2019 IL App (1st) 181632-U

FOURTH DIVISION
June 6, 2019

No. 1-18-1632

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re the GRANDPARENT VISITATION OF J.M.N. (KATHLEEN B., Petitioner-Appellee, v. HERBERT N., Respondent-Appellant).	) Appeal from) the Circuit Court) of Cook County)) 2014-D-080659)) Honorable) James Kaplan,) Judge Presiding)

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

O R D E R

Held: Trial court's denial of father's motion to reconsider order granting grandmother's visitation was not an abuse of discretion where visitation order had been agreed upon and an evidentiary hearing was unnecessary to resolve reconsideration arguments.

¶ 1 Respondent-appellant, Herbert N., and petitioner-appellee, Kathleen B., are the maternal grandparents of minor J.M.N., who was born in 2010. Herbert N. and his wife, Evamary N., have also adopted J.M.N. Since the adoption, Herbert N. has not opposed Kathleen B.'s visitation, but has disagreed with some of her specific requests. The circuit court concluded Kathleen B.'s petition for grandparent visitation by entering an agreed order and denying Herbert N.'s

subsequent motion for reconsideration. In this appeal, Herbert N. argues primarily that he should have been permitted to present additional argument and bring in evidence and witnesses during a pretrial conference that preceded his agreed order with Kathleen B. and that the agreed order drafted by Kathleen B.'s attorney included several errors. Kathleen B. responds in part that Herbert N. is bound by the agreed order, not only because he signed it, but because he was present when the court entered it. Kathleen B. also contends that an evidentiary hearing was unnecessary to resolve the insignificant issues that Herbert N. identified in his motion to reconsider. The child's guardian *ad litem* is not participating in this appeal.

¶ 2 Both parties have been involved in J.M.N.'s care since his birth in 2010, due in part to his mother's bipolar disorder when he was born, his mother's death by suicide in 2015, and his father's relinquishment of his parental rights. Kathleen B. cared for her grandson on a daily basis while living with her daughter and J.M.N. in Chicago for the first 18 weeks of the baby's life. Kathleen B. then returned to her own home, 175 miles away, in Peoria, Illinois, and J.M.N. went to live with Herbert N., whose home in Arlington Heights, Illinois, was 15 miles away from the daughter's residence. In 2014, Herbert N. and Evamary N. adopted J.M.N.

¶ 3 In January 2015, Kathleen B. petitioned the court for temporary and permanent grandparent visitation and later that same month she and Herbert N. entered into an agreed order granting temporary visitation. This order would be the first of many entered over the next three years by various judges of the circuit court, some by agreement, which expanded Kathleen B.'s visitation with J.M.N. Despite the parties' cooperation in scheduling visitation, Kathleen B.'s underlying petition was still pending in 2018.

¶ 4 In March 2018, the circuit court conducted a pretrial conference which addressed the dates and logistics of J.M.N.'s visitation with his grandmother and the need for him to continue

with the same therapist as previously provided by court order.

¶ 5 When the conference began, J.M.N.'s guardian *ad litem* reported that despite several pretrial conferences and several settlement meetings with Kathleen B. and Herbert N., there was still "a transportation issue." During the ensuing discussion, the judge emphasized that it was beneficial for J.M.N. to "have all the family he possibly can have" and to spend time with his grandmother, particularly if he was used to being with her. The judge also repeatedly indicated it was reasonable to expect Herbert N. to drive part of the return leg after J.M.N.'s visits with his grandmother. Up until January 2016, Kathleen B. had done all of the driving between her home in Peoria and Herbert N.'s home in Arlington Heights. During the subsequent two years, Herbert N. drove part of the return leg. When Kathleen B.'s attorney said that the established meeting point in Joliet was not convenient to either party, the judge suggested that the location be moved closer and more convenient to Herbert N.'s home in Arlington Heights. After further discussion without a consensus on Kathleen B.'s new drop off location, the judge said "We've gone on long enough" and that the court was changing the point of exchange "to the oasis on the Tristate that's just north of Joliet Road."

