

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

IN RE: THE SUGGS/DAY CHILDREN : APPEAL NO. C-081009
: TRIAL NO. F98-2Z
:
: *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Appellant, L.C. Suggs, appeals a judgment of the Hamilton County Juvenile Court restructuring the parenting time with the children he shares with appellee, Sara Day. We find no merit in his two assignments of error, and we affirm the trial court's judgment.

The record shows that the parties have two children. Day is the residential parent, and Suggs has visitation rights. Since Suggs first obtained visitation rights over ten years ago, the parties have had difficulties cooperating and communicating. They have been to court many times for contempt and modification hearings. Eventually, though, they were able to agree to a visitation schedule.

Subsequently, Day filed a motion asking the court to hold Suggs in contempt and to modify the visitation schedule. Following several hearings, a magistrate found that "the parties demonstrate an unwillingness or an inability to communicate with one another regarding the best interest of their children. In reviewing the evidence, the court finds it imperative that a more structured and clear parenting

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

time schedule be established.” The magistrate then recommended a restructured parenting-time plan.

Suggs objected to the magistrate’s decision. He also filed a motion for the trial court to interview the children in camera. The trial court did interview the children and conducted a hearing on the objections. Following that hearing, the court rejected the parenting-time schedule adopted by the magistrate. It stated that “[t]hese parents need stricter, clearer structure with defined times not subject to interpretation or unilateral invocation. The order set out by the Magistrate is too vague.”

The court held another hearing where it meticulously went through the parenting-time issues and crafted a comprehensive parenting-time schedule. It stated that “[t]his schedule is intended to be strict in its nature and therefore relies upon the parents to be able to flex in the course of daily life to adjust and to agree to irregular changes in the routine. The schedule is designed to minimize unilateral decisions and to provide for the best interests of the children and their education, while affording the children a full opportunity to foster their relationship with both of their parents.” The court journalized an entry implementing the parent-time schedule, and this appeal followed.

In his first assignment of error, Suggs claims he was denied the effective assistance of counsel. He relies upon *In re Heston*,² a case from this court, for the proposition that a right to effective assistance of counsel exists in cases involving children.³ But in *Heston*, the trial court awarded permanent custody of the appellant’s children to the state.

² (1998), 129 Ohio App.3d 825, 719 N.E.2d 93.

³ *Id.* at 827.

A fundamental difference exists between dependency, abuse, and neglect cases involving the state and private custody cases.⁴ Courts have described permanent termination of parental rights as “the family law equivalent of the death penalty in a criminal case.” Therefore, parents “must be afforded every procedural and substantive protection the law allows.”⁵

Ohio courts have explicitly refused to extend the right to counsel to private custody cases.⁶ “The constitutional right to effective assistance of counsel applies in criminal proceedings and in certain civil proceedings when the state seeks to infringe on a life, liberty or property interest protected by the Fifth and Fourteenth Amendments. There is no constitutional right, however, to effective representation by counsel in civil cases between individual parents in cases involving visitation and residential parent status.”⁷ Consequently, Suggs may not raise a claim of ineffective assistance of counsel, and we overrule his first assignment of error.

In his second assignment of error, Suggs contends that the trial court erred in crafting the visitation plan and in failing to consider the factors set forth in R.C. 3109.051. He argues that the court abused its discretion by prohibiting overnight visitation, by prohibiting breaking up a week’s overnight vacations, by restricting vacation time to a set week in the summer, and by changing Easter vacation. This assignment of error is not well taken.

R.C. 2151.23(F) states that the juvenile court shall exercise its jurisdiction in child-custody matters in accordance with R.C. Chapter 3109, which governs domestic

⁴ *In re Bailey*, 1st Dist. Nos. C-040014 and C-040479, 2005-Ohio-3039, ¶18-22.

⁵ *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶10; *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45.

⁶ *In re Rosier-Lemmon/Rosier Children*, 5th Dist. No. 2003-CA-00306, 2004-Ohio-1290, ¶20-24; *In re L.S., Jr.*, 152 Ohio App.3d 500, 2003-Ohio-2045, 788 N.E.2d 696, ¶49; *Carpenter v. Jetter* (Jan. 8, 1996), 12th Dist. No. CA95-01-007.

⁷ *L.S.*, supra, at ¶49 (citations and emphasis omitted).

relations cases. R.C. 3109.051 governs the modification of parenting time or visitation rights.⁸ It requires court orders that address visitation rights to be “just and reasonable.”⁹

In modifying visitation rights, a court must determine whether a change in the visitation order is in the child’s best interest, and it must consider the factors set forth in R.C. 3109.051(D) in making that determination.¹⁰ The trial court has broad discretion in modifying visitation rights. That discretion includes the power to restrict the time and place of visitation, to determine the conditions under which visitation will occur, and to deny visitation all together if it would not be in the child’s best interest.¹¹ A reviewing court will not reverse the trial court’s decision on visitation absent an abuse of discretion.¹²

In this case, the record shows that the court considered the statutory factors and the children’s best interest in determining the visitation schedule. In fact, the court spent a significant amount of time crafting the visitation order. It spent an entire hearing working out with the parties specific details of the plan and asking them what schedule would work for them. He considered the history of the case, the parties’ inability to communicate, their tendency to unilaterally interpret the visitation order, the children’s schedule, and the children’s wishes in the matter.

Suggs is nitpicking the details of the plan, which, overall, actually gives him more time to spend with the children. He complains that the court stopped overnight visitation during the week, but that decision was to accommodate the

⁸ *Braatz v. Braatz*, 85 Ohio St.3d 40, 44-45, 1999-Ohio-203, 706 N.E.2d 1218; *Bailey*, supra, at ¶25.

⁹ *In re Ross*, 154 Ohio App.3d 1, 2003-Ohio-4419, 796 N.E.2d 6, ¶5.

¹⁰ *Braatz*, supra, at 44-45; *Ross*, supra, at ¶5.

¹¹ *Bailey*, supra, at ¶25.

¹² *Appleby v. Appleby* (1986), 24 Ohio St.3d 39, 41, 492 N.E.2d 831; *Ross*, supra, at ¶5.

children's school schedules. In this case, the parties' inability to cooperate and communicate justified the implementation of a rigid parenting-time schedule.¹³ Under the circumstances, we cannot hold that the trial court's parenting-time order was so arbitrary, unreasonable, and unconscionable as to connote an abuse of discretion.¹⁴ Consequently, we overrule Suggs's second assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 10, 2009

per order of the Court _____
Presiding Judge

¹³ See *Ross*, supra, at ¶6-9.

¹⁴ See *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 218, 450 N.E.2d 1140; *Ross*, supra, at ¶6.