



Sheffield v. Sheffield, A16A1135

Georgia Court of Appeals, (9/21/2016, 9/30/2016)

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In a recent opinion, Judge Carla Wong McMillian, for the Court, found that, although the Gwinnett County Juvenile Court “clearly intended to act in the best interests of the Child, we must reverse the grant of joint legal custody to the Mother and Grandmother and remand for further proceedings on the question of legal custody.”

The Mother, Kaleigh Sheffield, appealed the juvenile court's final order awarding joint legal custody of her minor child to her mother, Holly Sheffield, the child's Grandmother. The Mother asserted that the juvenile court erred in awarding joint legal custody of the Child to her and the Grandmother after finding that she is fit to parent. She did not enumerate as error the award of primary physical custody to the Grandmother. The Court of Appeals, on this sole enumeration of error, reversed and remanded for further proceedings.

The Court found that there was a limited record for review as the bench trial was not taken down and, therefore, the Court was only able to review the Grandmother's petition for custody and the juvenile court's Final Order. The guardian ad litem's report was not included in the record. The Grandmother filed a petition for custody in November 2014, and the bench trial was held in June 2015. The Juvenile Court found that the Grandmother has been the Child's primary caretaker since his birth, provided a stable home environment for the Child, who has significant developmental delays, the Grandmother was meeting the Child's special needs by attending therapy with the Child and meeting with his teachers and school counselors to ensure compliance with his Individualized Educational Plan. (Also, in 2008 the Mother consented to the Grandmother's appointment as the Child's temporary guardian. However, the Supreme Court has held that “[u]nless and until the relationship of parent and child is lawfully terminated, parents retain parental rights, even in circumstances in which they properly may have lost parental power.” *In the Interest of M. F.*, 298 Ga. 138, 145 (2) (780 SE2d 291) (2015).)

Further, the Juvenile Court found that the Mother has been unwilling to participate in and cooperate with professionals to make sure that the Child's special needs are adequately met and that the Child “would suffer long term emotional harm if sole custody were awarded to [the Mother].” Therefore, the court found that “it would be in the best interests of the [Child] that the [Grandmother] is awarded primary physical custody” with the Mother to have visitation rights. Nonetheless, the court found that the Mother “meets the definition of fitness to parent under Georgia law” and awarded joint legal custody of the Child to the Mother and Grandmother.

The Mother then appealed the Juvenile Court's Final Order.

The Court of Appeals found that OCGA § 19-7-1 (b.1) provides: “There shall be a rebuttable presumption that it is in the best interest of the child or children for custody to be awarded to the parent or parents of such child or children, but this presumption may be overcome by a showing that an award of custody to such third party is in the best interest of the child or children. The sole issue for determination in any such case shall be what is in the best interest of the child or children.”

To overcome the rebuttable presumption that it is in the child's best interest to award custody to a parent, a third-party relative, such as a grandparent, must show by clear and convincing evidence that awarding custody to the parents would cause either physical harm or significant, long-term emotional harm to the child. See *Clark v. Wade*, 273 Ga. 587, 598 (IV) (544 SE2d 99) (2001). “The factors include (1) who the child's past and present caretakers are; (2) with whom the child has formed psychological bonds and how strong those bonds are; (3) whether the parties have evidenced interest in, and contact with, the child over time; and (4) whether the child has unique medical or psychological needs that one party is better able to meet. *Id.* at 598-99 (IV).”

Here, although the juvenile court found “by clear and convincing evidence that the [Child] would suffer physical or emotional harm if custody were awarded to the [Mother],” the Juvenile Court then awarded the Mother and Grandmother joint legal custody.

The Court of Appeals reversed, although finding that the Juvenile Court judge intended to act in the best interests of the Child, and stated that the Georgia General Assembly “has clearly indicated that joint custody arrangements do not include third parties when one or both parents are suitable custodians.” *Stone v. Stone*, 297 Ga. 451, 452 (774 SE2d 681) (2015). Therefore, a third party may have sole legal custody of a child when no parent is suitable for custody, Georgia law only allows joint custody arrangements between parents. *Id.* at 454. See also OCGA § 19-9-3 (a) (1).” The Court has remanded for further proceedings on the question of legal custody.