

[Cite as *Haney v. Corbett*, 2004-Ohio-4642.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ANGELA HANEY

Plaintiff-Appellant

-vs-

SHANE CORBETT

Defendant-Appellee

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Sheila G. Farmer, J.

Case No. 04CAF01005

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of
Common Pleas, Juvenile Division, Case
No. 98030382

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 2, 2004

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

JAMES MICCIULLA

LINDA GORDON

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Hoffman, J.

{¶1} Plaintiff-appellant Angela Haney appeals the December 10, 2003 Judgment Entry of the Delaware County Juvenile Court designating defendant-appellee Shane Corbett as the residential parent and legal custodian of the parties' minor child.

STATEMENT OF THE CASE AND FACTS

{¶2} This action originated on September 24, 2001, upon the motion of appellee for the reallocation of parental rights and responsibilities of the parties' minor child, Scott Haney, DOB: August 6, 1997. The parties were never married, but father signed an Acknowledgement of Paternity.

{¶3} Also on September 24, 2001, appellee filed a motion for temporary custody of the minor child pending further hearing due to appellant's moving her residence to West Virginia. Prior to her move, appellant failed to file notice of her intention to relocate with the court, and did not inform appellee until the day before she left. All of the child's family, including maternal and paternal grandparents, step-siblings, and father live in Ohio.

{¶4} On September 25, 2001, the trial court issued an ex parte order stating appellant was not to remove the child from Ohio, except upon court approval, and granting ex parte temporary custody to appellee until appellant both appeared at court to accept service and established a residence within 60 miles of Delaware, Ohio. Upon completion of both, temporary custody of Scott would be returned to appellant.

{¶5} On October 3, 2001, the matter came on for hearing and the magistrate issued a decision finding appellant had been advised of both the hearing and the motions.

The magistrate ordered appellee be granted custody of the minor child, and scheduled a hearing on the temporary orders for October 12, 2001.

{¶6} On October 12, 2001, the trial court continued the hearing on the temporary orders until November 30, 2001, finding service had not been perfected on appellant and appellee still had not obtained physical custody of the child.

{¶7} At the November 30, 2001 hearing, appellant's attorney attended in person and appellant attended via speaker phone. The court determined appellee would retain temporary custody and the parties would meet midway to exchange the child. The trial court scheduled a status conference for January 24, 2002

{¶8} On December 14, 2001, appellant filed a motion for an emergency hearing. The trial court granted the hearing and on December 20, 2001, custody was returned to appellant, due to her relocation to Delaware. The trial court ordered neither party was to remove the child from Delaware County, contiguous counties or Pickaway County, where appellee resided at the time. On December 21, 2001, the court appointed a guardian ad litem for the child.

{¶9} The minor child was enrolled in the Buckeye Valley preschool program. However, on March 16, 2002, appellant removed the child from school. Appellant did not return the child to appellee for his Labor Day weekend parenting time, and appellant would not return the child to start school.

{¶10} On August 28, 2002, upon motion of appellee, the trial court ordered appellant to contact Buckeye Valley School and make arrangements for the child to begin school on September 3, 2003, until further order of the court.

{¶11} On September 4, 2002, appellee filed a motion to show cause stating appellant had removed the child from Delaware County and taken the child with her to West Virginia, contrary to court orders, she denied his parenting time over the Labor Day weekend, and she failed to return the child to begin school. The motion was scheduled to be heard on September 11, 2002, the day trial commenced.

{¶12} On September 11, 2002, however, appellant gave the minor child to appellee with a note stating he could have custody. Appellant then left Ohio. Thereafter, appellee filed a motion for temporary custody, approved by the guardian ad litem. On September 16, 2003, appellee was granted temporary custody.

{¶13} Trial commenced on February 13, 2003. The guardian ad litem submitted her recommendations on February 28, 2003. Counsel for the parties were to submit proposed findings of fact and conclusions of law on March 3, 2003. On December 10, 2003, the trial court rendered its decision, designating appellee as the residential parent and legal custodian of the minor child.

{¶14} It is from the December 10, 2003 Judgment Entry appellant now appeals raising the following assignments of error:

{¶15} "I. THE COURT ABUSED ITS DISCRETION IN REQUIRING APPELLANT TO RELOCATE TO DELAWARE OHIO TO MAINTAIN CUSTODY.

{¶16} "II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR AGAINST THE APPELLANT BY NOT ALLOWING HER PARENTING TIME OUTSIDE DELAWARE COUNTY AND THE CONTIGUOUS COUNTIES AND BY NOT AWARDING HER HOLIDAY PARENTING TIME; AND BY NOT INCLUDING THE REQUIRED NOTICES BY ORC SECTION 31109.05.1 IN ITS ORDER.

{¶17} “III. THE TRIAL COURT’S UNDUE DELAY IN RENDERING ITS DECISION WAS PREJUDICIAL TO THE APPELLANT.

