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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0169**

Javier Perdomo, petitioner,
Appellant,

vs.

Twila Comes Flying,
Respondent,

vs.

Christopher Gran, intervenor,
Respondent,

Cecilia Gran, intervenor,
Respondent.

**Filed February 26, 2008
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27 FA 302140

Thomas J. Vollbrecht, Faegre & Benson, LLP, 2200 Wells Fargo Center, 90 South 7th Street, Minneapolis, MN 55402; and

Sara K. Van Norman, Jacobson – Buffalo, Energy Park Financial Center, 1360 Energy Park Drive, Suite 210, St. Paul, MN 55108 (for appellant)

Twila Comes Flying, 2432 Ogama Place, #301, Minneapolis, MN 55404 (respondent)

Wright S. Walling, Stacia W. Driver, Walling, Berg & Debele, P.A., 121 South 8th Street, Suite 1100, Minneapolis, MN 55402 (for intervenor respondents)

Linda Tannenbaum, Hennepin County Family Court Division, MC L893, 110 South 4th Street, Suite 600, Minneapolis, MN 55401 (guardian ad litem)

Considered and decided by Stoneburner, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.*

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Javier Perdomo challenges the order of the family division of the district court (family court) that enforces visitation rights with appellant's daughter granted to intervenor-respondents Robert and Cecelia Gran by the juvenile division of the district court (juvenile court) and establishes a visitation schedule. Appellant argues that the family court erred in ruling that the amended juvenile court order that awarded the Grans visitation rights is final because it was not appealed. Appellant also argues that the family court erred in ruling that appellant is not entitled to relief under Minn. R. Civ. P. 60.02. We affirm.

FACTS

Respondent Twila Comes Flying is the mother of T.P., who was born on November 4, 2001. Appellant Javier Perdomo is the presumed father of T.P., having signed a recognition-of-parentage form that was filed with the state health department. While living with her mother, T.P. was twice adjudicated a child in need of protective

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

services (CHIPS)—at birth and again on April 7, 2004—because of mother’s substance-abuse issues. Mother was ordered to complete a case plan to correct the conditions that led to T.P.’s out-of-home placement, and T.P. was placed with intervenor-respondents Christopher and Cecelia Gran. T.P. lived with the Grans during the first five months of her life and then from mid-January 2004 until July 13, 2005, when T.P. began to live with appellant. During the time that T.P. lived with her mother prior to July 13, 2005, T.P. visited the Grans every Sunday.

In addition to working with mother on a case plan, the county also worked with appellant on a case plan, in the hope that legal and physical custody of T.P. could be transferred to him if T.P. and mother could not be reunited. While appellant successfully completed his case plan, mother did not.

The juvenile court conducted a permanency hearing on July 13, 2005. Mother was not present at the hearing, but her legal representative was. There appears to be no dispute that mother agreed to a transfer of legal and physical custody of T.P. to appellant. Based on its investigation, the county concluded that appellant is a suitable legal and physical custodian for T.P. While not challenging a transfer of custody to appellant, two child-protection social workers and T.P.’s guardian ad litem recommended that T.P. continue to have a relationship with the Grans.

On direct examination, appellant stated the following regarding T.P.’s relationship with the Grans:

Q: Do you, as her father, believe that it’s in [T.P.’s] best interest to live with you and that you be her legal custodian?

A: Yes.

Q: Now you also understand that her—[T.P.'s] therapist has said it's important for her to have contact not only with her mother but with Mr. and Mrs. Gran? You understand that?

A: Yes.

Q: And you've indicated to the Court through counsel earlier that you're willing to let them have ongoing contact, is that correct?

A: Yes.

Q: And you understand that's important for [T.P.'s] emotional health and stability? You understand that?

A: Yes.

On August 24, 2005, the juvenile court ordered the transfer of sole legal and physical custody of T.P. from mother to appellant. The juvenile court found that it is in T.P.'s best interests to be placed with appellant because (1) mother requested that placement; (2) appellant and T.P. have a close, intimate relationship; (3) T.P. has adjusted to appellant's home; and (4) T.P. would be able to remain in contact with her relatives. The juvenile court ordered visitation rights for mother but did not mention the Grans by name in its findings of fact and did not order visitation for them. At the conclusion of the order, the juvenile court stated that juvenile court jurisdiction under the petition was dismissed. Appellant did not appeal the juvenile court's order.

