COURT OF APPEALS
DECISION
DATED AND FILED

August 27, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2993 **Cir. Ct. No. 2012FA5081**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

GARY A. KRAMSCHUSTER AND SANDRA L. KRAMSCHUSTER,

PETITIONERS-APPELLANTS,

V.

STEPHANIE M. PRZYTARSKI P/K/A STEPHANIE M. KRAMSCHUSTER AND TED VALLEJOS,

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: FREDERICK C. ROSA, Judge. *Affirmed.*

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Gary and Sandra Kramschuster appeal an order granting them supervised visits in New Jersey with their maternal grandchild. The grandparents ask this court to reverse the circuit court's order and to grant them broader visitation rights as requested in their motion for grandparent visitation.

¶2 The grandparents seek reversal of the circuit court's visitation order on four grounds: (1) the court exhibited bias and prejudice against the grandparents; (2) the court erred by appointing Attorney Laura Schwefel to be the child's guardian ad litem (GAL); (3) the court erred by not finding the child's father an unfit parent; and (4) the court made various erroneous findings. As we explain, the grandparents' arguments are either undeveloped or not persuasive. Therefore, we affirm.

BACKGROUND

¶3 This case relates to ongoing custody and physical placement litigation between the child's mother Stephanie Przytarski and the child's adjudicated father Ted Vallejos. The child was born in 2006. The mother and father initially stipulated to joint custody and primary physical placement with the mother. At all pertinent times, the mother has lived in Wisconsin and the father has lived in New Jersey. It is undisputed that the child had a good relationship with the grandparents, the appellants here, while the child was living with their daughter, the child's mother.

¶4 Since 2007, the mother and father have had a contentious co-parenting relationship. On December 27, 2012, the mother was arrested and charged with interference with custody after she denied the father placement. A no contact order was issued prohibiting the mother from contacting the child or the father. As a result, the child was placed with the father in New Jersey. The no contact order was later modified to allow Skype contact between the mother and the child.

¶5 In 2013 and 2014, the circuit court held proceedings pertaining to the mother's and father's separately filed motions to modify custody and

placement. In the course of those proceedings, the grandparents filed a motion for grandparent visitation pursuant to WIS. STAT. § 767.43(3) (2013-14).[1] The grandparents made numerous requests in the motion, including that the child be returned to Wisconsin and that the grandparents "shall have, at their discretion, unsupervised visitation with [the child]" at various times. The circuit court held a hearing on the grandparents' motion in October 2013, in conjunction with the motions in the underlying custody and placement dispute between the mother and father. The court heard testimony from each parent and the grandparents, as well as recommendations from the GAL.

¶6 In December 2013, the circuit court issued a temporary visitation order that allowed the grandparents to have supervised visits with the child in New Jersey upon written notice to the father. The court further ordered the father to bring the child to Wisconsin for a weekend during the child's spring break in order for the grandparents and parents to participate in a psychological evaluation, including an evaluation with the child. The order also indicated that the circuit court would review the status of the grandparent visitation and would issue a further placement schedule once the court considered the results of the psychological evaluations. The spring break visit did not occur because the parties were unable to obtain a psychologist for the evaluations.

¶7 After several more hearings with additional testimony from the parties, the circuit court issued a final order on November 14, 2014 modifying custody and placement. The circuit court ordered sole custody and primary

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

placement with the father, and authorized the mother and grandparents to have supervised placement in New Jersey. The circuit court also ordered the father, upon written notice from the mother or grandparents, to bring the child to Wisconsin the first full weekend in August for a supervised visit with the mother and grandparents.

DISCUSSION

¶8 The grandparents appeal the final order that granted them supervised visits in New Jersey and ordered the father to bring the child to Wisconsin once a year for a supervised visit with the mother and grandparents.[2] The grandparents argue that the circuit court order should be reversed and that their motion requesting substantially more visitation should be granted for four reasons: (1) the court exhibited bias and prejudice against the grandparents; (2) the court erred by appointing Attorney Laura Schwefel to be the child's guardian ad litem; (3) the court erred by not finding the child's father an unfit parent; and (4) the court made various erroneous findings. We address each argument in turn.