{¶18} “IV. THE TRIAL COURT DEPRIVED APPELLANT OF HER DUE PROCESS RIGHTS GUARANTEED HER UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION BY DECIDING MATTERS EX PARTE, DEPRIVING THE APPELLANT THE RIGHT TO BE HEARD.”

I

{¶19} In the first assignment of error, appellant argues the trial court abused its discretion in requiring appellant to relocate to Delaware, Ohio to maintain custody. She claims the trial court denied her the opportunity of a hearing to determine if her relocating was in the best interest of the child.

{¶20} Assuming, arguendo, the trial court abused its discretion in issuing the ex parte order requiring appellant relocate to Delaware, Ohio to maintain custody, the issue became moot and no longer in controversy when appellant did in fact move back to Ohio, obtained custody, and the matter was scheduled for hearing. Further, appellant did not actually exchange physical custody of the child with appellant until November 30, 2001. She moved back to Ohio and obtained custody of the child on December 14, 2001. Accordingly, we do not find appellant has demonstrated actual prejudice resulting from the trial court’s order.

{¶21} Accordingly, appellant’s first assignment of error is overruled.

II

{¶22} In the second assignment of error, appellant contends the trial court committed prejudicial error by not allowing her parenting time outside of Delaware or the contiguous counties, in omitting required notices and by not awarding her holiday parenting time.

{¶23} The trial court awarded appellant parenting time on alternating weekends, an additional two weeks time in June, July and August, and five days during winter break. The court restricted appellant's parenting time to Delaware or contiguous counties, except relative parenting time in Canton for 48 hours.

{¶24} A review of the trial court's December 10, 2003 entry indicates the trial court found appellant did not return the child to appellee when ordered to do so, she did not take the child to school when ordered to do so and she did not take the child to therapy during the time period she previously had the child with her. Accordingly, we do not find the trial court erred in denying appellant parenting time outside of Delaware or the contiguous counties or in determining appellant's holiday visitation schedule.

{¶25} Appellant maintains the trial court erred in not including in its order the non-custodial parents entitlement to access school records, school activities and medical records as specified in Ohio Revised Code section 3019.05.1(I)(J)(K). We find, however, the trial court did not error in not specifically including in its order appellant's entitlement to access school records, school activities or medical records, as Section 3019.051(I) states:

{¶26} "(I)***Unless the court determines that the parent who is not the residential parent should not have access to the center to the same extent that the residential parent is granted access to the center, the parent who is not the residential parent and who is granted parenting time rights is entitled to access to the center to the same extent that the

residential parent is granted access to the center. If the court determines that the parent who is not the residential parent should not have access to the center to the same extent that the residential parent is granted such access under division (C) of section 5104.011 of the Revised Code, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to the center, provided that the access shall not be greater than the access that is provided to the residential parent under division (C) of section 5104.011 of the Revised Code, the court shall enter its written findings of fact and opinions in the journal, and the court shall include the terms and conditions of access in the parenting time order or decree.” (Emphasis added).

{¶27} The trial court is only required to specify the terms and conditions of the non-residential parent’s access to such records and activities, if the court determines said parent is *not* to have the same access as the residential parent. The trial court did not determine appellant was not entitled to equal access; therefore, the trial court was not required to specify the terms and conditions of her access.

{¶28} Appellant’s second assignment of error is overruled.

III

{¶29} In her third assignment of error, appellant argues the trial court’s undue delay in rendering a decision was prejudicial error which caused her harm. The case proceeded to trial on September 11, 2002 and February 13, 2003. The parties were to submit proposed findings of fact and conclusions of law on March 3, 2003. The trial court did not enter its decision on this matter until December 10, 2003.

{¶30} As noted in the statement of facts, *supra*, following the September 11, 2002 hearing, appellant gave the minor child to appellee with a note stating he could have

custody. She then left Ohio. Thereafter, appellee filed a motion for temporary custody, approved by the guardian ad litem. The trial court granted appellee temporary custody on September 16, 2003.

{¶31} Accordingly, appellant has failed to demonstrate actual prejudice arising out of the trial court's delay.

{¶32} The third assignment of error is overruled.

IV

{¶33} In the fourth assignment of error, appellant maintains the trial court deprived her of her due process rights by deciding matters ex parte. Specifically, appellant argues the trial court's August 28, 2002 Judgment Entry ordering her to make necessary arrangements for the child to attend school beginning September 4, 2002 at Buckeye Valley Schools, denied her the opportunity to litigate the issue of whether the pre-school was in the best interest of the child.

{¶34} We note neither party filed objections to the magistrate's order. Further, appellant did not request a transcript of the trial proceedings. Accordingly, due to appellant's failure to request a transcript and to object to the magistrate's order, we find appellant has not preserved this issue for our appellate review and the assignment of error is overruled.

JUDGES