

No. 101559 - *In re: Antonio R.A.*

FILED
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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Benjamin, J., concurring:

I concur in the result of the majority opinion affirming the denial of the infant guardianship requested by Antonio R.A.'s grandparent. As the majority opinion duly explains, this was an appeal of the denial of an infant guardianship proceeding by the grandparent. This was not a petition for grandparent visitation. This Court affirmed these denials, but placed in its opinion certain directives requiring implementation of grandparent visitation by the family court. The majority opinion references the statutory procedure for the grandmother to request grandparent visitation with Antonio R.A., but circumvents that procedure by directing that "[t]he family should schedule a hearing as soon as possible to establish a schedule for visitation between Antonio and Carol G."

I am concerned that the granting of grandparent visitation by this Court without the procedural safeguards inherent in our statutory and case law is supplanting the important role of the family court in determining whether visitation is in the child's best interests. Therefore, while I agree with the affirmation of the lower court's denial of the guardianship, I disagree that this Court can order visitation without the benefit of a petition by the grandmother seeking this visitation and without adhering to the statutory guidelines for establishment thereof.