

STATE OF MICHIGAN
COURT OF APPEALS

JOEL C. HENRY,

Plaintiff/Counterdefendant-
Appellee,

v

JOY L. HENRY, a/k/a JOY L. FRANCIS,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

June 29, 2010

No. 292931

Ingham Circuit Court

LC No. 06-002156-DZ

JOEL C. HENRY,

Plaintiff/Counterdefendant-
Appellee,

v

JOY L. HENRY, a/k/a JOY L. FRANCIS,

Defendant/Counterplaintiff-
Appellant.

No. 293966

Ingham Circuit Court

LC No. 06-002156-DZ

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

GLEICHER, J. (*concurring*).

I concur in the results reached by the majority, but write separately to clarify the procedure I believe that the circuit court should follow on remand.

The circuit court correctly characterized this as a “tragic and distressing case.” For the vast majority of their lives, the Henry children, other than DH, maintained an extraordinarily close relationship with their mother. According to the evidence presented over the course of many hearings, until Francis’s emotional breakdown, she ran the household and home schooled the children, while Henry engaged in far more limited parenting activities. Even after Francis’s return from her involuntary commitment at St. Lawrence Hospital, Henry permitted Francis to resume primary responsibility for the children’s needs and welfare. And irrespective of Francis’s mental problems and the three months she spent with the children outside Michigan, the

evidence suggests that the children made an excellent transition from home schooling to the Haslett public schools.

Unquestionably, Francis's serious mental problems emerged in 2006. The extent of her recovery from her mental illness remains an open question. Francis has presented some evidence that at this point, she does not require psychiatric care. Dr. VanderJagt's 2007 psychological evaluation of Francis specifically contemplated that her condition could improve. But the circuit court record also contains a disturbing "Summary of Proceedings" prepared by a Friend of the Court (FOC) parenting time advocate in August 2009. The report catalogues the difficulties that Francis's supervisors have encountered during her parenting times, and identifies Francis's interaction with JH as one of the foremost problems:

Of grave concern first and foremost is the relationship of [Francis] with the eldest of the minor children, [JH]. During every visit, there seems to be some disagreement that arises between [Francis] and [JH]. This worker admits this problem may have been exacerbated by the responsibility placed on [JH] in the early stages of the order requiring her to provide much of the youngest child's care during the visits; changing diapers, etc.^[1] Responsibilities that would have easily been carried out by [Francis] had she exhibited healthy parenting behaviors during the supervised parenting time sessions. [JH] often directs [Francis] and confronts her regarding her care of and interaction with the other children especially [DH], the youngest child. Due to being "taken," [JH] displays anger, hostility, and mistrust towards her mother. She has searched [Francis]'s purse and turned over items to the parenting time supervisor. At different locations, she has repeatedly looked over her shoulders and out of the windows reporting that she thought she saw different individuals that helped her mother "take" her.

Of late, it is reported that the minor children [CH] and [SH] have begun to display hostility towards [Francis] during supervised parenting time.

Dating back to 2006, Dr. VanderJagt detected significant difficulties in JH's relationship with Francis. Dr. VanderJagt recalled as follows a November 2006 play session he observed involving Francis, JH and CH:

The play activity with [Francis] proceeded with [CH] allowing her to engage him, while [JH] rather quietly and rather sullenly chose to work alone. [Francis] appropriately tried to re-approach and engage [JH] in play, but [JH] was resistant. [JH] appeared to be waiting for something to occur, around which she could organize expression of unhappiness and dissatisfaction with her mother. It did not take her long to discern an "unfairness" in her mother's behavior in the

¹ At an early supervised visit, Francis photographed DH's genitalia to support her assertion that DH had a severe and untreated diaper rash. Two physicians examined DH and disagreed. After this event, the circuit court ordered that Francis could not change DH's diapers during parenting time, and that JH would bear this responsibility.

session, and she politely but emphatically confronted her mother with an expanding notion of dissatisfaction purportedly related to unfairness on the part of her mother towards her, relative to her mother's interactions with her brother. [JH]'s complaints were virtually manufactured, and appeared to be psychologically necessary for her as a vehicle to express broad-based unhappiness and anger towards her mother.

For her part, [Francis] handled this difficult situation gently and adequately, if not particularly effectively. She did not recognize on an empathic level what was going on, but many, if not most parents, would not do so. The play session was completed on an emotionally indeterminate and ambivalent note, although parting behavior was nominally appropriate and reflected underlying emotional attachment on the part of the children.