¶ 6 When the parties discussed specific visitation dates, including summer vacations and holidays, Kathleen B.'s attorney said that a judge who had previously presided over the case indicated that Mother's Day should be designated for Evamary N. and that Grandparents' Day should be designated for Kathleen B. Herbert N. *pro se* replied that he and Evamary N. had never celebrated Grandparents' Day with J.M.N. and had instead "[given] that date to [Kathleen B.], and "We are willing to let her see him." The judge remarked to Herbert N. that it was "amazing" for a grandfather to undertake raising a young child. "[b]ut some of these things you're talking about [today] are so petty," "they're beneath your dignity." Herbert N. replied, "That's why I

have given them to her" and "That's why I agreed to give [Grandparents' Day] to her." The judge responded, "If there is a legal holiday called Grandparents' Day, she gets it. If not, she doesn't."

¶ 7 Toward the end of the conference, the judge instructed Kathleen B.'s attorney to write an order for the court's entry. Herbert N. then said, "I have an objection to the Order because this is a settlement proceeding and they have not proven anything that they're supposed to prove." The judge responded, "I'm doing this over your strenuous objection."

¶ 8 Kathleen B.'s attorney subsequently prepared a five-page, typewritten order for grandparent visitation which included a blank line to be filled in for the location of Kathleen B.'s new drop off point at the end of her weekend visitations with J.M.N. The draft stated Kathleen B. and Herbert N. "shall meet halfway at the [highway] oasis located at _____." The draft also indicated Herbert N. would exercise grandparent visitation on Mother's Day and Kathleen B. would exercise grandparent visitation on Grandparents' Day. Kathleen B. and Herbert N. personally signed the last page of the draft order.

¶ 9 Kathleen B.'s attorney then filed a written motion seeking entry of the order. Counsel indicated that a draft order had circulated amongst the parties on "numerous occasions prior to the [March pretrial conference]" and that the parties had agreed to modify the terms of the draft so as to incorporate the judge's rulings and then have the order entered. Counsel also wrote in the motion that Herbert N., who was acting *pro se*, as he had at various points in the visitation proceedings, had subsequently objected to some of the order's details, but that the proposed order reflected the rulings the judge made during the March pretrial conference in order to conclude the action.

¶ 10 When Kathleen B.'s attorney, Herbert N. *pro se*, and the guardian *ad litem* appeared in court on April 16, 2018 with the order, the judge asked Herbert N. what was objectionable. Herbert N. responded, "the main issue, which has been for the last two years, is the driving expense." The judge responded that the meeting point had been repeatedly discussed. Herbert N. agreed, but said that he had only two previous opportunities to advocate for his preferred drop off location. Herbert N. proposed a continuance, because he had interviewed two new attorneys and wanted time "to decide which of those attorneys I am going to hire." The judge responded in part, "In all due respect, really, you've had so many lawyers involved in this case" and that impeding Kathleen B.'s visitation with J.M.N. was not in the minor's best interests. Specifically, "[Your parental rights are significant.] But it's best if your child knows as many of his family members as possible, because that's the whole presence of life, knowing your family, relations, and having stumbling blocks in the way of it is not – it's not [in] the best interest of your child." Herbert N. agreed that Kathleen B. should see J.M.N. "as often as she can" and confirmed that his concern was about "transportation costs." As Herbert N. began to argue for a different meeting point, Kathleen B.'s attorney interjected that the draft order accurately reflected the court's rulings and should be entered. The guardian *ad litem* confirmed the accuracy of the draft and that Herbert N.'s concern was "probably more of a motion to reconsider once the order is entered than a matter of whether or not the order is accurate." Kathleen B.'s attorney said that no one, however, could recollect the exact meeting point that the judge had chosen. Herbert N. then proposed that the meeting point be moved to North Avenue. When Herbert N. began to return to the arguments he made in March, the judge said, "If we can get an agreed order today, and it ends today, I will give you your point of exchange. If not, I'm just going to sign the order now and put in [the Joliet/Plainfield Exit marked] 220 [on I-55, which would be much further south]."

