

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-001662-MR

ALLEN S. MULLINS  
EDITH J. MULLINS

APPELLANTS

v. APPEAL FROM LETCHER CIRCUIT COURT  
HONORABLE SAMUEL T. WRIGHT, III, JUDGE  
ACTION NO. 02-CI-00417

VANESSA HALL

APPELLEE

OPINION

REVERSING

\*\* \*\* \* \* \*

BEFORE: GUIDUGLI, McANULTY, AND MINTON, JUDGES.

McANULTY, JUDGE: This is a grandparent visitation case under Kentucky Revised Statutes (KRS) 405.021 in which the circuit court granted the biological maternal grandmother visitation rights over the refusal of the adoptive parents. Having concluded that the biological grandmother did not have standing after the adoption to pursue visitation when she had not been granted visitation prior to the adoption, we reverse.

On October 14, 2002, Vanessa Hall (Hall), the biological maternal grandmother of Hunter Allen Mullins (Hunter) filed a petition under KRS 405.021 for grandparent visitation with Hunter. At the time Hall filed her petition, Hunter was in the process of being adopted by his biological paternal grandparents, the Appellants in this action, Allen and Edith Mullins (the Mullinses). At this point, it is important to note that the Mullinses did not oppose visitation and had accommodated many short visits between Hunter and Hall. However, they did oppose court-ordered visits of a much longer duration and occurring according to a set schedule.

The adoption proceedings commenced on August 23, 2002. At that time, Hunter was three years old. Hunter's biological parents voluntarily terminated their parental rights in Hunter and consented to his adoption by the Mullinses. On November 22, 2002, the Letcher Circuit Court issued a Judgment of Adoption, which terminated the parental rights of the biological parents and granted the adoption of Hunter by the Mullinses.

On January 27, 2003, the Domestic Relations Commissioner (DRC) of the Letcher Circuit Court recommended granting Hall's petition for grandparent visitation. The Mullinses filed exceptions. In response, the DRC conducted a hearing on March 6, 2003, to hear the Mullinses' arguments. On

May 12, 2003, the DRC overruled the Mullinses' exceptions. The Letcher Circuit Court adopted the DRC's recommended orders on July 15, 2003. Further, the Letcher Circuit Court ordered that Hall shall have visitation with Hunter one weekend per month on Friday at 5:00 p.m. until Sunday at 5:00 p.m. The Mullinses appeal from this order.

Consistently, the Mullinses have argued that Hall does not have standing to petition for grandparent visitation under KRS 405.021 for two reasons. The first reason is that Hall is no longer Hunter's grandmother due to the adoption by the Mullinses. The second reason is that Hall did not have an order granting visitation prior to the voluntary termination of the parental rights of her daughter, Hunter's biological mother. Standing issues aside, the Mullinses further argued that Hall failed to show, as required by Scott v. Scott, Ky. App., 80 S.W.3d 447, 451 (2002), that harm would result to Hunter from a deprivation of visitation with Hall.

In her one and a half page brief, on the issue of standing, Hall argues that the circuit court correctly ruled that she had the right to visit with Hunter because she had filed her petition for visitation prior to the time the circuit court finalized the adoption. Hall contends that KRS 405.021 should be interpreted to allow a grandparent who is actively

seeking visitation with her grandchild to be awarded visitation. In support, Hall argues that "anything less would be wrong."

As to whether the trial court abused its discretion in granting the request for visitation, Hall contends that the trial court correctly determined that it would be in the best interest of the child to have visitation with Hall. Further, this determination was supported by ample evidence, such evidence being the trial court's conclusion that grandparents should be allowed to visit with their grandchildren.

Unfortunately, Hall's equitable arguments fail before this Court. Once the Mullinses adopted Hunter, Hall's statutory right to seek visitation under KRS 405.021 was cutoff by the termination and adoption statutes. See Hicks v. Enlow, Ky., 764 S.W.2d 68, 74 (1989). Moreover, as this case does not involve an adoption by a stepparent, there are no applicable exceptions to this rule. See id. As harsh as this may seem, "[t]he termination and adoption procedures are domestic relations considerations of overriding importance, and no exceptions for grandparents to the terms of the termination order required by statute should be implied where none are provided." Id. at 74.

Because the circuit court did not grant visitation to Hall prior to the termination of her daughter's parental rights in Hunter, the exception in KRS 405.021 is not applicable in this case. In pertinent part, KRS 405.021 is as follows:

(1) The Circuit Court may grant reasonable visitation rights to either the paternal or maternal grandparents of a child and issue any necessary orders to enforce the decree if it determines that it is in the best interest of the child to do so. Once a grandparent has been granted visitation rights under this subsection, those rights shall not be adversely affected by the termination of parental rights belonging to the grandparent's son or daughter, who is the father or mother of the child visited by the grandparent, unless the Circuit Court determines that it is in the best interest of the child to do so.

The circuit court terminated the parental rights of Hunter's biological mother by order issued on November 22, 2002, and the circuit court order adopting the DRC's recommended order was not entered until July 16, 2003. "[T]he existence and extent of grandparents' rights is exclusively the prerogative of the legislature, and we are limited to interpreting and applying the statutory mandate." Hicks, 764 S.W.2d at 71. To conclude that the exception in KRS 405.021 is applicable in this case would be to ignore the plain language of the statute.

Having determined that Hall did not have standing to seek visitation with Hunter, we need not address whether Hall met her burden under Scott, 80 S.W.3d at 451, to show by clear and convincing evidence that harm to the child will result from a deprivation of visitation with the grandparent. However, having reviewed the record, we feel compelled to note that Hall presented no proof in support of her petition other than the

facts that she had been seeing Hunter, and Hunter knew who she was. Moreover, the circuit court made no findings of fact on the matter. If Hall had had standing to pursue visitation with Hunter, we would certainly remand this case to the circuit court for an evidentiary hearing and the entry of findings of fact. Presently, the circuit court's order unconstitutionally infringes on the Mullinses' fundamental rights to raise their child without government intervention.

For the foregoing reasons, the order of the Letcher Circuit Court is reversed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Smallwood, Jr.  
Whitesburg, Kentucky

BRIEF FOR APPELLEE:

James W. Craft, II  
Whitesburg, Kentucky