

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

IN THE MATTER OF:

J.P.L.

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CASE NO. CA2011-11-112

OPINION  
9/17/2012

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
JUVENILE DIVISION  
Case No. 02-P00710

Webb Law Office LLC, Tyler Webb, 423 Reading Road, Mason, Ohio 45040, Guardian Ad Litem

Wood & Lamping LLP, Anne B. Flottman, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202, for appellee

Jeffrey E. Richards Law Office, Jeffrey E. Richards, 147 Miami Street, P.O. Box 536, Waynesville, Ohio 45068, for appellant

**POWELL, P.J.**

{¶ 1} This appeal centers on a father's motion to modify his visitation schedule because mother was relocating out of state with the child. In denying the motion, the juvenile court noted that it had entered an order providing a visitation schedule based on mother's relocation less than two weeks before father's new motion. While we do not find the juvenile

court's reference to res judicata applicable to the facts of this case, we affirm the judgment of the juvenile court.

{¶ 2} According to the entry of the Warren County Juvenile Court, the issue of mother's planned relocation out of state with the child "was the underlying premise of the extensive litigation culminating in the August 15, 2011 Magistrate's Decision that contained a comprehensive parenting time schedule for Father." The juvenile court adopted the magistrate's decision on September 20, 2011. Ten days later, father moved to amend visitation, stating, without more, that "Mother has now moved out of state and this is a change of circumstances."

{¶ 3} The juvenile court, indicating that res judicata bars re-litigation of issues that have been or could have been litigated in a prior proceeding, held that the court had already amended visitation "in view of Mother's out of state relocation," "there was nothing new for the court to consider," and "as a result Father is not entitled to the relief requested."

{¶ 4} On appeal, father presents a single assignment of error:

{¶ 5} THE COURT ERRED BY DISMISSING APPELLANT'S MOTION FOR A CHANGE IN THE VISITATION SCHEDULE.

{¶ 6} Father argues under this assignment of error that res judicata should not be applied to his motion, that he did not need to demonstrate a change of circumstances for his motion, and the juvenile court could not issue factual findings without an evidentiary hearing.

{¶ 7} A decision on the modification of visitation or parenting time is within the trial court's sound discretion and will not be reversed absent an abuse of that discretion. See R.C. 3109.051; *Koeppen v. Swank*, 12th Dist. No. CA2008-09-234, 2009-Ohio-3675; *In re Hinkle Children*, 12th Dist. No. CA2009-12-309, 2003-Ohio-5282.

{¶ 8} We agree that father was not obligated to show a change of circumstances for his motion to modify visitation. See *Castanias v. Castanias*, 12th Dist. No. CA2007-01-015,

2008-Ohio-2909; *Banfield v. Banfield*, 12th Dist. Nos. CA2010-09-066, CA2010-09-068, 2011-Ohio-3638; *Campana v. Campana*, 7th Dist. No. 08-MA-88, 2009-Ohio-796.

{¶ 9} However, we do not find the juvenile court was requiring a change of circumstances when it stated that father's motion presented "nothing new for the court to consider." Taken within the context of the court's order, it appears the juvenile court found that father was requesting a modification because mother had moved out of state, but the juvenile court had just concluded the process of modifying visitation to cover the relocation of the child.

{¶ 10} Further, we do not agree the trial court erred in failing to hold a hearing on father's motion. The record indicates father did not request a hearing and it was within the province of the juvenile court to determine whether a hearing was necessary to decide the issues raised by the motion. See W.C. Juv.R. 17(M) (version of Warren County Juvenile Court Local Rules applicable to this case).

{¶ 11} We are mindful that the allocation of custody and visitation rights remains subject to future modification by the juvenile court and for this reason, courts have held that the doctrine of res judicata should not be applied strictly in cases involving child custody and visitation. See *Kelm v. Kelm*, 92 Ohio St. 3d 223, 227 (2001).

{¶ 12} Therefore, we will not apply res judicata to father's motion, as the issues of parenting time remain subject to future modification. However, we find the juvenile court did not abuse its discretion when it denied father's new modification motion, which was filed less than two weeks after the court's order addressing the modification of visits as the result of the relocation. The juvenile court indicated that it thoroughly considered and devised visitation time based on mother's move out of state, and that was the only basis listed by father in his new motion. See W.C. Juv.R. 17; see R.C. 3109.051.

{¶ 13} Father's single assignment of error is overruled.

{¶ 14} Judgment affirmed.

RINGLAND and PIPER, JJ., concur.