A. Prejudice Towards the Grandparents

¶9 The grandparents argue that the order should be reversed because the circuit court exhibited bias and prejudice against them. In support, the grandparents allege that the court conducted a "non-recorded telephonic hearing … on April 11, [2014]" and that the grandparents "were neither noticed or participated in the hearing." The grandparents assert that they were entitled to be

[2] The November 2014 final order also granted the father sole custody and primary physical placement. However, that portion of the order is not pertinent to this particular appeal by the grandparents.

at the hearing because the hearing "vacated the[ir] spring break visitation" with the child. We understand the grandparents to be referring to the portion of the December 2013 order that ordered the father to bring the child to Wisconsin during spring break for psychological evaluation with the parents and grandparents and potentially placement with the grandparents. According to the grandparents, the court's failure to notify them of this telephone hearing demonstrated, "bias and advocacy for the adverse parties which includes the guardian ad litem."

¶10 As an initial matter, we note that the grandparents fail to support their argument with any legal authority. Indeed, the only case law they cite to is ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), for the proposition that a circuit court cannot act as both advocate and judge. The grandparents fail to cite to any law on judicial bias or any law to support their contention that they were entitled to be present at this telephone hearing in April 2014. We now cite and apply ***Pettit*** for another legal proposition—that we may decline to address arguments that are inadequately briefed. *See* ***id.*** at 646. Because the grandparents' argument is undeveloped, we reject it on that basis.

¶11 We also reject the bias argument on its merits because it is not supported by the evidence in the record. As a general matter, we presume that judges are "fair, impartial, and capable of ignoring any biasing influences." ***State v. Gudgeon***, 2006 WI App 143, ¶20, 295 Wis. 2d 189, 720 N.W.2d 114. "To overcome this presumption, the party asserting judicial bias must show that the judge is biased or prejudiced by a preponderance of the evidence." ***State v. McBride***, 187 Wis. 2d 409, 415, 523 N.W.2d 106 (Ct. App. 1994).

¶12 The record shows that the grandparents could not overcome this presumption. The grandparents' assertions that they were entitled to be present at

the telephone hearing and that the circuit court improperly vacated the December 2013 order arise only from the fact that the father did not bring the child to Wisconsin during the child's spring break in 2014 and the grandparents did not have placement then. However, nothing about that scenario evidences any bias on the part of the circuit court.

¶13 According to the December 2013 order, the father was "ordered to bring the child to Wisconsin for an extended weekend during her school spring break" and "[w]hile the child is in Wisconsin, the grandparents and the parents shall participate in a psychological evaluation which includes an observation of each with the child." The order further indicated that the "evaluation shall be done by Sheryl Dolezal, PhD." Finally, the order indicated, "*Following the evaluation*, the grandparents *may* have placement with the child .... That placement shall be unsupervised *provided* Dr. Dolezal does not determine that such a visit would be harmful to the child." In other words, there must first be a psychological evaluation before any placement with the grandparents can occur. Then after the evaluation, the grandparents will have placement *only if* Dr. Dolezal does not find such placement harmful to the child.

¶14 It is undisputed that the grandparents objected to Dr. Dolezal serving as the psychologist because of a potential conflict of interest. It is also undisputed that the circuit court appointed two alternate psychologists at the February 3, 2014 hearing, at which the grandparents were present, but that those psychologists declined the request. At the May 9, 2014 hearing, the circuit court referred to the spring break placement and noted that "placement was canceled because no therapist thus far contacted has been willing to accept the case." Thus, the record shows that the December 2013 order was not "vacated" during the telephone hearing in April 2014, but rather, that the grandparents were unable to have

placement during spring break because the prerequisite to that placement—having a psychologist evaluate them and not find that placement harmful—was not satisfied due to there being no psychologist willing to accept the assignment. In sum, we conclude that the grandparents fail to show that the circuit court was biased or prejudiced against them.