On November 4, 2005, the county moved to amend the juvenile court's order to include the Grans in the findings of fact and to grant them visitation. The juvenile court subsequently amended its order, adding the requested findings of fact. In addition to the findings listed above, the juvenile court found that placement with appellant is in T.P.'s best interests because T.P. "will be able to maintain her ongoing individual therapy to provide support with her new custodian" and "will be able to continue her relationship

with the Grans . . . which is important for her healthy development and in her best interests.” The juvenile court also ordered “reasonable visitation” to the Grans, “on a schedule [to be] established by the parties.” The juvenile court again dismissed its jurisdiction, and appellant did not appeal from the amended order.

While the record reflects that both the juvenile court’s order and amended order were served on counsel in the juvenile-court matter, appellant did not receive either order. His attorney later acknowledged that “misrouting” of the orders may have occurred in her office.

On December 12, 2005, the Grans moved in family court to intervene in the case in order to enforce the visitation rights granted to them by the juvenile court and to modify the amended order’s award of unstructured visitation to give them time with T.P. from 5:00 p.m. on Saturday to 5:00 p.m. on Sunday every other weekend. Appellant opposed the Grans’ motion and asked the family court for relief from the juvenile court’s amended order under Minn. R. Civ. P. 60.02. In the family court proceeding, questions arose regarding whether the Grans have standing under chapter 257C to seek visitation rights.

The family court stated that appellant’s motion based on rule 60.02 was unsupported by law:

The juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be in need of protection or services, or neglected and in foster care. Minn. Stat. § 260C.101, Subd. 1. In Hennepin County District Court, all child protection proceedings are adjudicated in the Juvenile Division and governed by the Rules of Juvenile Protection Procedure. Rule 3 therein specifies that,

“[e]xcept as otherwise provided by statute or these rules, the Minnesota Rules of Civil Procedure do not apply to juvenile protection matters.” The Rules of Juvenile Protection Procedure set forth the avenues for seeking relief from a final Juvenile Court Order. Civil Procedure Rule 60 does not afford [appellant] another “bite at the apple” in the Family Division after he failed to timely file for relief from the Amended Order in accordance with Juvenile Protection Procedure Rule 46 or 47. If the Family Division were to rely upon Civil Procedure Rule 60 as requested by [appellant], it would essentially be asserting jurisdiction as a reviewing court over the Juvenile Division. This Court lacks authority to proceed in that manner because the Family Division and the Juvenile Division occupy the same level in the judicial hierarchy. Minnesota district courts have concurrent jurisdiction. *See In State ex rel. Minnesota Nat. Bank of Duluth v. District Court, Fourth Judicial District*, 195 Minn. 169, 173, 262 N.W. 155, 157 (1935) (relying upon the rule at 15 C.J. 1134 that “no court of coordinate power is at liberty to interfere with [the action of another] . . . This rule rests upon comity and the necessity of avoiding conflict in the execution of judgments by independent courts, and is a necessary one because any other rule would unavoidably lead to perpetual collision and be productive of the most calamitous results.”). The Amended Order issued by the Juvenile Court granting [the Grans] visitation rights with [T.P.] is the law of this case unless and until the appellate courts of Minnesota rule otherwise.

The family court concluded that the case turned on the enforcement of the previously granted right of visitation to the Grans, not on whether the Grans have standing under chapter 257C to petition for a grant of visitation rights.

As a result, the family court granted the Grans’ motion to intervene, denied appellant’s motion for relief under rule 60.02, and issued an interim order establishing a specific visitation schedule of T.P.’s time with the Grans from noon to 5:00 p.m. every other Saturday, pending completion of the report of the guardian ad litem (GAL). At a

subsequent, final hearing following receipt of the GAL's recommendations, the family court ordered that the Grans' visitation with T.P. would occur from 9:00 a.m. until 7:00 p.m. on the first Saturday of each month and for additional time if mutually agreed upon. This appeal follows.

D E C I S I O N

I.

Appellant contends that the juvenile court was not authorized to award the Grans visitation. For the purposes of this appeal, we assume that there is no explicit grant of authority allowing a juvenile court to award visitation to foster parents.

