OFFICIAL ARKANSAS
COURT OF APPEALS OPINION

Cite as 2012 Ark. App. 190

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-1034

LARRY PFEIFER
APPELLANT

V.

BENJAMIN GLENN DEAL
APPELLEE

Opinion Delivered February 29, 2012

APPEAL FROM THE YELL COUNTY CIRCUIT COURT, NORTHERN DISTRICT
[NO. DR-11-120]

HONORABLE JERRY D. RAMEY, JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

Larry Pfeifer appeals from the Yell County Circuit Court's order granting appellee Benjamin Deal's motion to dismiss Pfeifer's petition for custody of his granddaughter (Deal's daughter). We affirm.

Pfeifer is the maternal grandfather of M.D., born September 5, 2002. M.D.'s parents divorced in 2005, and her mother was awarded custody. M.D. and her mother lived with appellant most of the time, and appellant provided much of the child care, as his daughter was an alcoholic and had serious medical problems. Although Deal later moved to Branson, Missouri, he continued to have visitation with his daughter. The mother died on July 5, 2011, while M.D. was with Deal in Missouri. Deal obtained an ex parte order in the divorce case granting him temporary custody of M.D. The circuit court later determined that "once a party to a divorce passes away, it terminates the divorce proceeding. For that reason, the

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divorce case is no longer an open case, and all Orders entered after the Plaintiff's death is [sic] held for not[sic]."

In August 2011, Pfeifer filed a petition for emergency ex parte custody in a new case, naming Deal as the defendant. The same day, he filed a separate petition for custody under the Uniform Child Custody and Jurisdiction and Enforcement Act ("UCCJEA"), codified at Arkansas Code Annotated section 9-13-101 et seq. In the alternative, Pfeifer asked the court to grant him visitation with M.D. Deal filed a motion to dismiss for lack of jurisdiction, arguing that Pfeifer was not entitled to custody under Arkansas Code Annotated section 9-13-101 and that the proper avenue for Pfeifer to obtain custody of the child was through a guardianship proceeding.

On October 3, 2011, the circuit court granted Deal's motion to dismiss regarding the issue of custody, finding "the Domestic Relations statutes do not provide for the award of custody of a minor child to a non-parent." The court denied the motion to dismiss as to the issue of visitation. Appellant filed a timely notice of appeal on October 12, 2011.[1]

Pfeifer asserts that this appeal presents the following two questions: (1) whether Arkansas Code Annotated section 9-13-101 (Repl. 2009) provides for the award of custody of a minor child to a non-parent, and (2) if so, whether he sufficiently pled facts to establish his right to pursue custody of M.D. based on section 9-13-101. We hold that the statute in

[1]While the court did leave open the matter of visitation, we have determined that the custody determination is nonetheless final. *Ford v. Ford*, 347 Ark. 485, 65 S.W.3d 432 (2002) (holding that Rule 2(d) of the Arkansas Rules of Appellate Procedure–Civil permits an appeal from any order that is final as to the issue of custody, regardless of whether the order resolves all other issues).

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question does not allow a grandparent to initiate a custody proceeding, and thus we affirm the circuit court's ruling. Our supreme court has set out the appropriate standard of review as follows:

> We review issues of statutory interpretation de novo, as it is for this court to decide what a statute means. In this respect, we are not bound by the trial court's decision; however, in the absence of a showing that the trial court erred, its interpretation will be accepted as correct on appeal.
>
> Our rules of statutory interpretation are well settled. When reviewing issues of statutory interpretation, we are mindful that the first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. When the language of a statute is plain and unambiguous, there is no need to resort to the rules of statutory construction. A statute is ambiguous only where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning. When a statute is clear, however, it is given its plain meaning, and we will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language used.

Rylwell, L.L.C. v. Ark. Dev. Fin. Auth., 372 Ark. 32, 36, 269 S.W.3d 797, 800 (2007) (internal citations omitted).

The statute at issue in the present case provides:

> Award of custody.
>
> (a)(1)(A)(i) *In an action for divorce*, the award of custody of a child of the marriage shall be made without regard to the sex of a parent but solely in accordance with the welfare and best interest of the child.
>
> (ii) In determining the best interest of the child, the court may consider the preferences of the child if the child is of a sufficient age and capacity to reason, regardless of chronological age.
>
> (B) When a court order holds that it is in the best interest of a child to award custody to a grandparent, the award of custody shall be made without regard to the sex of the grandparent.

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> (2)(A) Upon petition by a grandparent who meets the requirements of subsection (b) of this section and subdivision (a)(1) of this section, a circuit court shall grant the grandparent *a right to intervene* pursuant to Rule 24(a) of the Arkansas Rules of Civil Procedure.
>
> (B)(i) [involving a grandchild who is twelve (12) months of age or younger]
>
> . . . .
>
> (ii) *A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding* involving a grandchild who is twelve (12) months of age or older when:
>
> (a) A grandchild resides with this grandparent for at least one (1) continuous year regardless of age;
>
> (b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and
>
> (c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

Ark. Code Ann. § 9-13-101 (emphasis added). The plain language of this statute, read as a whole, shows an intent to allow a grandparent to intervene, and even be awarded custody, when there is an existing custody suit. It does not allow the grandparent to create the custody dispute or initiate a custody action. *Cf.* Ark. Code Ann. § 9-13-103 (providing that a grandparent "may petition a circuit court of this state for reasonable visitation rights"). If the legislature had intended to allow grandparents to petition for custody when there is no divorce or custody dispute in which to intervene, it could have so provided; it did not. It is unnecessary to address Pfeifer's arguments regarding the effects of whether the statute allows for intervention only in a divorce proceeding or allows for intervention in other custody proceedings, because he clearly does not fall in either category.

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Finally, Pfeifer contends that a grandparent's right to initiate a custody proceeding was recognized in *Coffee v. Zolliecoffer*, 93 Ark. App. 61, 216 S.W.3d 636 (2005). In that case, the maternal grandparents petitioned for custody of the minor, and this court affirmed the trial court's award of custody to the grandparents without discussion of their right to initiate such a suit. As the present issue was not raised, we do not find *Coffee* determinative here.

Affirmed.

ROBBINS and WYNNE, JJ., agree.

Sanford Law Firm, PLLC, by: *Josh Sanford*, for appellant.

Laws Law Firm, P.A., by: *Allen Laws*, for appellee.