

RENDERED: JUNE 3, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001893-ME

ELISABETH FROMMEL

APPELLANT

v. APPEAL FROM CHRISTIAN FAMILY COURT
HONORABLE JUDY A. HALL, JUDGE
ACTION NO. 04-CI-00410

KIMBERLY WYATT and
RICARDO REYES

APPELLEES

OPINION
VACATING
AND REMANDING

** ** * * * * *

BEFORE: BUCKINGHAM AND JOHNSON, JUDGES; EMBERTON, SENIOR JUDGE.¹

BUCKINGHAM, JUDGE: Elisabeth Frommel appeals from an order of the Christian Family Court dismissing her Petition for Grandparent's Visitation Rights without holding an evidentiary hearing. In dismissing the petition, the court relied on Scott v. Scott, 80 S.W.3d 447 (Ky.App. 2002). Since the court entered

¹ Senior Judge Thomas D. Emberton, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

its order, this court has overruled the Scott case. See Vibbert v. Vibbert, 144 S.W.3d 292 (Ky.App. 2004). Thus, we vacate and remand for further proceedings.

Frommel is the grandmother of Nathan Kyle Reyes, a child who was born on June 8, 1998. The child's parents are Richardo Reyes, who is Frommel's son, and Kimberly Wyatt. Reyes and Wyatt were not married when Nathan was born.

Wyatt currently resides in Hopkinsville, Kentucky, with her husband, Jamie Wyatt, and three other children. Frommel also lives in Hopkinsville, but Reyes now resides in Bloomington, Illinois. Although there was no evidentiary hearing in this case, it appears to be undisputed that Frommel had established a relationship with the child until January 2004 when a dispute arose between Frommel's husband and Wyatt's husband over the piercing of Nathan's ear. Following the disagreement between the two men, Wyatt refused to allow Nathan to visit with Frommel or to have any other contact with her.

Frommel filed a Petition for Grandparent's Visitation Rights in March 2004. Reyes consented to the visitation, but Wyatt objected. The court dismissed the petition without an evidentiary hearing based on the Scott case. This appeal followed.

We held in the Scott case that "grandparent visitation may only be granted over the objection of an otherwise fit

custodial parent if it is shown by clear and convincing evidence that harm to the child will result from a deprivation of visitation with the grandparent." Id. at 451. In the Vibbert case, however, we found that Scott "set an unnecessarily strict and unworkable standard." Vibbert, 144 S.W.3d at 294.

In setting a new standard, we further held in Vibbert that "[t]he grandparent seeking visitation must prove, by clear and convincing evidence, that the requested visitation is in the best interest of the child." Id. at 295. We also set forth "a broad array of factors" to be used in determining whether grandparent visitation is in the child's best interest. Id.

The court in this case followed the standard set in Scott rather than the new standard set in Vibbert. Therefore, the order of the Christian Family Court is vacated and remanded for further proceedings in accordance with the Vibbert case.

ALL CONCUR.

BRIEF FOR APPELLANT:

Julia T. Crenshaw
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BRIEF FOR APPELLEE:

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