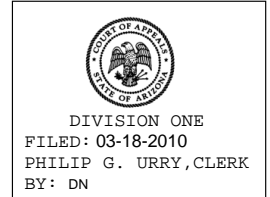


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24



**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

In re the Matter of: ) 1 CA-CV 09-0505 A  
)  
ANGELA ANN FIGUEROA, ) DEPARTMENT C  
)  
Petitioner/Appellee, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules  
) of Civil Appellate  
DAVID OWEN COOKMAN, ) Procedure)  
)  
Respondent/Appellee. )  
)  
\_\_\_\_\_)  
MARCY COOKMAN, Paternal )  
Grandmother, )  
)  
Petitioner/Intervener/ )  
Appellant. )  
\_\_\_\_\_)

Appeal from the Superior Court in Maricopa County

Cause Nos. FC 2005-004365; FC 2008-002995 (Consolidated)

The Honorable Robert E. Miles, Judge

**AFFIRMED**

The Murray Law Offices, P.C.  
by Stanley David Murray  
Attorneys for Appellant

Phoenix

Angela Ann Figueroa Cookman  
David Owen Cookman  
Appellees/In Propria Persona

Phoenix

I R V I N E, Presiding Judge

¶1 Appellant Marcy Cookman appeals the trial court's denial of her petition for grandparent visitation rights. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Angela Figueroa Cookman and David Cookman (collectively, "Parents") were married on October 18, 1997. Their daughter, Isabella ("Child"), was born on June 10, 2003. Parents adopted her that year, after completing a nine-month investigation process. Parents divorced on October 27, 2005, and were awarded joint legal custody of Child. In their answering brief, Parents assert that they remarried on August 22, 2009.

¶3 Appellant Marcy Cookman ("Grandmother") is the paternal grandmother of Child. On June 24, 2008, Grandmother filed a Petition for Order to Appear Re: Grandparent's Visitation. Grandmother claimed that because Parents would not let her have unsupervised visits with Child, they interfered with her ability to have meaningful access and visitation with Child. Parents asked the trial court to dismiss Grandmother's petition.

¶4 A trial on Grandmother's petition took place on June 5, 2009. Grandmother testified that she and her son, Appellee David Cookman, "always had a wonderful relationship." She said that in the beginning she would see Child at least once a week.

She explained that while Parents had invited her to see Child recently, they invited her during times when she was suffering from a broken hip or had to work as a volunteer media hostess at the Phoenix Suns basketball games. She wanted unsupervised visits because she wanted to avoid the hostility from Parents that would come with the visits. She played a voicemail message for the court from Child's mother, Angela, which stated: "I have to tell you what a disgusting person I think you are, and I pray every day that God have mercy on your soul for what you're doing (inaudible) son."

¶15 Two of Grandmother's friends, Susan Shumway and Sally Lynch, testified concerning her good character and love for Child. Susan testified that she had known Grandmother for thirty years and had only seen "love and concern and caring" when Grandmother was with Child. She described one evening when she took Christmas presents over to the family on Grandmother's behalf (Grandmother was volunteering) and Parents refused to accept the gifts. Sally, also a long time friend of Grandmother, testified that she spent time with Grandmother and Child and they interacted well together.

¶16 Appellee Angela Figueroa Cookman, Child's mother, expressed concern about Grandmother being alone with Child. She testified: "[w]e've always had concerns about her physical limitations, her alcohol being mixed with her medication,

smoking around [Child], and even being around [Grandmother] and any of her friends, we've received such awful e-mail[s] from her friends regarding their opinions of the case . . . . [W]e're concerned about the impact that would have on [Child] and what they would - how that would reflect with [Child]. It would be very hurtful." She described Grandmother as "very controlling, very self-centered, very needy."

¶7 Angela stated that Parents had concerns about leaving Child unsupervised with Grandmother since they initially adopted Child. Parents had only left Child unsupervised with Grandmother on two occasions and realized that it was not in Child's best interests to do so. Angela testified that Parents allowed Grandmother to call Child every day between 5:30-7:30PM. During one of these calls, Grandmother told Child that she had to put her dog to sleep because she had cancer. Angela thought this inappropriate conversation for a five year old. She said they had tried to set up meetings for Grandmother and Child on at least fifteen occasions, including inviting Grandmother over for Christmas, Easter, Sunday dinner, and Child's graduation, but Grandmother did not attend. On cross-examination, Angela stated that she had seen Grandmother intoxicated and had seen her smoke but never in front of Child. When asked if Child missed Grandmother, Angela testified that Child responded no, but "she

missed seeing [Grandmother's] puppies and playing with the dogs."

¶18 David Cookman testified that his mother, Grandmother, was emotionally abusive and manipulative in her role as a parent and he did not want Child to be in the middle of that type of environment. He described one occasion when Grandmother took Child out for a walk with her two dogs. He happened to look outside and saw Child walking towards 7th Avenue while Grandmother was facing the other way. He stated: "I went out there, and she wouldn't admit it. I said you're putting my child in danger and you won't admit that's a problem. That's when I knew -- I didn't know the medication, I don't know the drinking, I don't -- she's not old enough to know better. I was at least 12 to know better to get out of the situation. She doesn't." David expressed concern about Grandmother's drinking while on medication. He concluded that it would be detrimental to Child if they allowed Grandmother to have unsupervised visits.