Herbert N. responded, "North Avenue would be fine." The judge wrote the word "Agreed" above the title of the draft order and entered the order. The executed order indicated Kathleen B.'s drop off point on Sunday afternoons would be at the highway oasis at North Avenue.

¶ 11 In May 2018, Herbert N. filed a motion to reconsider in which he listed the numbers of several paragraphs in the agreed order that he wanted to change. The court struck the motion, but Herbert N. filed a similar list a few days later. In June 2018, the court denied Herbert N.'s revised motion. Herbert N. then initiated this appeal.

¶ 12 The intended purpose of a motion to reconsider is to bring the trial court's attention to newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24, 919 N.E.2d 383, 391 (2009). Pursuant to section 2-1203 of the Code of Civil Procedure, the circuit court has discretion to modify or set aside a judgment within 30 days of its entry. 735 ILCS 5/2-1203(a) (West 2016). On review, we consider whether the denial of Herbert N.'s section 2-1203 motion was an abuse of discretion. *Cable America*, 396 Ill. App. 3d at 24, 919 N.E.2d at 391.

¶ 13 An abuse of discretion occurs when no reasonable person would adopt the same view as the trial court. *McGill v. Garza*, 378 Ill. App. 3d 73, 75, 881 N.E.2d 419, 422 (2007) (abuse of discretion occurs when a ruling is arbitrary or unreasonable and no reasonable person would reach the same conclusion).

¶ 14 Herbert N. cites *In re Marriage of Sutherland*, 251 Ill. App. 3d 411, 414, 622 N.E.2d 105, 108 (1993), for the proposition that we must also consider whether "substantial justice is being done between the parties."

¶ 15 On appeal, Herbert N. first argues that it was an abuse of discretion to deny his motion for reconsideration, because he did not agree to the underlying order. He contends that Kathleen

B.'s motion seeking entry of the order as well as the transcript of the April 2018 proceedings confirm that there was a judicial ruling in March 2018, rather than an agreement, and that Herbert N. objected to that ruling.

¶ 16 We are not persuaded that the denial of the motion for reconsideration was an abuse of discretion, as the record reflects that Herbert N. ultimately agreed to the entry of the underlying order. The record shows that Kathleen B. and Herbert N. negotiated most of the terms of the order during a series of pretrial conferences and settlement conferences that took place before the March pretrial conference that we summarized above. During the March pretrial, all of the remaining details were resolved either by the parties' agreement or by judicial ruling. The revised draft order circulated and Herbert N. and Kathleen B. individually signed the last page of the document with the expectation that it would be entered, but Herbert N. subsequently had second thoughts. Kathleen B.'s attorney summarized this history in her motion seeking entry of the order. Counsel's summary was confirmed by the guardian *ad litem* and indirectly confirmed by Herbert N., who told the court that his "main issue" was the "driving expense" and that he wanted to address the merits of a different location, as well as other issues, and perhaps hire a new attorney. The judge, however, gave Herbert N. an ultimatum. The judge said to Herbert N., "If we can get an agreed order today, and it ends today, I will give you your point of exchange. If not, I'm just going to sign the order now and put in [Exit] 200 [in the blank space that you left for the point of exchange]." Thus, the case was going to conclude that day, either by agreement or by judicial determination. The judge emphasized, "It's over today, final. That's it." Herbert N. then verbally agreed to the court's entry of the order. Herbert N.'s preferred location, North Avenue, was written onto the typewritten draft, the judge also wrote "Agreed" above the title, and the judge entered the order.

