

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EARL H. SIMMONS,	§
	§
Petitioner Below-	§ No. 150, 2002
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
VALERIE SIMMONS VASSAR-	§ in and for New Castle County
HAWK and ADAM SIMMONS	§ File No. CN97-08014
VASSAR,	§ Petition No. 00-12099
	§
Respondents Below-	§
Appellees.	§

Submitted: September 6, 2002  
Decided: September 27, 2002

Before **WALSH, HOLLAND** and **BERGER**, Justices

**ORDER**

This 27th day of September 2002, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The petitioner-appellant, Earl H. Simmons, filed an appeal from the Family Court's February 22, 2002 order finding Simmons' petition for visitation to be meritless and directing that it be returned to him without being docketed. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In this appeal, Simmons claims that the Family Court improperly refused to allow his petition for visitation with his granddaughter to be docketed. He contends that his petition should be considered because

his granddaughter's mother and father are now divorced, which was not the case when his previous petition was denied.<sup>1</sup>

(3) This was the latest in a series of petitions filed by Simmons. On January 6, 1998, after a hearing, the Family Court denied Simmons' first petition for visitation on the ground that he had failed to demonstrate that visitation was in the child's best interest. Simmons filed another petition for visitation on January 9, 1999, which the Family Court dismissed on the ground that no new circumstances had been alleged. On April 13, 2000, Simmons filed a third petition for visitation. After a hearing on April 3, 2001, the Family Court again denied Simmons visitation in a five-page decision dated June 8, 2001.

(4) In its June 8, 2001 decision, the Family Court noted that the only change in circumstances alleged by Simmons in his third petition was the separation of the child's mother and father. The Family Court further stated as follows:

The root of [Father's] hostility stems from Father's allegation that Paternal Grandfather<sup>2</sup> unlawfully removed him from the custody of his mother on several occasions during his childhood, including one incident where Father was returned to his mother by a private detective. . . The Court finds that Mother and Father's concerns are genuine and that they are

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<sup>1</sup>Simmons' son is the child's father.

<sup>2</sup>That is, Simmons.

acting in a way that they believe protects [their child's] best interests.

The Family Court then ordered that any future filings by Simmons would be reviewed by the Family Court to determine their merit prior to docketing.

(5) Under Delaware law, a petition for visitation rights filed by a grandparent is governed by DEL. CODE ANN. tit. 10, § 1031(7), which states:

. . .

(7) Upon petition thereto, [the Court may] grant grandparents reasonable visitation rights as the Court shall determine with respect to the grand-child, regardless of marital status of the parents of the child or the relationship of the grandparents to the person having custody of the child; provided however:

a. That when the natural or adoptive parents of the child are cohabiting as husband and wife, grandparental visitation may not be granted over both parents' objection. The trier of fact shall make the ultimate decision based upon the best interest of the child. . . .

The burden is on the petitioning grandparent to demonstrate that visitation is in the child's best interest.<sup>3</sup> Whether or not visitation is granted is within the sound discretion of the Family Court.<sup>4</sup>

(6) We find no error or abuse of discretion on the part of the Family Court in refusing to allow Simmons' fourth petition for visitation to be docketed. The Family Court already had determined that the best interest

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<sup>3</sup>*Rosemary E.R. v. Michael G.Q.*, 471 A.2d 995, 996 (Del. 1984).

<sup>4</sup>*Id.*

of the child would not be served by granting Simmons visitation. The record indicates that Simmons' fourth petition merely repeated allegations that previously had been resolved by the Family Court, with the sole additional allegation being that the mother and father of the child were now divorced. The Family Court appropriately determined that there was no change of circumstances warranting the docketing of the petition.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice