

Marriage of Harrington

COLORADO COURT OF APPEALS

Court of Appeals No.: 04CA1986
Jefferson County District Court No. 99DR3717
Honorable Jane A. Tidball, Judge

In re the Marriage of

Christy Harrington, n/k/a Christy Ryan,

Appellee,

and

Sean L. Harrington,

Appellant.

ORDER VACATED AND CASE
REMANDED WITH DIRECTIONS

Division VI
Opinion by: JUDGE LOEB
Plank* and Nieto*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced: August 3, 2006

Law Office of Madeline Wilson, Madeline Wilson, Denver, Colorado, for Appellee

Karen S. Renne, Golden, Colorado, for Appellant

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2005.

In this third appeal arising out of the dissolution of the marriage between Sean L. Harrington (father) and Christy Ryan (mother), father appeals the August 2004 denial of his request to disqualify the special advocate. We vacate the trial court's order and remand for further proceedings.

In the first appeal between these parties, a division of this court addressed the validity of a July 2003 order restricting father's parenting time, authorizing the return of the minor child to mother, and awarding her attorney fees. See In re Marriage of Harrington, (Colo. App. No.03CA1825, Dec. 30, 2004)(not published pursuant to C.A.R. 35(f)).

The special advocate was appointed by order of the court in August 2003.

In a second appeal, another division of this court reversed the trial court's May 4, 2004, order, which ordered father to pay the special advocate fees in the amount of \$845 and "any future fees billed . . . that are directly attributable to the . . . time spent reviewing documents submitted by [father]." See In re Marriage of Harrington, (Colo. App. No. 04CA1161, Mar. 9, 2006)(not published

pursuant to C.A.R. 35(f)). As pertinent to this appeal, the trial court did not address father's allegation that the special advocate had engaged in unethical practice and should be disqualified, which was raised for the first time in father's timely post trial motions.

Father filed a motion for reconsideration of the May 4 order, seeking relief under C.R.C.P. 59 based on "newly discovered evidence" obtained from subsequent conversations with the special advocate and renewing his prior request for disqualification based on bias, prejudice, and unethical conduct. The trial court denied that motion, finding that it was filed outside the fifteen-day time period required by C.R.C.P. 59(a).

Approximately six weeks later, father filed an amended motion for reconsideration, relying on C.R.C.P. 59(f) and 60(b). On August 16, 2004, the trial court denied the amended motion based on father's failure to file affidavits, as required by C.R.C.P. 59(d)(4). The court alternatively determined that, "even if the facts were supported by an affidavit, [father] has not shown how the evidence is material or how it might change the outcome of the Court's May 2004 order." The court further summarily denied husband's motions for disqualification of the special advocate. On August 30,

2004, father filed another motion to reconsider, which the trial court stayed ruling on, finding that it lacked jurisdiction based on the pending appeal.

Father asserts that the trial court erroneously denied his motion and seeks a remand for evaluation of the special advocate's conduct. Based on a July 2005 order issued by a motions division of this court, we limit the appeal to review under C.R.C.P. 60(b) standards. We conclude that the trial court must reconsider husband's request for disqualification of the special advocate and enter specific findings to support its determination.

The resolution of a C.R.C.P. 60(b) motion is reviewed for abuse of the trial court's discretion. Front Range Partners v. Hyland Hills Metro. Park & Recreation Dist., 706 P.2d 1279 (Colo. 1985). A court abuses its discretion when it acts in a manifestly arbitrary, unfair, or unreasonable manner. In re Marriage of Page, 70 P.3d 579 (Colo. App. 2003).

Here, the record does contain affidavits concerning the conversations father had with the special advocate after the May 2004 order, but it appears that the trial court did not consider them because they may have been filed separately from the motion.

As previously stated, the trial court summarily denied father's request to disqualify the special advocate. However, in the absence of specific findings, we are unable to evaluate the propriety of the court's determination or ascertain if the court considered whether any of the standards previously applicable to special advocates (or currently concerning child and family investigators) were violated. See generally In re Marriage of Redmond & Bezdek, 131 P.3d 1167 (Colo. App. 2005).

Thus, we conclude that a remand is necessary for such review under the standards applicable to a motion filed pursuant to C.R.C.P. 60(b)(5). See In re Marriage of Smith, 928 P.2d 828.

The order denying the request to disqualify the special advocate is vacated, and the case is remanded to the trial court with directions to reconsider father's request and to enter specific findings to support its determination.

JUDGE PLANK and JUDGE NIETO concur.