B. Attorney Laura Schwefel as the Guardian Ad Litem

¶15 The grandparents relatedly argue that the circuit court was not impartial because it appointed Attorney Laura Schwefel to serve as the child's guardian ad litem and that attorney Schwefel "has an ax to grind." This argument lacks a coherent legal theory and support in the record, and thus, does not warrant resolution by this court. *See* ***Pettit***, 171 Wis. 2d at 646 ("We may decline to review issues inadequately briefed.").

¶16 If the grandparents mean to argue that the circuit court erred in not granting their motion to have the GAL removed, we also reject that argument as being without merit.[3] Generally, "the appointing court oversees the conduct of the GAL, and may on its own, or at the request of a parent, remove and replace the GAL." ***Paige K.B. v. Molepske***, 219 Wis. 2d 418, 434, 580 N.W.2d 289 (1998); *see also* WIS. STAT. § 767.407(5). "If the circuit court, for any reason, finds a GAL's performance inadequate to protect the best interests of the child, the court should either remove and replace that GAL or take other appropriate action." ***Paige K. B.***, 219 Wis. 2d at 435. While the grandparents find fault with the

[3] We question whether the grandparents have standing to move for termination of the GAL where the child's parents are alive and the grandparents do not share in custody of the child. However, since none of the parties raise this issue, we do not address it.

GAL's conduct vis-à-vis them, they point to no action by the GAL that was contrary to the child's best interests. The circuit court found that the GAL has served in this role "for a number of years," that the record before it was a "box and a half," that there have been "numerous hearings … which the guardian ad litem participated in," and therefore, found that "the guardian ad litem has more knowledge than most about what's going on here." The court stated that the grandparents "have objected to the appointment of the guardian ad litem at pretty much every hearing" but that the court was "keeping this guardian ad litem who has institutional knowledge of [this] voluminous case." In sum, the grandparents fail to show that the circuit court erred in appointing attorney Schwefel as the guardian ad litem or in denying their request to terminate her appointment.

C. Father's Fitness and Child's Best Interest

¶17 The grandparents argue that the circuit court erred in not finding the child's father to be an unfit parent. It appears that the grandparents are arguing that the court should have found the child's father unfit so that the father's "determination of the child's best interest" is not given "some special weight." As we proceed to explain, the grandparents' argument is without merit.

¶18 "The decision whether to grant or deny visitation is within the circuit court's discretion. We will affirm a circuit court's discretionary determination so long as it examines the relevant facts, applies the proper legal standard, and uses a demonstrated rational process to reach a conclusion that a reasonable judge could reach." ***Martin L. v. Julie R. L.***, 2007 WI App 37, ¶4, 299 Wis. 2d 768, 731 N.W.2d 288 (citations omitted).

¶19 "[C]ircuit courts must apply the presumption that a fit parent's decision regarding grandparent visitation is in the best interest of the child. At the

same time, we observe that this is only a presumption and the circuit court is still obligated to make its own assessment of the best interest of the child." ***Roger D. H. v. Virginia O.***, 2002 WI App 35, ¶19, 250 Wis. 2d 747, 641 N.W.2d 440.

¶20 Our independent review of the record shows that the circuit court examined the relevant facts, applied the proper legal standard, made its own assessment of the best interest of the child, and reached a reasonable conclusion. The court was specifically concerned with the likelihood that the grandparents would act in a manner that is "contrary to decisions made by a parent who has legal custody of the child and that are related to the child's physical, emotional, educational or spiritual welfare."

¶21 The circuit court found that the grandfather has thwarted the father's efforts to form a relationship with the child and that the grandfather has not considered the possibility that his behavior contributed to the trauma the child experienced during transfer of the child. The court also found that the "mother's interference with father's placement rights is emotionally harmful to the child" and that the grandfather has "supported mother's obstructionist behavior." The court found that the grandparents "purchased a phone for the child without [the father's] consent and attempted to contact her directly at school in an effort to circumvent father's right as a custodial parent."

