not received any communication from

his office. She contacted Psych BC but was not able to enroll in intensive outpatient

treatment (IOP), although she completed an IOP program at Highland Springs addressing coping skills for dealing with trauma. She also regularly sees a therapist.

{¶7} Byers testified that she had not had visitation with her child since March

2020 because she cannot afford to pay the cost of \$2,000 a month. Lucas does not allow

her to speak with their child on the phone but does allow her to send him weekly

packages. Byers works at a restaurant five hours a week and has not attempted to obtain full-

{¶8} Lucas Lucas

{¶9} Anna Tyrrell testified that she had most recently supervised visitation in

March 2020. She offered to supervise shorter visits or video visits due to the cost but

Byers did not take her up on the offer. She testified that had

{¶10} During the course of the trial, Dr. Neuhaus was subpoenaed but did not appear because of a family emergency. The matter was continued and Dr. Neuhaus was

again subpoenaed but did not appear.



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{¶11} The February 10, 2023 subsequently adopted by the

trial court, made the following pertinent findings: the parenting coordinator had not been able to monitor Byers recommendation as to parenting time because she lacked sufficient information; mother

testified that she discontinued parenting time because she could not afford it; joint therapy with Dr. Neuhaus occurred but the last session was in December 2020; mother completed an IOP at Highland Springs; Byers receives mental health treatment from Dr. Seaman; and Lucas It concluded that it was not in the best interest of the child that

Byers be granted Rule V parenting time, but in the JE ought to be eliminated or modified given the lack of progress by the parties in

complying with those orders. that if the judgment remained unmodified th[e]n

It

found that Byers shall have supervised visitation at a minimum of 6 hours a week, to be provided at Safe and Sound; that the order to attend joint therapy is rescinded; and that the order to complete IOP at Psych BC is rescinded. It ordered that mother continue therapy with Dr. Seaman and sign necessary releases of information relating to her therapy to the parenting coordinator.

{¶12} Lucas timely appeals and raises the following assignment of error:

{¶13} {¶14} Lucas raises various arguments that the court abused its discretion in amending its visitation order. First, he argues that the court erred in terminating its order that Byers have her parenting time supervised by Anna Tyrrell, arguing that Byers r r y allowing Byers to seek out a more



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malleable parenting- with her child.

{¶15} Decisions on visitation, including rulings on motions to modify, are reviewed

for an abuse of discretion. In re J.S., 11th Dist. Lake No. 2011-L-162, 2012-Ohio-4461,

¶ 19. issues relating to visitation parties' demeanor and attitude that does not translate well to the record. omitted.) In re T.J.T.P., 11th Dist. Ashtabula Nos. 2018-A-0042 and 2018-A-0043, 2019-

Ohio-837, ¶ 15, citing In re A.M., 11th Dist. Trumbull No. 2016-T-0051, 2016-Ohio-8433,

¶ 23. An abuse of discretion

decision- State v. Beechler, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶

62, quoting 11 (8th Ed.2004).

{¶16} R.C.

3109.051(D) Hynd v. Roesch, 11th Dist. Ashtabula No. 2016-A-0065, 2017-Ohio-7448,

¶ 15. Pursuant to R.C. 3109.051(D), the trial court shall consider the factors therein to

determine the best interest of the child. Cireddu v. Clough, 11th Dist. Lake No. 2013-L-

092, 2014-Ohio-2454, ¶ 77. These factors include, inter alia, the relationship of the child with the parents, the mental and physical health of all parties, the safety of the child, and

the willingness of the parents to facilitate parenting time. A noncustodial parent s right

of visitation with his children is a natural right and should be denied only under

extraordinary circumstances. Eitutis v. Eitutis, 11th Dist. Lake No.

2009-L-121, 2011-Ohio-2838, ¶ 81.

