RENDERED: FEBRUARY 26, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001100-ME

WILLIAM OSBORNE AND
VIRGINIA OSBORNE — APPELLANTS

v.

APPEAL FROM FLOYD FAMILY COURT
HONORABLE JOHNNY RAY HARRIS, JUDGE
ACTION NO. 05-CI-00477

WALT E. CARROLL; REGINA
CARROLL; MERLIN OSBORNE;
AND SHERRY OSBORNE — APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: KELLER AND VANMETER, JUDGES; GRAVES,[1] SENIOR JUDGE.

GRAVES, SENIOR JUDGE: William and Virginia Osborne appeal from a Floyd Family Court order, entered March 24, 2009, denying the Osbornes' petition for

[1] Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

grandparent visitation. The Osbornes contend that the trial court failed to make specific findings of fact and failed to rely upon sufficient evidence. We agree and reverse the Floyd Family Court order with instructions.

The Osbornes' son, Merlin, and his wife, Sherry, have four daughters. After learning that the two oldest daughters were sexually abused by a maternal cousin, Merlin and Sherry continued to allow the cousin to care for the girls. In October 2004, the girls were removed from their parents' custody and placed in the custody of Walt and Regina Carroll.

In December 2004, the Osbornes petitioned for grandparent visitation. Although the court initially allowed temporary visitation, all visitation with family members was suspended in April 2005. During a November 2005 hearing, the court noted that there was an on-going molestation investigation concerning William. The Cabinet for Health and Family Services substantiated a finding of abuse against William. The court declined to reinstate visitation.

William filed an administrative appeal to contest the Cabinet's finding, and the claim was changed from substantiated to unsubstantiated. Following numerous procedural motions, the court scheduled a hearing to reconsider grandparent visitation on October 7, 2008.

During the hearing, the Osbornes presented numerous witnesses who testified that they were kind, loving people. The Osbornes themselves testified that

they could properly care for their granddaughters. They also agreed to prevent the children from having contact with their father if the court so ordered. In addition to hearing testimonial evidence, the trial court interviewed the children and requested that the guardian *ad litem* provide the court with a detailed written recommendation.[2]

On March 24, 2009, the trial court denied the Osbornes' petition. This appeal follows.

The Osbornes contend that the trial court failed to make specific findings of fact concerning the factors set forth in *Vibbert v. Vibbert*, 144 S.W.3d 292 (Ky. App. 2004). In *Vibbert*, our Court defined the appropriate test for grandparent visitation. We stated,

> We now hold that the appropriate test under KRS 405.021 is that the courts must consider a broad array of factors in determining whether the visitation is in the child's best interest, including but no limited to: the nature and stability of the relationship between the child and the grandparent seeking visitation; the amount of time spent together; the potential detriments and benefits to the child from granting visitation; the effect granting visitation would have on the child's relationship with the parents; the stability of the child's living and schooling arrangements; the wishes and preferences of the child.

Id. at 295.

Kentucky Rules of Civil Procedure (CR) 52.01 provides, "the court shall find the facts specifically and state separately its conclusions of law thereon

[2] The report is not in the record but referenced in the trial court's order.

and render an appropriate judgment." In its order, the trial court quoted *Vibbert* and specifically named each factor. The court indicated that its decision to deny visitation was based upon the guardian *ad litem*'s recommendation, testimonial evidence, depositions, and previous custody orders. The order, however, did not contain any factual findings.

It is not enough for a trial court to name specific witnesses or other evidence on which it relied. The court must specifically state the facts which led to its conclusion. Because the court failed to make any findings of fact, it is not possible to make a reliable determination of the basis for the court's conclusion.

Accordingly, we reverse the March 24, 2009, order of the Floyd Family Court and remand with instructions to enter sufficient findings of fact.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Kathryn Burke
Pikeville, Kentucky

No appellee brief filed.