¶22 The circuit court noted that the father acknowledged it is in the child's best interest to maintain a relationship with the grandparents but that their visits should be supervised. Considering these facts, along with the contentious history involving the father, mother, and maternal grandfather, the court reasonably concluded that it is in the best interest of the child to limit the grandparents' visitation rights to supervised visits until further notice.

¶23 Because the grandparents' brief focuses heavily on challenging the father's fitness, we briefly address that peripheral argument now. The grandparents point to Dr. Kavanagh's testimony that the father has a narcissistic personality disorder to support their assertion that the father is unfit. However, "whether to credit [an] expert's testimony and the weight to give it are judgments for the fact finder to make." ***City of Stoughton v. Thomasson Lumber Co.***, 2004 WI App 6, ¶18, 269 Wis. 2d 339, 675 N.W.2d 487 (WI App 2003). The circuit court "may reject an expert's opinion even if it is uncontradicted." ***Bray v. Gateway Ins. Co.***, 2010 WI App 22, ¶24, 323 Wis. 2d 421, 779 N.W.2d 695 (WI App 2009).

¶24 Here, the circuit court found that Dr. Kavanagh's testimony was unpersuasive given the following facts, which are supported by the evidence in the record: "[Dr. Kavanagh] offered an opinion [to the court] based on conversations with [the] mother and after reviewing videos of several Skype sessions with the child"; her license was retired in 2013; and she was "involved in a questionable on-line therapy practice." The grandparents fail to show that the circuit court erred in its exercise of discretion in finding Dr. Kavanagh's testimony not persuasive.

¶25 The grandparents also do not point to any actions by the father that support their assertion that he is an unfit parent. Rather, it is undisputed that since the child has been placed with the father, the child has adjusted well, is doing well in school, and participates in activities such as the Girl Scouts. Thus, we conclude that the grandparents fail to demonstrate that the circuit court erred in declining to find the father unfit.

D. Erroneous Findings

¶26 Finally, the grandparents argue that the circuit court made various erroneous findings. However, the grandparents fail to explain how any of these allegedly erroneous findings matter with respect to their motion for grandparent visitation rights.

¶27 The grandparents assert that the circuit court erred in finding that Dr. Kavanagh was forced to retire her psychotherapy license, and that the court "confuse[s] correlation with causality with respect to [the child's] trauma and PTSD directed at [the father]" and erroneously "correlates the trauma is caused by [the mother] or [grandfather]." These allegedly erroneous findings of fact appear to be part of a regurgitated argument, addressed and rejected above, that the court erred in rejecting Dr. Kavanagh's testimony that the father was responsible for any trauma to the child.

¶28 As was referenced above, it is undisputed that Dr. Kavanagh retired her license in 2013 and that she conducted professionally questionable online therapy. Even if we assume that Dr. Kavanagh was not in fact "forced" to retire her license, there are still ample facts that support the circuit court's reasonable conclusion that Dr. Kavanagh's testimony is not persuasive. As to the court's findings pertaining to the grandparents' conduct being contrary to the child's best

interest, the grandparents fail to point to any evidence to counter those findings. In sum, the grandparents fail to show that the circuit court erred.[4]

CONCLUSION

¶29 For the reasons stated above, we affirm the circuit court order granting the grandparents supervised visits.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[4] The grandparents also appear to argue that the circuit court erred in ordering them to pay the GAL fees. The grandparents fail to develop this argument, and we see no erroneous exercise of discretion by the court in ordering them to pay a portion of the GAL fees. *See* ***Lofthus v. Lofthus***, 2004 WI App 65, ¶33, 270 Wis. 2d 515, 678 N.W.2d 393 ("Determining who pays [the guardian ad litem] is a discretionary decision."); *see also* WIS. STAT. § 767.407(6) ("The court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem.").

Furthermore the grandparents mistakenly state that the order requires them to "pay $200 to [the GAL] forever and without any basis." The order specifies that each party "shall pay a *minimum* of $200 per month *towards their share of GAL fees*." Thus, the grandparents would not pay the GAL "forever," but rather, until they have paid their share of the fees.