The juvenile court is indisputably charged with acting in the best interests of the child who is the subject of the proceedings before it. *See* Minn. Stat. § 260C.001, subd. 2 (2006) ("The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child."). At the permanency hearing, a child-protection social worker, a child-services worker from Hennepin County's Indian Child Welfare Act unit, and T.P.'s GAL all testified that it is in T.P.'s best interests to have custody over her transferred to appellant, but each testified to this based on the understanding that T.P. would continue to have contact with the Grans. All three also testified that a continued relationship with the Grans is important for T.P. And appellant not only agreed that contact with the Grans is in T.P.'s best interests, he agreed to allow "ongoing contact" between T.P. and the Grans. Further, consistent with this record, the juvenile court specifically found that allowing T.P. to retain her relationship with the Grans is in T.P.'s best interests.

Parties can stipulate to matters that a court cannot order. *LaBelle v. LaBelle*, 302 Minn. 98, 115-16, 223 N.W.2d 400, 411 (1974); *Gatfield v. Gatfield*, 682 N.W.2d 632, 637 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). Thus, here, the juvenile court's award of visitation to the Grans is consistent with the juvenile-court record, appellant's stipulation, and its own finding that the visitation is in T.P.'s best interests. Moreover, after the July 2005 permanency hearing, appellant actually facilitated visitation between T.P. and the Grans until fall 2005. Thus, even assuming a lack of explicit authority allowing a juvenile court to award visitation to foster parents, we cannot say that this record shows this grant to be inappropriate.

Further, once the time for posttrial motions and appeal has expired, a judgment becomes final. *Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006), *review denied* (Minn. May 16, 2006); *see also Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 765 (Minn. 2005) (stating that a judgment or appealable order becomes final if a timely appeal is not filed.) The time to appeal a juvenile court order is 30 days from service of notice of its filing. Minn. R. Juv. Prot. P. 47.02, subd. 2.

Here, as noted, appellant not only did not appeal the juvenile court's order or amended order, but he actually facilitated the visitation about which he now complains. Thus, the juvenile court's orders were final. Once an order is final, challenges to the order generally amount to an improper collateral attack on a prior ruling. *See Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370-71, 147 N.W.2d 100, 103 (1966) (stating that even if the decision of a district court is wrong, if it is an appealable order, it is still final after the time for appeal has expired); *Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn.

App. 1996) (stating that public policy favors the finality of judgments, Minnesota law does not permit collateral attack on a judgment valid on its face, and a judgment alleged to be merely erroneous is not subject to attack), *review denied* (Minn. Feb. 26, 1997). For this reason, the family court correctly determined that the Grans' motion was for enforcement of visitation already granted by the juvenile court.

II.

Appellant next argues that the family court should have, under Minn. R. Civ. P. 60.02, reopened the juvenile court's judgment from the amended order. This court will not reverse a district court's determination regarding whether to reopen a judgment absent an abuse of discretion. *Kornberg v. Kornberg*, 542 N.W.2d 580, 583 (Minn. App. 2003).

The juvenile court had jurisdiction over T.P. because she had been adjudicated CHIPS. Minn. Stat. § 260C.101, subd. 1 (2006). Procedure in juvenile court is governed by the Minnesota Rules of Juvenile Protection Procedure. Minn. R. Juv. Prot. P. 1.01.

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding, including a default order, and may order a new trial or grant such other relief as may be just for any of the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;

(c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) the judgment is void; or

(e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event shall it be more than ninety (90) days following the service of notice by the court administrator of the filing of the court's order.

Minn. R. Juv. Prot. P. 46.02. Minn. R. Civ. P. 60.02 applies to orders of district courts and is substantially equivalent to rule 46.02, with two differences: it provides a sixth avenue to reopen a judgment that is not present in rule 46.02; and, more importantly in this case, whereas rule 46.02 only allows 90 days for a motion, rule 60.02 allows a court to grant relief within a reasonable time or, for three of the bases for relief listed in the rule, "not more than 1 year" after the judgment.

