

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001501-ME

J.B. AND A.B.

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 13-CI-500731

C.D.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, KRAMER, AND VANMETER, JUDGES.

VANMETER, JUDGE: J.B. and A.B. (“Mr. and Mrs. Ball” or “Parents”)¹ appeal from the Jefferson Circuit Court’s June 26, 2014, order granting C.D.

(“Grandmother”) grandparent visitation rights with the minor children K.B., A.B., and E.B. (“Children”). For the following reasons, we affirm.

Grandmother is the biological, maternal grandmother of the Children. Mr. Ball is the Children’s biological father, and Mrs. Ball is their adoptive mother.

¹ Mrs. Ball, one of the parties herein, has the same initials as A.B., one of the children. For clarity, we will refer to the parents, J.B. and A.B., as Mr. Ball, Mrs. Ball, or Parents, and not by their initials.

Grandmother's daughter and the Children's biological mother, A.S., has long suffered from psychological problems and voluntarily terminated her parental rights following the initiation of this suit, allowing Mrs. Ball to subsequently adopt the Children. Grandmother's motion for grandparent visitation was reserved despite the adoption.

During the marriage of Mr. Ball and A.S., Grandmother often babysat the Children, and has been involved in their lives since birth. Following Mr. Ball and A.S.'s divorce, Grandmother supervised A.S.'s visitation with the Children. She has also volunteered at the Children's schools and has clearly spent significant amounts of time with them. She was only recently shut out of the Children's lives.

The two older children, K.B. and A.B., suffer psychological problems stemming from their relationship with their mother. Dr. Patricia McGinty, K.B. and A.B.'s psychologist, testified that K.B. suffers from Reactive Attachment Disorder, which results from a disruption of child bonding and affects overall childhood development. K.B. has also been diagnosed with depression, anxiety, and issues with self esteem and receiving negative attention for her behavior. Dr. McGinty testified that A.B. also suffers from Reactive Attachment Disorder, developmental delays, and anger and impulse control issues.

Following a court order, Dr. McGinty also met with Grandmother. She testified that Grandmother is honest and has no mental health disorders. Dr. McGinty indicated that no mental health reason exists for keeping Grandmother away from the Children. In fact, she stated that a grandparent-grandchild

relationship could possibly benefit the Children, since depressed children need more attention than average children. She further indicated that the Children had been acting out since their contact with Grandmother was cut off in April 2013.

Mr. Ball testified that he has concerns about Grandmother reintroducing A.S. to the Children. In addition, he believes Grandmother undercuts his authority with respect to the Children's diet and gift giving, and that this will prevent the Children from growing up to be "highly functioning adults." He claims the Children acted out the last time they were given gifts from their Grandmother, and mentioned an incident in which Grandmother gave K.B. an iPod after he had specifically asked Grandmother not to do so. He believes the Children's problems are partially due to Grandmother being a painful reminder of their mother. Mrs. Ball has also been working with Dr. McGinty on bonding with K.B. The Guardian Ad Litem assigned to represent the Children's interests recommended visitation between Grandmother and the Children once per week for eight weeks, followed by an expansion into overnight visitation after six months.

As for the standard of review in grandparent visitation cases, this court has stated the following:

A family court's factual findings are reviewed for clear error. A finding supported by substantial evidence is not clearly erroneous. Substantial evidence is that which is "sufficient to induce conviction in the mind of a reasonable person." Furthermore, we must give due regard to the family court's opportunity "to judge the credibility of the witnesses."

However, the interpretation of Kentucky Revised Statutes (KRS) 405.021 and the application of the appropriate standard to the facts are issues of law and, consequently, are reviewed *de novo*.

Waddle v. Waddle, 447 S.W.3d 653, 655 (Ky. App. 2014) (internal citations omitted). Thus, we review the circuit court's findings of fact for clear error, and its conclusions of law *de novo*.

KRS 405.021(1) gives the circuit court the authority to grant grandparent visitation rights. The standard for awarding grandparent visitation is a modified best interests standard, set forth in *Walker v. Blair*, 382 S.W.3d 862, 871 (Ky. 2012). "The constitutional presumption that a fit parent acts in the child's best interest is the starting point for a trial court's analysis under KRS 405.021(1)." *Id.* at 870-71. "The grandparent petitioning for visitation must rebut this presumption with clear and convincing evidence that visitation with the grandparent is in the child's best interest." *Id.* at 871. In *Walker*, the Kentucky Supreme Court enumerated the modified best interest test as follows:

A trial court can look at several factors to determine whether visitation is clearly in the child's best interest. The *Vibbert* court laid out many of these factors, including:

- 1) the nature and stability of the relationship between the child and the grandparent seeking visitation;
- 2) the amount of time the grandparent and child spent together;
- 3) the potential detriments and benefits to the child from granting visitation;

- 4) the effect granting visitation would have on the child's relationship with the parents;
- 5) the physical and emotional health of all the adults involved, parents and grandparents alike;
- 6) the stability of the child's living and schooling arrangements; and
- 7) the wishes and preferences of the child.

