

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000374-ME

DANIEL DEMPSEY
AND CRYSTAL DEMPSEY

APPELLANTS

v.

APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE JOHN DAVID MYLES, JUDGE
ACTION NO. 11-CI-00613

LINDA JAMISON

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, COMBS, AND STUMBO, JUDGES.

CLAYTON, JUDGE: This is an appeal from the Shelby Circuit Court's Order regarding grandparents' visitation. Based upon the following, we affirm the decision of the trial court.

BACKGROUND INFORMATION

Appellee, Linda Jamison, and her husband, Bobby Jamison, originally brought an action in Shelby Circuit Court on August 23, 2011, seeking visitation rights as grandparents of H.N.D.¹ Bobby was dismissed as a party due to the fact that he is a step-grandparent to the child.

On February 9, 2012, the trial court granted Jamison visitation rights with H.N.D. without entering findings of fact or conclusions of law on the issue. During 2013, Jamison exercised her visitation rights with H.N.D. Part of the visitation involved cattle shows, during which H.N.D. would spend time in the barns with cattle. On January 22, 2013, the trial court entered a new scheduling order regarding visitation which provided that H.N.D. would not spend more than four hours in the barn due to her asthma.

On December 11, 2013, the Appellants filed a motion to set aside the prior orders based upon the case of *Walker v. Blair*, 382 S.W.3d 862 (Ky. 2012). The trial court denied the motion and the Appellants moved the court to alter, amend or vacate that order. The trial court also denied this motion. The Appellants then brought this appeal.

STANDARD OF REVIEW

¹ We refer to the minor child only by her initials.

Issues of law are reviewed *de novo*. *Phelps v. Wehr Constructors, Inc.*, 168 S.W.3d 395, 397 (Ky. App. 2004).

DISCUSSION

The Appellants first argue that the Kentucky Supreme Court's decision in *Walker* should be followed by the trial court in this case. *Walker v. Blair*, 382 S.W.3d 862 (Ky. 2012), provides that:

[A] fit parent is presumed to act in the best interest of the child. A grandparent petitioning for child visitation contrary to the wishes of the child's parent can overcome this presumption of validity only with clear and convincing evidence that granting visitation to the grandparent is in the child's best interest. In determining the child's best interest, the trial court can turn to the factors in the modified best interest analysis. . . .

The trial regarding Jamison's visitation rights occurred prior to the Court's rendering of the *Walker* opinion. In *Carpenter-Moore v. Carpenter*, 323 S.W.3d 11, 16 (Ky. App. 2010), a panel of our court held that:

In cases involving new judicial precedent, "a court is to apply the law in effect at the time it renders its decision." *Commonwealth v. Alexander*, 5 S.W.3d 104, 106 (Ky. 1999). In *Alexander*, the courts looked to whether the decision resulted in a procedural or a substantive change in the law.

Walker was a substantive change in the law of grandparent's visitation. Thus, the trial court did not err in failing to follow the *Walker* decision. We, therefore, affirm the decision of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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