When a juvenile court terminates its jurisdiction over a case, jurisdiction is transferred to family court. Minn. R. Juv. Prot. P. 42.05, subd. 2(b). Appellant's argument that the family court should have reopened the juvenile court's judgment is premised on the notion that when the transfer of jurisdiction to family court occurs, family court rules can then apply to rulings made in juvenile court. But when juvenile court rules differ from rules and statutes that might otherwise apply, the provisions of the rules governing juvenile-protection proceedings are controlling. *In re the Welfare of J.R.*, 655 N.W.2d 1, 3 (Minn. 2003). Rules of juvenile court have shorter deadlines because of the importance of expediency in juvenile-protection proceedings. *Id.* at 4-5. The longer periods for challenge under rule 60.02 are not appropriate for cases under the juvenile court's jurisdiction. Thus, any motion to reopen the judgment of the juvenile court

should have been made within the timelines of rule 46.02, not rule 60.02.¹ A contrary conclusion would allow systematic circumvention of the timelines in rule 46.02. Given the time-sensitive nature of juvenile-protection matters and the supreme court's explicit statement that courts are to apply the juvenile-protection rules in the event of any conflict with other authorities, we conclude that Minn. R. Civ. P. 60.02 is inapplicable here.

Under the juvenile rules, appellant had 90 days to seek relief from the November 17, 2005 service of notice of filing of the November 9, 2005 amended order. Minn. R. Juv. Prot. P. 46.02. Here, the record is unclear as to when appellant's motion for relief under rule 60.02 was made, including multiple purported dates of service, at least one of which is five days before the motion was allegedly signed by appellant's attorney. Therefore, whether appellant's rule 60.02 motion could be deemed timely if it were treated as a motion under Minn. R. Juv. Prot. P. 46.02 is unclear, at best. Even if it were timely, however, the crux of appellant's motion is that the juvenile court lacked authority to award Grans visitation. That allegation is, essentially, an allegation of legal error. And because Minn. R. Juv. Prot. P. 46.02 is analogous to Minn. R. Civ. P. 60.02, an allegation of legal error is an inadequate basis for a motion for relief under Minn. R. Juv. Prot. P. 46.02. *See In re Welfare of Children of M.L.A.*, 730 N.W.2d 54, 61 (Minn. App.

¹ We note that the notion that a family court would reopen any judgment under rule 60.02 is called into question by Minn. Stat. § 518.145, subd. 2 (2006), a statutory provision analogous to rule 60.02 for use in family courts. Our supreme court has stated that motions to open marriage dissolution decrees should be made pursuant to section 518.145, subd. 2, not rule 60.02. *Maranda v. Maranda*, 449 N.W.2d 158, 164 n.1 (Minn. 1989). Minn. Stat. § 518.145, subd. 2, applies to all cases under chapter 518.

2007) (noting Minn. R. Juv. Prot. P. 46.02 is “very similar” to Minn. R. Civ. P. 60.02); *Reid v. Strodtman*, 631 N.W.2d 414, 420 (Minn. App. 2001) (stating that “[d]istrict courts are not to review judicial error through application of rule 60; review of judicial error is the function of the appellate courts”). Thus, regardless of whether appellant’s motion could be construed as a motion for relief under Minn. R. Juv. Prot. P. 46.02 and regardless of whether that motion were further deemed to be timely, the district court did not abuse its discretion by denying it.

III.

The family court made very thorough findings regarding T.P.’s best interests pursuant to Minn. Stat. § 518.17, subd. 1 (2006). Appellate review of a family court’s best-interests determinations is limited to whether the district court abused its discretion by making findings unsupported by the evidence or by improperly applying the law. *Reed v. Albaaj*, 723 N.W.2d 50, 57 (Minn. App. 2006). The family court determined that T.P.’s best interests would be served by having visitation with the Grans from 9:00 a.m. until 7:00 p.m. on the first Saturday of each month, with additional time if the parties could mutually agree. Appellant does not challenge the family court’s factual findings or best-interests determination, and, in any event, they are well supported by the record. As such, we will not disturb either in this appeal. *See Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that an appellate court need not “discuss and review in detail the evidence for the purpose of demonstrating that it supports the [district] court’s findings,” and that its “duty is performed when [it] consider[s] all the evidence

. . . and determine[s] that it reasonably supports the findings”); *Vangsness v. Vangsness*, 607 N.W.2d 468, 474-75 & n.1 (Minn. App. 2000) (applying *Wilson* in dissolution case).

Affirmed.