¶ 17 Herbert N.'s decision to voluntarily resolve Kathleen B.'s petition is demonstrated by his signature on the last page of the draft order and confirmed by his statements in open court indicating that he would prefer an agreed order rather than a judicial determination. As a matter of public policy, Illinois courts favor the "peaceful and voluntary resolution of disputes." *Vandenberg v. Brunswick Corp.*, 2017 IL App (1st) 170181, ¶ 29, 90 N.E.3d 1048. A party that enters into an agreed order is bound by that order. An agreed order is a record of the parties' agreement, is not a judicial determination of the parties' rights, and generally is not subject to appellate review. *In re Matter of Haber*, 99 Ill. App. 3d 306, 309, 425 N.E.2d 1007, 1009 (1981); *Jackson v. Ferolo*, 4 Ill. App. 3d 1011, 1014, 283 N.E.2d 247, 250 (1972) (a party cannot complain of an order to which he has consented, and such an order is not subject to reversal on appeal). The order at issue is an agreed order that is not subject to our review.

¶ 18 Herbert N.'s signature and his statements in open court in April are why we reject his additional contention that he was verbally agreeing only to the point of exchange after a visitation, rather than the contents of the entire order. This contention is belied by Herbert N.'s prior signature on the last page of the draft document, even though the point of exchange was uncertain, as no one could recall its exact location. This contention is further betrayed by the transcript indicating that the judge gave Herbert N. an ultimatum to commit to the order, and that Herbert N. then chose entry of an agreed order rather than a judicial determination. In addition, Herbert N. and Kathleen B.'s agreement is consistent with the parties' cooperation since J.M.N.'s birth in 2010. Their cooperative relationship is reflected in the transcripts tendered for our review, as well as various orders, such as the agreed visitation order that was entered in January 2015, after Herbert N. and Evamary N. adopted J.M.N. in 2014.

¶ 19 Herbert N. next contends that it was an abuse of discretion to deny his motion for

reconsideration, because the court abused its discretion earlier by making "substantive" rulings at the underlying March pretrial conference. Herbert N. points out that the court made rulings during a pretrial conference at which the parties were not allowed to "enter evidence, present witnesses, and make argument as to the contested issues." This is another unpersuasive position, however. Kathleen B. responds that the only "substantive" issue in this case—whether Kathleen B. should have grandparent visitation—has not been contested. Kathleen B.'s response is confirmed by the record. In fact, when the judge asked Herbert N. during the March conference whether Kathleen B. should have visitation, Herbert N. answered, "Of course. That's never been an issue, your Honor." Herbert N.'s motion to reconsider did not present "substantive" concerns.

¶ 20 Furthermore, Herbert N. fails to specify any evidence, witnesses, or additional argument that would illuminate the "contested issues" that he listed in his motion to reconsider. Herbert N. wrote:

> "B-I 4 p.m., not 6 p.m., next day school
>
> C-Holidays- II No card, no respondent call
>
> C-Transportation-remove 'halfway'
>
> C-III-Holidays-Thanksgiving week-8 days
>
> C-VI G P day not legal holiday
>
> C-VI B- " " " " "
>
> E-I-Pursuant to [JMN]'s Parents [*(sic)*] Agreement
>
> F II Per transcript petitioner to call [JMN]
>
> F II Time previously ordered at 6 p.m.
>
> 1st Page-The word 'Agreed' was affixed after respondent signed!!"

¶ 21 To the best we can decipher this list, Herbert N.'s objections were not about legal,

substantive issues that would require the court to consider witness testimony, evidence, or further argument. A hearing is necessary only where there are substantive legal issues to be decided or conflicting factual allegations that need to be resolved through testimony or other evidence. *In re Marriage of Chapman*, 162 Ill. App. 3d 308, 315, 515 N.E.2d 424, 429 (1987) (trial court did not err in refusing request for evidentiary hearing as to motion to vacate, where trial court was already familiar with most matters and was adequately informed of other matters by motion); *In re Marriage of Varco*, 158 Ill. App. 3d 578, 511 N.E.2d 736 (1987) (no evidentiary hearing necessary to evaluate allegations in motion). Instead of issues that would require an evidentiary hearing, Herbert N. raised minor details that he had already agreed to by affixing his signature and making affirmative statements in open court.