The evidence supports that the current supervised parenting time schedule, in which Francis visits all five children together for an hour each month at a public location, does not comport with the stated presumption of the Child Custody Act, that a child's best interests are served when the child has "a strong relationship with both of his or her parents." MCL 722.27a(1). The Legislature has determined that in general, parenting time "shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time." *Id.* The abbreviated, difficult visits described in the record do not advance this goal.

In my view, it is important to distinguish between modifications of parenting time that do not change a child's established custodial environment, and modifications that may have that effect. If a parent seeks additional parenting time that would alter a child's established custodial environment, MCL 722.27(1)(c) mandates a showing by clear and convincing evidence that the change will serve the child's best interests. However, if the additional parenting time sought does not alter a child's established custodial environment, I submit that the Legislature intended that the presumption in favor of meaningful parenting time designed to enhance parent-child relationships should guide a circuit court's decision making. Pursuant to MCL 722.27(1)(b), "Parenting time of the child by the parents is governed by section 7a." Subsection 7a(1) instructs, "Parenting time shall be granted in accordance with the best interests of the child," and continues, "It is *presumed* to be in the best interests of a child for the child to have a strong relationship with both of his or her parents." (Emphasis added).

In MCL 722.27a(6), the Child Custody Act states that "when determining the frequency, duration, and type of parenting time to be granted," the circuit court may consider:

- (a) The existence of any special circumstances or needs of the child.
- (b) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.
- (c) The reasonable likelihood of abuse or neglect of the child during parenting time.

(d) The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.

(e) The inconvenience to, and burdensome impact or effect on, the child of traveling for purposes of parenting time.

(f) Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.

(g) Whether a parent has frequently failed to exercise reasonable parenting time.

(h) The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.

(i) Any other relevant factors.

The Michigan FOC Parenting Time Guideline, published by the Supreme Court Administrative Office, recognizes that supervised parenting time may contravene the presumption in favor of strong parent-child bonds:

Given the presumption in favor of parenting time, supervised parenting time should occur only when other, less restrictive methods of ensuring a child(ren)'s well-being during parenting time cannot be implemented. The primary purpose of supervised parenting time is to provide for the safety of the child(ren). The welfare of the child(ren) is the paramount consideration in determining the manner in which supervision is provided. [*Id.* at 13.]

* * *

There are two objectives to be achieved by a supervised parenting time order. The primary objective of supervised parenting time is to protect the child(ren). The second objective is to move the supervised parenting time toward an unsupervised plan when appropriate. Therefore, supervised parenting time orders should include specific objectives that must be achieved to allow the parenting time to transition from supervised to unsupervised. Generally, three methods will be used to determine when a plan moves to the next phase: 1) the implementation of an unsupervised plan could occur automatically when the parent accomplishes certain milestones (periods of time or goals set out in the order); 2) a supervised parenting time plan could include time intervals indicating when the plan is to be reviewed to determine whether unsupervised parenting time should occur; or 3) the plan could require that parenting time be reviewed only at the request of a party. [*Id.* at 17.]

In my view, the supervised parenting time arrangement originally devised in this case has failed to achieve the goals of the Child Custody Act.

Should Francis supply the circuit court with a psychiatric or psychological report documenting either improved mental and emotional function, or complete recovery from her prior mental condition, I believe that the circuit court should conduct an evidentiary hearing. Given the statutory presumption in favor of building and nurturing parent-child relationships, current psychiatric or psychological evidence tending to prove that Francis has achieved some recovery mandates rigorous consideration of whether the goals set forth in the Child Custody Act warrant modification of the extraordinarily restrictive parenting time schedule now in effect. At an evidentiary hearing, the circuit court should specifically consider the factors set forth in MCL 722.27a(6) in crafting an appropriate parenting time approach, as well as the parenting time needs of each *individual* child and the objectives identified in the FOC Parenting Time Guideline. In making a determination, the circuit court should seek to maximize the time the children spend with Francis, with appropriate, up-to-date provisions in place to monitor Francis's behavior and any potential risks to the children. The circuit court should also keep in mind the "second objective" of supervised parenting time, "to move the supervised parenting time toward an unsupervised plan when appropriate."

/s/ Elizabeth L. Gleicher