

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002369-MR

TAMI SEGUIN

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE REED RHORER, JUDGE
ACTION NO. 96-CI-01295

JANICE FRANKLIN AND
GLEN FRANKLIN

APPELLEES

OPINION
VACATING AND REMANDING
** **

BEFORE: GUIDUGLI, HUDDLESTON AND KNOFF, JUDGES.

GUIDUGLI, JUDGE. Tami Seguin appeals from an order of the Franklin Circuit Court granting the motion of Janice and Glen Franklin for visitation pursuant to KRS 405.021(1). For the reasons stated herein, we must vacate the order and remand it for further consideration.

Alexandre Franklin ("Alex") was born out of wedlock to Tami Seguin ("Tami") and Barry Franklin ("Barry") on September 6, 1993. Sometime thereafter, the three moved in with Barry's parents, Janice and Glen Franklin ("the Franklins"). The Franklins provided financial support to Tami, Barry, and Alex, and undertook a parental or quasi-parental role with respect to Alex.

On October 24, 1995, Barry moved out of the Franklin house, leaving Tami and Alex behind. The Franklins would later allege that Tami left Alex with them for increasing periods of time, including leaving the state to work as a stripper. They would also state that even when Tami was in Kentucky, she would not see Alex for days at a time.

On April 12, 1996, the Franklins filed a motion seeking temporary custody, alleging that Tami had a severe alcohol problem and had abandoned Alex. A temporary order was rendered in favor of the Franklins, and the matter was transferred to Franklin Circuit Court for further adjudication. On September 4, 1996, the Franklins filed a petition seeking custody of Alex in Franklin Circuit Court. Upon taking proof, the court determined that the Franklins were not the de facto custodians of Alex as they alleged, and further that Tami was not unfit. The Franklins' petition for custody was denied, and the matter was affirmed on appeal to this court.

On or around August 3, 2001, Tami took Alex to Walker, Louisiana. On August 21, 2001, the Franklins filed a motion in Franklin Circuit Court seeking visitation pursuant to KRS 405.021. Tami filed a response and defended on the ground that the Franklin Family Court did not have jurisdiction. She further maintained that the grandparent visitation statute was unconstitutional. A hearing on the motion was conducted on September 18, 2001, and the court concluded that it could properly exercise jurisdiction. On October 2, 2001, it rendered

an order granting the Franklins' motion for visitation, and this appeal followed.

We need not entered into a protracted analysis of Tami's claims of error as we must remand the matter to the circuit court for further consideration. On June 21, 2002, a panel of this Court rendered an opinion in Scott v. Scott, Ky. App., 80 S.W.3d 447 (2002), which modified the standard under which grandparent visitation matters are adjudicated. We held in relevant part in Scott 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." Scott, 80 S.W.3d at 451. Scott went on to hold that the then-existing standard for adjudicating such claims was violative of the 14th Amendment to the United States Constitution because the Commonwealth has no compelling interest in intervening in family affairs absent a showing of clear and convincing evidence of harm to the child. While the trial court may very well find in favor of the Franklins on remand, the parties are entitled to an adjudication of their claims under the revised standard.

For the foregoing reasons, we must vacate the order of the Franklin Circuit Court and remand the matter for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marie Alagia Cull
Frankfort, KY

BRIEF FOR APPELLEES:

Michael L. Judy
Frankfort, KY

