In re Interest of P.A.S.

2001 | Cited 0 times | Court of Appeals of Texas | June 20, 2001

APPEAL FROM THE COUNTY COURT AT LAW OF ANDERSON COUNTY, TEXAS

This is an appeal from a decree of adoption and an order modifying the parent-child relationship. In one issue, Toni and Robert Brew, Appellants, contend the trial court erred in modifying a provision of the mediated settlement agreement signed by the Brews and Appellees, Glenda and Randolph Alfred. We affirm.

At some point prior to November 1996, the Brews were appointed possessory conservators of P.A., a child whose biological parents' rights had been terminated. Glenda Alfred was appointed sole managing conservator of P.A. Joyce Rothlander, P.A.'s paternal grandmother, was also appointed a possessory conservator. On November 1, 1996, Glenda and Randolph Alfred filed a petition to adopt P.A. The Brews filed a counter petition to adopt P.A. Rothlander filed a petition in intervention in the case requesting reasonable possession of or access to P.A. However, Rothlander is not a party to this appeal.

By order dated June 4, 1998, the trial court referred the case to mediation in accordance with Texas Family Code section 153.0071. See Tex. Fam. Code Ann. § 153.0071 (Vernon Supp. 2001). All five parties met the following day and signed a mediated settlement agreement. The parties agreed that the Alfreds would adopt P.A. The agreement names the Alfreds as sole managing conservators and the Brews and Rothlander as possessory conservators. The agreed upon possession schedule is set out in an exhibit to the agreement and states in part that the Brews and Rothlander shall have possession of P.A. the second weekend of each month from Friday at 6:00 p.m. to Sunday at 6:00 p.m. "extended by school holidays according to Sept. 9, 1996 order."

By motion filed February 11, 2000, the Alfreds asked the trial court to sign their proposed decree of adoption and order on motion to modify in suit affecting the parent-child relationship. The trial judge sent a letter to the parties dated March 23, 2000 in which he explained that, with one modification, he was using the form of judgment submitted by the Brews' attorney. That modification concerns weekend possession. The decree provides in pertinent part that the Brews and Rothlander shall have the right to possession of P.A. as follows:

Weekends. On the second weekend of each month, beginning on Friday at 6 p.m. and ending at 6 p.m. on the Sunday immediately following. Except if the second weekend commences during a school holiday.

Weekend Possession Extended by a School Holiday. Except as otherwise explicitly provided in this Possession Order, if a weekend period of possession by TONI BREW, ROBERT BREW, AND JOYCE ROTHLANDER begins on a Friday that is a school holiday during the regular school term or a federal, state, or local holiday during the summer months when school is not in session, or if the period ends on or is immediately followed by a Monday that is such a holiday, that weekend period of possession shall begin at 6 P.M. on the Thursday immediately preceding the Friday holiday or school holiday or end at 6:00 P.M. on that Monday holiday or school holiday, as applicable.

In their sole issue, the Brews complain of the modification. They assert that their mediated settlement agreement is a Rule 11 agreement and, thus, is a binding contract that cannot be altered by the trial court. The trial court, they contend, was required to either accept the agreement as a whole or reject it as a whole, but it could not modify a provision within the agreement.

A court may refer a suit affecting the parent-child relationship to mediation. Tex. Fam. Code Ann. § 153.0071(c). If certain statutory requirements are met, a mediated settlement agreement is binding on the parties and a party is entitled to judgment on the mediated settlement agreement. Tex. Fam. Code. Ann. § 153.0071(d) & (e). Here, the agreement met the statutory requirements. Therefore, the trial court was required to enter judgment on the mediated settlement agreement. See id.

The record before us, however, does not indicate that the trial court ignored this mandate by entering a decree and order including a term not previously agreed upon by the parties. The mediated agreement did not actually specify the complete terms of weekend possession with particularity. The mediated settlement agreement states that the Brews and Rothlander shall have possession of P.A. on certain weekends, for a certain time period, "extended by school holidays according to Sept. 9, 1996 order." The contents of that order are not set out in the agreement.

By contrast, the trial court's decree sets out with particularity an explanation of how weekend possession is extended by holidays. The appellate record does not contain the September 9, 1996 order referenced in the agreement. In its absence, we presume that order supports the trial court's action. See Simon v. York Crane & Rigging Co., 739 S.W.2d 793, 795 (Tex. 1987) (where record on appeal is incomplete, appellate court presumes that omitted portion of the record supports the trial court's ruling). We overrule the Brews' sole issue.

We affirm the trial court's decree of adoption and order on motion to modify in suit affecting the parent child relationship.

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