

DISTRICT COURT OF APPEAL OF FLORIDA

State, Department of Revenue ex rel. Zeoli v. Kline

95 So. 3d 440 (Fla. Dist. Ct. App. 2012) · Decided August 17, 2012

SUMMARY

The Florida appellate court held that a child-support adjustment based on substantial time spent with a noncustodial parent must be made pursuant to a qualifying parenting plan. Because the hearing officer's unsigned visitation stipulation was neither agreed to by the parents nor established by the circuit court and did not establish a time-sharing schedule, the court reversed and remanded.

CASE DETAILS

COURT	District Court of Appeal of Florida
WRITING FOR THE COURT	Van Nortwick; Clark; Ray
JURISDICTION	Florida
DECIDED	August 17, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Department of Revenue appealed a trial court order establishing Sean Kline's child support obligation and a custody-related time-sharing arrangement.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State, Department of Revenue ex rel. Kristen Zeoli v. Sean H. Kline

TOPICS

[child support](#)[statutory interpretation](#)[child custody](#)[appellate procedure](#)[family law procedure](#)

PRACTICE AREAS

[family law](#)[child support](#)[appellate procedure](#)

QUESTIONS PRESENTED

1. Whether a child-support adjustment for substantial time spent with a noncustodial parent may be based on an informal time-sharing arrangement or an unsigned document that does not qualify as a parenting plan under Florida law.

2. Whether the trial court's child-support order could stand when the adjustment was not made pursuant to a parenting plan established or approved as required by statute.

HOLDINGS

1. An adjustment to the presumptive child-support amount for substantial time spent with a noncustodial parent must be based on time-sharing pursuant to a parenting plan as required by sections 61.30(11) and 61.046, Florida Statutes.
2. The unsigned document created by the hearing officer did not qualify as a parenting plan because it did not reflect an agreement of the parents, did not establish a time-sharing schedule, and was not established by the circuit court.

KEY QUOTATIONS

"Because the order was not made pursuant to a parenting plan under section 61.046(4), Florida Statutes (2010), we reverse and remand for further proceedings." (95 So. 3d at 440)

"The so-called 'stipulation' created by the hearing officer neither reflects an agreement of the parents nor otherwise qualifies as a parenting plan because it does not establish a time-sharing schedule and was not established by the circuit court." (95 So. 3d at 440)

FACTUAL BACKGROUND

Kristen Zeoli and Sean Kline are the biological parents of a child. The hearing officer calculated child support under section 61.30 and considered the child's overnight stays with Kline. The hearing officer sua sponte created a purported visitation stipulation that neither parent signed, and the record did not show that the parents stipulated to the child staying with Kline for more than 26 percent of the nights annually.

PROCEDURAL HISTORY

The Department petitioned on behalf of Kristen Zeoli for an order establishing Kline's child support obligation. After a hearing before a court-appointed hearing officer, the trial court entered an order adopting the hearing officer's child-support recommendation, including an adjustment based on the number of nights the child stayed with Kline and a document labeled a "Stipulation for a Formal Visitation Agreement." The appellate court reversed and remanded because the order was not based on a qualifying parenting plan.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion.

OPINION

PER CURIAM.

PER CURIAM. The Department of Revenue appeals an order establishing the child support obligations of Sean H. Kline, appellee, and a custody arrangement for the parties' child. Because the order was not made pursuant to a parenting plan under section 61.046(4), Florida Statutes (2010), we reverse and remand for further proceedings. Appellant Kristen Zeoli and appellee Sean Kline are the biological parents of a child.

On behalf of Zeoli, the Department petitioned for entry of an order setting appellee's child support obligation. Following a hearing conducted by a court appointed hearing officer, the trial court entered an order setting child support.

The order adopted the recommendation of the hearing officer who calculated the respective support obligations for each parent in accordance with section 61.30. In so doing, the hearing officer considered the number of nights the child resided with the appellee father and entered sua sponte a document entitled a "Stipulation for a Formal Visitation Agreement." This so-called stipulation was not signed by either parent.

Further, a review of the record discloses that, while the parents had established between them an informal time-sharing arrangement, neither stipulated on the record that the child stays with appellee in excess of 26% of nights per year, as the stipulation indicated. While the determination of child support may consider time spent with a non-custodial parent, section 61.30(11), provides that any adjustment to the presumptive child support amount for substantial time spent with a non-custodial parent is to be made when the time with the non-custodial parent is pursuant to "a parenting plan." A parenting plan, as defined in section 61.046(14), is a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child.... (a) The parenting plan must be: 1.

Developed and agreed to by the parents and approved by the court; or 2. Established by the court, with or without the use of a court-ordered parenting plan recommendation, if the parents cannot agree on a plan or the parents agreed on a plan not approved by the court. There is nothing in the record resembling a "parenting plan" as defined in section 61.046(14).

The so-called "stipulation" created by the hearing officer neither reflects an agreement of the parents nor otherwise qualifies as a parenting plan because it does not establish a time-sharing schedule and was not established by the circuit court.

Accordingly, we reverse the order under review and remand the cause for further proceedings consistent with this opinion. VAN NORTWICK, CLARK, and RAY, JJ., concur.