To this list, we add:

- 8) the motivation of the adults participating in the grandparent visitation proceedings.

Id. (citing *Vibbert v. Vibbert*, [144 S.W.3d 292 \(Ky. App. 2004\)](#)).

The circuit court found that Grandmother had been involved in the Children's lives since birth, and that the Children speak lovingly of their Grandmother despite their recent separation. The circuit court recognized that K.B. and A.B. suffer mental health issues and have suffered great loss. Further, the Children's conditions have worsened since Grandmother was removed from their lives. The circuit court found that Mr. and Mrs. Ball do not understand bonding and attachment, or how their behavior will affect the children. Next, the circuit court found that therapeutic intervention in visitation would be beneficial for all parties involved. Lastly, the court found that the Children would benefit from having another stable adult in their lives.

Ultimately, the circuit court concluded that Grandmother had proved by clear and convincing evidence that visitation is in the Children's best interest. The court awarded Grandmother visitation on the first and third Saturday of every

month for two months, and then expanded overnight visitation. Additionally, Grandmother would have the Children for a continuous five-day period during the summer. Visitation was ordered to be initially implemented through a therapy session. The parties were ordered to allow the Children no contact with A.S. and all gifts and cards from Grandmother to the Children were ordered to be delivered. From this order, Mr. and Mrs. Ball appeal.

Mr. and Mrs. Ball raise four issues. First, they argue that the circuit court committed clear error when it found that they do not understand bonding and attachment or how their behaviors will cause long-standing issues for the Children. Second, they claim the circuit court erred by awarding grandparent visitation rights over their objection. Next, they claim the circuit court abused its discretion in awarding more visitation time than is in the Children's best interest. Finally, Mr. and Mrs. Ball argue that the circuit court erred on a number of its minor orders, including: parents cannot restrict the Children's diet except where recommended by a physician; Grandmother's paramour is permitted to be around the Children; and all gifts, cards, and letters from Grandmother had to be delivered to the Children.

First, Mr. and Mrs. Ball claim that the circuit court's factual finding regarding their knowledge of bonding and attachment was clearly erroneous. We disagree. The circuit court's finding on this issue was insignificant, but nonetheless supported by substantial evidence. Mr. and Mrs. Ball clearly have their Children's best interests in mind, and have made every effort to ensure that

their Children are healthy. Still, the circuit court relied on Dr. McGinty's expert opinion in finding that Mr. and Mrs. Ball do not understand bonding issues. The court further relied on Dr. McGinty's opinion that a relationship with Grandmother could be beneficial in addressing K.B. and A.B.'s attachment issues when it concluded that visitation was in the Children's best interest. Therefore, we believe this particular factual finding was supported by substantial evidence in the form of expert testimony.

Second, Mr. and Mrs. Ball assert that the circuit court erred by awarding Grandmother grandparent visitation rights. The Balls claim that Grandmother failed to show more than just a loving relationship, or that Grandmother failed to show that harm would result from deprivation of visitation. However, Dr. McGinty's testimony seems to indicate that K.B. and A.B. would be harmed by deprivation of visitation with their Grandmother. Dr. McGinty indicated that the Children's behavior had worsened since they stopped seeing their Grandmother, and that removing another stable adult relationship from their lives could be detrimental. Since the circuit court conducted a thorough review of the evidence, expert witness testimony, and all of the *Walker* factors, we are not inclined to reverse the circuit court's conclusion.

Third, the Balls claim that the circuit court abused its discretion in awarding Grandmother more visitation time than she originally sought, and more time than what is in the Children's best interests. The test for abuse of discretion is whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by

sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). The Balls argue that ordering the Children to spend so much time away from their parents is detrimental to the consistent environment they are trying to create for therapeutic reasons. As we noted previously, Dr. McGinty testified that having Grandmother present in their lives is beneficial to the Children given their special needs. Therefore, we do not believe the circuit court abused its discretion in awarding twice-monthly visitation.

Lastly, we do not agree that the circuit court abused its discretion by ordering that Grandmother's paramour could be present during visitation, all food restrictions must be supported by a letter from a doctor, and that all gifts, cards, or letters shall be accepted and delivered to the Children. While we agree that Grandmother's paramour does not have a legal right to visitation per KRS 405.021, the court has not granted him such a right. He is merely permitted to be present when Grandmother exercises her right to visitation. Since the Balls have presented no other case law in support of these arguments, we do not agree that the circuit court abused its discretion regarding these issues.

We do not believe the circuit court erred in awarding Grandmother visitation, and therefore the Jefferson Circuit Court's order is affirmed.

ALL CONCUR.

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