

IN THE CIRCUIT COURT OF CEDAR COUNTY, MISSOURI
GENERAL DIVISION

FILED
10/12/2022
CIRCUIT-ASSOCIATE-PROBATE
SARAH TURNER - CIRCUIT CLERK
CIRCUIT COURT CEDAR COUNTY

STATE OF MISSOURI, et al)
Plaintiffs,)
vs.) Case No. 22CD-CV00413
AGAPE BAPTIST CHURCH, INC.)
Defendant)

ORDER
AND MEMORANDUM OF LAW

On the 11th day of October, 2022, a Case Management Conference was held. State of MO appears by Attorney James Atkins and Agape Baptist Church, Inc., appears by Attorney John Schulz. Discussion was held on several procedural and due process issues arising from the implementation of the recent statute RSMo. §210.1271. Both sides are commended for their briefings and arguments on the issues presented.

1. “As a general rule, all parties with a legal interest in the subject matter of litigation should be joined as parties. Alvino v. Alvino, 659 S.W.2d 266, 269 (Mo. App. E.D. 1983). Rule 52.04(a) governs the joinder of necessary parties, and provides that: “A person shall be joined in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been joined, the court *shall* order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.”

2. Rule 52.06 provides that “Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action...”.

3. As noted in State v. Planned Parenthood, 66 S.W.3d 16 (Mo. 2002) “[t]he perceived importance of a case as a basis for taking procedural shortcuts in order to address substantive issues is neither workable nor reliable as a benchmark for appellate review. Committee for Educational Equality v. State, 878 S.W.2d 446, 454 (Mo. banc 1994). This is especially true in a case where the procedural requirement is critical to a full and fair consideration of the substantive issues in the case.”

4. RSMo. §210.1271 provides that: “2. In cases of an order granted ex parte under subsection 1 of this section requiring a residential care facility to cease operations, a hearing shall be held within three business days to determine whether the order shall remain in effect, **with attempted notice to the facility and the parents or guardians and due process for all parties.**” (emphasis added). The statute therefore contemplates that the parents or guardians are to have notice and the opportunity to be heard after the initial ex parte decision.

5. In this case, an ex parte order to close the facility was not issued and, due to the filing and dismissal of the earlier case, both parties were aware of the Petition for Injunctive Relief. During a phone conference with the Attorneys for both parties an Order was entered herein regarding DFS supervision while the case was pending. This Court found that Rule 92 governs Injunctions and a hearing on a Preliminary Injunction was set. Rule 41.01 makes Rules of Discovery applicable to Injunctions under Rule 92.

6. Plaintiff has not provided Discovery in this case, has not provided names of children still attending school who are the subject matter and who the State intends to call as witnesses and, further, did not appear at the depositions scheduled by Defendant. The Juvenile Officer has not removed any children from the Defendant.

7. As noted in In re M.A.F., 232 S.W.3d 640 (Mo. App. 2007) “Proper procedure requires notice and opportunity for adequate preparation for hearing by both parents. Notice is required, not only to comply with due process, but also because the trial court's discretion in changing a child's name is guided by a determination of what is in the best interests of the child. Schubert v. Tolivar, 905 S.W.2d 924, 926 (Mo. App. E.D. 1995). **The trial court cannot be assured that evidence with respect to best interests has been fully developed without**

notice to the parents.” (emphasis added) The case at bar involves the proposed closing of a private religious boarding school chosen and contracted for by the parents who remain the natural guardians of their children. Parents are found to be necessary parties.

8. Were this a simple matter of non-licensure, then it is clear that the Court would retain jurisdiction to act. State Dep't of Pub. Welfare v. Galilean Children's Home, 102 So. 2d 388 (Fla. Dist. App. 1958). However, the State here seeks to have the Court determine, without providing due process to the parents or permitting discovery, the closure of the school for “(3) Failing to comply with background checks as required by section 210.493; or (4) An immediate health or safety concern for the children at the residential care facility.”

9. The issue of failing to comply with background checks has not been particularly argued and it is believed that this reason no longer applies. The State's position has been repeatedly that there is an immediate health or safety concern. However, no medical or other health related documents were attached to their Petition for relief and no expert witness identified. Further, as noted earlier, the Juvenile Officer has not removed any of the children from the school despite having statutory authority to do so.

10. Juvenile Courts **have exclusive original jurisdiction**. RSMo. §211.031: “1. Except as otherwise provided in this chapter, the juvenile court...shall have exclusive original jurisdiction in proceedings: (1) Involving any child who may be a resident of or found within the county and who is alleged to need care and treatment because: (a) The parents, or other persons legally responsible for the care and support of the child, neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his or her well-being...”

11. The new statute further provides that: “4. If the court refers the matter to a juvenile officer, the court may also enter an order placing a child in the emergency, temporary protective custody of the children's division within the department, as provided under this section, for a period of time not to exceed five days. **Such placement shall occur only if the children's division certifies to the court that the children's division has a suitable, temporary placement for the child and the court makes specific, written findings that:**

- (1) It is contrary to the welfare of the child to remain in the residential care facility;
- (2) **That the parent or legal guardian is unable or unwilling to take physical custody of the child within that time;** and
- (3) There is no other temporary, suitable placement for the child.

This further makes it clear that parents are a necessary party to the proceedings.

12. Finally, as to appointment of a Guardian Ad Litem, the new statute specifically provides: "5. The provisions of sections 452.700 to 452.930 shall apply". RSMo. §452.785 states: "5. The court shall appoint guardian ad litem in any proceeding in which child abuse or neglect is alleged."


ORDER AND CONCLUSION

1. The Court finds that IAW Rule 41.01 the Rules of Discovery apply to Injunctions under Rule 92. As no discovery has yet been conducted, IAW Rule 92(c)(3) the Court consolidates the hearing on the preliminary injunction with a hearing on the merits. Both parties shall submit proposed scheduling orders for discovery to be completed and anticipated Trial dates by COB 10/14/2022.

2. The parents of the children alleged to be the subject matter of the law suit shall be identified by the State and made parties/Defendants with notice and opportunity to be heard at any future hearings.

3. A Guardian Ad Litem shall be appointed on behalf of each child. The State, through the MO Department of Social Services, shall provide proposed names to the Court for approval. IAW most Juvenile Court practice, appointed GAL fees will be paid by the State.




Thomas Pyle, JD, LL.M
Associate Circuit Judge
Cedar County, MO