¶ 22 For instance, Herbert N. appears to indicate that the word "halfway" must be removed from the sentence in paragraph (C) (i) of the agreed order, indicating Herbert N. and Kathleen B. "shall meet halfway at the oasis located at North Ave." The point of exchange is not "halfway" between the parties' residences and is actually much closer to Herbert N.'s home. This is a minor discrepancy which did not require an evidentiary hearing or any change in the wording of the order. The report of proceedings reflects that the court and parties understood the new exchange point would be the North Avenue exit off I-355, regardless of whether that location was "halfway" between Arlington Heights and Peoria.

¶ 23 It appears that two of the items on Herbert N.'s list, "G P not legal holiday," concerned paragraph (C)(vi) of the agreed order, which states "Petitioner [Kathleen B.] shall exercise grandparent visitation with the minor child every year on "National Grandparents' Day. Said holiday is celebrated annually on the Sunday after Labor Day." The March transcript indicates that Herbert N. *repeatedly* stated his agreement to Kathleen B. having visitation on

Grandparents' Day. When Kathleen B.'s attorney introduced the topic of Grandparents' Day, Herbert N. affirmatively said, "Well on that subject, your Honor, [my wife and I] never in eight years celebrated that day. We gave that to her [(Kathleen B.)]. We are willing to let her see him." After the judge chastised Herbert N. for a pretrial conference concerning details that were so "petty" they were "beneath [Herbert N.'s] dignity," Herbert N. reiterated to the judge, "That's why I agreed to give [that day] to her." The judge then remarked, "If there is a legal holiday, called Grandparents' Day, she gets it. If not, she doesn't."

¶ 24 National Grandparents' Day is a secular holiday celebrated in various countries. https://en.wikipedia.org/wiki/ National_Grandparents_Day (last visited June 3, 2019). In the United States, "Congress passed the legislation proclaiming the first Sunday after Labor Day as National Grandparents' Day in the U.S. and, on August 3, 1978, then-President Jimmy Carter signed the proclamation." https://en.wikipedia.org/wiki/National_Grandparents_Day (last visited June 3, 2019). Herbert N.'s motion for reconsideration appears to point out that Grandparents' Day is not a "legal holiday" in the traditional sense of that phrase because the Sunday event is not a national holiday when government offices and banks are closed. This discrepancy, if it is a discrepancy, is a clerical detail instead of a substantive issue that would require the presentation of witnesses, or evidence, or additional argument. Even if Herbert N. proved that Grandparents' Day was not a "legal holiday," his proof would not change the fact that he repeatedly stated in March that Kathleen B. should have visitation on Grandparents' Day and that he indicated in April that the court should enter the order which included this provision. "A court should not set aside a settlement agreement merely because one party has second thoughts." *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 214, 633 N.E.2d 225, 229 (1994).

¶ 25 For these reasons, we reject Herbert N.'s contention that "substantial justice is not being

done between the parties" because he was not permitted to "enter evidence, present witnesses, and make [additional] argument" during the March pretrial conference.

¶ 26 Herbert N.'s final contention is that "despite the numerous orders granting [Kathleen B.] Grandparent Visitation, there has never been a substantive hearing where the Petitioner was required to prove the elements necessary to support a finding that grandparent visitation was appropriate." This contention is unpersuasive because Herbert N. conceded the elements of Kathleen B.'s petition for grandparent visitation when he agreed to her visitation with J.M.N. Furthermore, during the March conference, when Herbert N. was asked whether Kathleen B. should have visitation with J.M.N., Herbert N. answered, "Of course. That's never been an issue, your Honor."

¶ 27 We conclude that it was not an abuse of discretion for the court to deny Herbert N.'s motion for reconsideration, given that Herbert N. had participated in negotiating the agreed order, Herbert N. signed the order, Herbert N. affirmatively stated on the record that he was agreeing to entry of the order, and Herbert N.'s motion raised only minor details which did not warrant an evidentiary hearing. The denial of Herbert N.'s motion to reconsider the agreed order did not work an injustice between the parties. We affirm the circuit court's ruling.

¶ 28 Affirmed.