

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001429-MR

BONITA BURNETT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE RICHARD J. FITZGERALD, JUDGE  
ACTION NO. 98-FC-001467

THOMAS BURNETT, SR.,  
ALBERT BURNETT, AND  
LOIS BURNETT

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, GUIDUGLI, AND MILLER, JUDGES.

MILLER, JUDGE: Bonita Burnett brings this appeal from a May 18, 2000, order of the Jefferson Family Court. We affirm.

This case commenced on March 10, 1998, with the filing of a petition for dissolution of marriage by Thomas Burnett, Sr. against Bonita Burnett. There were two minor children of the marriage. The marriage was dissolved on September 14, 1999, by decree of dissolution. The court eventually determined that the best interest of the children mandated that Bonita exercise sole custody with Thomas having visitation privileges. Lois Burnett and Albert Burnett, the paternal grandparents, filed a petition

for grandparent visitation as authorized under Kentucky Revised Statutes (KRS) 405.021. On February 11, 2000, the court held a hearing to determine whether it was in the best interest of the children to grant grandparent visitation. On February 16, 2000, and May 11, 2000, the court entered orders granting grandparent visitation and naming a supervisor for the visits.<sup>1</sup> This appeal follows.

Bonita contends the court's decision to grant grandparent visitation was abuse of discretion. Specifically, Bonita asserts that there was insufficient evidence to find that grandparent visitation was in the best interest of the children.

On February 11, 2000, a hearing was held before the court to determine the issue. Appellant concedes that there was no video or transcribed record made of the proceeding.

It is well established that the burden is on appellant to ensure that the record on appeal includes so much of the trial record as is necessary to an adequate appellate review. See Fanelli v. Commonwealth, Ky., 423 S.W.2d 255 (1968), *rev'd on other grounds*, Commonwealth v. Fanelli, Ky., 445 S.W.2d 126 (1969). As no record was preserved of the February 11, hearing, we must assume the evidence supported the court's finding that grandparent visitation was in the children's best interest. See Porter v. Harper, Ky., 477 S.W.2d 778 (1972). Additionally, we

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<sup>1</sup>Subsequent to filing the instant appeal, the February 16, 2000, and May 11, 2000, orders were modified by the court to include only Albert Burnett. Apparently, it was determined that Lois Burnett was not, in fact, the biological grandmother of the children and, thus, did not fall within the purview of our grandparent visitation statute. Kentucky Revised Statutes 405.021.

note that Bonita did not provide this Court with a narrative statement in conformity with Ky. R. of Civ. P. (CR) 75.13 or an agreed statement pursuant to CR 75.15. As such, we are bound to summarily affirm the court upon this issue. Id.

Bonita also argues that KRS 405.021 is unconstitutional. Specifically, she maintains that our grandparent visitation statute is unconstitutional in light of the recent United States Supreme Court case of Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

It appears the constitutionality of KRS 405.021 was not raised below at trial level. As a reviewing court, we are without authority to review issues not raised in or decided by the trial court. See Regional Jail Authority v. Tackett, Ky., 770 S.W.2d 225 (1989). This rule has been held broad enough to encompass constitutional challenges to legislative statutes. See Hoy v. Kentucky Industry Revitalization Authority, Ky., 907 S.W.2d 766 (1995), Cross v. Commonwealth, ex rel., Cowan, Ky. App., 795 S.W.2d 65 (1990), Massie v. Persson, Ky. App., 729 S.W.2d 448 (1987), *overruled on other grounds*, Conner v. George W. Whitesides Company, Ky., 834 S.W.2d 652 (1992). As such, we are of the opinion that the constitutionality of KRS 405.021 was not properly preserved for appellate review.

For the foregoing reasons, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Wallace N. Rogers  
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BRIEF FOR APPELLEE, ALBERT  
BURNETT:

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