{¶17} Here, the court modified aspects of its supervised visitation order, properly

stating that it considered the required factors under R.C. 3109.051(D). We do not find

that these orders were an abuse of discretion. First, as to the order that changed the



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requirement to have visitation supervised by Safe and Sound rather than Tyrrell, we initially note that the magistrate asked Lucas if he , invited error doctrine precludes a litigant from taking advantage of an error (Citation omitted.) Cronin v. Cronin, 11th Dist. Lake No. 2011-L-134, 2012-Ohio-5592, ¶ 34. See Perko v. Perko, 11th Dist. Geauga Nos. 2001-G-2403, et al., 2003-Ohio-1877, ¶ 23 (a party cannot raise as errors actions which were agreed to before the magistrate). The magistrate was told by Lucas that he did not oppose an order that visitation shall be supervised by Safe and Sound, upon which it can be determined the magistrate relied.

{¶18} Regardless, even in the absence of a determination that there was invited error, we find no abuse of discretion. The change in the visitation order still requires that the visits be supervised. It only alters who will conduct the supervision. There is no reason to find that this places the child at any risk such that it would violate the best interest standard and we discern nothing in the record that indicates why Tyrrell must supervise the visits rather than Safe and Sound. While Lucas argues that Tyrrell expressed concerns about the visitations and Byers does not want visitation with her her testimony what these concerns were or why any concerns with visitation would not be adequately addressed by Safe and Sound when monitoring visitation. The magistrate clearly took into consideration the cost associated with Tyrrell supervising visitation, expressing concern that Byers had not been able to maintain meaningful contact with her child. Weighing the



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impact of the change in visitation supervisor against Byers s

to modify this order. itation should only be denied

that visitation In re B.J.,

11th Dist. Geauga No. 2009-G-2933, 2010-Ohio-2284, ¶ 52.

{¶19} Lucas also argues that it was error for the court to end joint therapy since

there was no evidence the parties had successfully completed those sessions or are able to successfully communicate.

{¶20} The record is unclear as to how the joint counseling impacted the parties as

Dr. Neuhaus did not respond to the subpoenas to provide any testimony as to its success,

although the hearing was scheduled for an additional date to secure his appearance. The

court was within its discretion to determine that counseling was no longer necessary or

that visitation could be accomplished without requiring joint therapy. The counseling was

ordered to improve the parties communication but it is certainly not required that the

parties continue to undergo such counseling if the court decided it was no longer a worthwhile objective, particularly where the counseling had been ordered to be completed

with Dr. Neuhaus, who failed to appear before the court or contact the parties for

additional counseling sessions. We reiterate that a review by the appellate court on

matters regarding custody and visitation is substitute its judgment for that of the trial court where it is supported by evidence in the

Backer v. Backer, 2015-Ohio-5334, 54

N.E.3d 816, ¶ 25 (11th Dist.).

{¶21} Finally, Lucas argues that the court abused its discretion by failing to require



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that Byers provide the guardian ad litem with releases for her ongoing therapy and IOP at Highland Springs, which prevents the guardian ad litem from being fully aware of the circumstances of the case.

{¶22} We do not find an abuse of discretion. The guardian ad litem testified that although he was previously appointed guardian ad litem in this case, the parties had not sought an order reappointing him subsequent to the prior disposition of custody. Thus, it

Nonetheless, as to this ongoing therapy, the court required that releases be provided to the parenting coordinator, who had been ordered to monitor Byers therapy and counseling. This ensures that this progress is being monitored and continues to address concerns that were raised precipitating the order that Byers participate in therapy. Further, as to the IOP, Byers testified as to the nature of this program and provided a certificate of completion to the court, which the court evidently found sufficient to demonstrate her participation in the IOP.

{¶23} Regarding each of the orders with which Lucas takes issue, we find the court properly exercised its discretion in determining the best interest of the child in regard

to visitation and determining the grounds under which visitation would be appropriate.

Given the experience the court has with the parties and circumstances of this matter through multiple trials and proceedings, it was in the best position to determine the conditions to be placed upon visitation. See *In re T.J.T.P.*, 2019-Ohio-837, at ¶ 15.

{¶24} The sole assignment of error is without merit.



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{¶25} For the foregoing reasons, the judgment of Lake County Court of Common Pleas, Juvenile Division, modifying its order of supervised visitation, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, J.,

JOHN J. EKLUND, J.,

concur.