¶19 The trial court took the matter under advisement. On June 16, 2009, the trial court entered judgment denying Grandmother's petition for visitation, concluding that Grandmother did not meet the "burden (even by a preponderance of the evidence, much less by clear and convincing evidence) of rebutting the presumption" that Parents were fit and were acting

in Child's best interests. The trial court's minute entry did not address the parties' requests for attorney's fees.

¶10 Parents filed a motion asking the trial court to clarify its minute entry and if it intended to deny Parents' request for attorney's fees and costs, to reconsider. Grandmother filed a response and cross-motion for attorney's fees. The trial court denied both parties' motions for attorney's fees, stating that "[n]one of the parties provided any evidence at the hearing as to the amount of fees incurred to permit an award of fees." Grandmother appealed.

¶11 On October 8, 2009, Parents filed a motion to dismiss the appeal without prejudice and also asked this court to reconsider their request for attorney's fees. A panel of this court denied both motions. On December 12, 2009, Grandmother filed a Motion to Accelerate Appeal and Request for Oral Argument pursuant to Rule 29 of the Arizona Rules of Civil Appellate Procedure. This court granted the motion to accelerate.

#### **DISCUSSION**

¶12 Grandmother argues that the trial court abused its discretion by denying her petition for grandparent visitation rights. The decision to grant visitation rights is one in which the trial court is granted broad discretion because it is in the most favorable position to decide what is in the child's best

interests. *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970). "Unless it clearly appears that the trial judge has mistaken or ignored the evidence, a reviewing court will not disturb the lower court's decision." *Id.* Therefore, we review the trial court's denial of Grandmother's petition for visitation rights for abuse of discretion. *Id.*

¶13 Arizona Revised Statutes section 25-409 (2007), known as Arizona's Grandparent Visitation statute, provides:

A. The superior court may grant the grandparents of the child reasonable visitation rights to the child during the child's minority on a finding that the visitation rights would be in the best interests of the child and any of the following is true:

1. The marriage of the parents of the child has been dissolved for at least three months.

2. A parent of the child has been deceased or has been missing for at least three months. For the purposes of this paragraph, a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency.

3. The child was born out of wedlock.

. . . .

C. In determining the child's best interests the court shall consider all relevant factors, including:

1. The historical relationship, if any, between the child and the person seeking visitation.

2. The motivation of the requesting party in seeking visitation.
3. The motivation of the person denying visitation.
4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.
5. If one or both of the child's parents are dead, the benefit in maintaining an extended family relationship.

¶14 In applying A.R.S. § 25-409(C) to this case, the trial court first "recognize[d] and appl[ied] a presumption that a fit parent acts in his or her child's best interest in decisions concerning the child's care, custody, and control, including decisions concerning grandparent visitation." *McGovern v. McGovern*, 201 Ariz. 172, 177, ¶ 17, 33 P.3d 506, 511 (App. 2001); see also *Egan v. Fridlund-Horne*, 221 Ariz. 229, 234-36, ¶¶ 15-23, 211 P.3d 1213, 1218-20 (App. 2009). It was undisputed that both parents are fit. The trial court correctly stated that the presumption is rebuttable, however, and the grandparent seeking visitation bears the burden of rebutting that presumption. *Id.* Quoting *McGovern*, the trial court reasoned that it must "consider and give 'some special weight' to a fit parent's determination of whether visitation is in the child's best interest and give 'significant weight' to a parent's voluntary agreement to some visitation, albeit not as much visitation as the grandparent desires." *Id.* at 177-88, ¶ 18, 33 P.3d at 511-12.



¶15 An appellate court must assume that the trial court made any findings necessary to support its decision and "must affirm if any reasonable construction of the evidence justifies the decision." *Horton v. Mitchell*, 200 Ariz. 523, 526, ¶ 13, 29 P.3d 870, 873 (App. 2001) (citation omitted). The trial court recognized that Parents offered supervised visitation to Grandmother: "Having considered all relevant factors, including those set forth in A.R.S. § 25-409(c), the Court concludes that Grandmother has not met the burden (even by a preponderance of the evidence, much less by clear and convincing evidence) of rebutting the presumption." Therefore, the court denied Grandmother's petition.

¶16 The trial court did not abuse its discretion by denying Grandmother's petition for unsupervised visitation rights. Here, unlike many cases concerning grandparent visitation, the parents are jointly opposing any court-ordered visitation. Moreover, Grandmother admitted that Parents have provided *supervised* visitation opportunities to her; she simply wants *unsupervised* visitation rights. Therefore, the trial court properly gave significant weight to Parents' "voluntary agreement to some visitation, albeit not as much visitation as the grandparent desires" and appropriately concluded that Grandmother was given reasonable visitation opportunities. See *McGovern*, 201 Ariz. at 177-88, ¶ 18, 33 P.3d at 511-12.

¶17 The record also indicates that the trial court considered the relevant factors, including those listed in A.R.S. § 25-409(C). The evidence supports the trial court's finding that unsupervised visits with Grandmother were not in the child's best interests. Therefore, the trial court did not abuse its discretion by denying Grandmother's petition.

¶18 Both parties request attorney's fees. We decline to award Grandmother's attorney's fees and costs because she is not the prevailing party. The record indicates that Parents are pro se litigants in this appeal. Therefore, we decline to award their attorney's fees on appeal. We do, however, award Parents' costs on appeal.

#### CONCLUSION

¶19 For the foregoing reasons we affirm.

/s/

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PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/

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MICHAEL J. BROWN, Judge

/s/

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DONN KESSLER, Judge