

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001789-ME

SANDRA OLIVER

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE BRUCE T. BUTLER, JUDGE
ACTION NO. 16-CI-00053

JENNIFER WISNOSKI

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, MAZE, AND NICKELL, JUDGES.

NICKELL, JUDGE: In 2016, Sandra Oliver petitioned the Meade Circuit Court for grandparent visitation with A.W.,¹ the then-eight-year-old² daughter of Andrew Wisnoski (Drew), Oliver's deceased son. Jennifer Wisnoski (Jennifer), Drew's

¹ Pursuant to Court policy, A.W. will be referred to by initials only.

² A.W.'s mother testified she was born December 28, 2007; Oliver's petition listed the birthdate as December 16, 2008.

widow and A.W.'s mother, did not oppose Oliver having visitation, but wanted to attend all visits because Jennifer had asked Oliver not to expose A.W. to other family members who had accused Jennifer of killing Drew—a request Oliver twice ignored. While Jennifer had previously had a good relationship with Oliver, Jennifer now felt she could not trust her mother-in-law. Following a hearing,³ the Domestic Relations Commissioner (DRC) recommended denial of visitation. Oliver filed exceptions; Jennifer urged confirmation of the report. After reviewing the taped hearing, the DRC's recommendation, and Oliver's exceptions, the trial court adopted the report in full and refused to order visitation. We affirm.

FACTS

Until a rancorous falling out with Drew in 2010, Oliver enjoyed a harmonious relationship with her son, his wife and their daughter, dining with the trio and Jennifer's older daughter⁴ once or twice a week. After the disagreement, Oliver's relationship with Drew remained strained, and group meals occurred only about once a month.

On September 16, 2012, Drew consumed an energy drink and a diet pill. He went to work, and at 38 years of age, collapsed while driving a dump

³ Jennifer and Oliver testified; A.W. and her half-sister did not.

⁴ Drew was not the father of Jennifer's oldest daughter, but treated her as his own. Oliver's petition sought visitation with both girls, not wanting the older girl to feel ignored. Oliver acknowledged having no legal bond with the older child and ultimately pursued visitation with A.W. only.

truck. Doctors at three separate hospitals believed it unlikely he would ever recover due to brain injury resulting from prolonged oxygen deprivation.

Jennifer received word of Drew's collapse while driving her school bus route. After consulting with Oliver and Drew's three siblings, Jennifer chose to remove her husband from the ventilator and allow him to die. With Oliver's input, no autopsy was performed.

According to Jennifer's testimony, immediately after the funeral, Drew's family blamed her for his unexpected death, noting there had been no autopsy. For three and one-half years, Drew's family shunned Jennifer and her daughters.

For a week after the funeral, Oliver would not accept Jennifer's telephone calls. Then, when Drew's siblings ceased talking to Oliver, she resumed talking to Jennifer and regularly saw A.W. and her half-sister. The quartet normally ate dinner together; Jennifer invited Oliver to attend church with them, which she did; and Oliver frequently took the girls to Blazer's Fun Zone. Jennifer was usually with the girls when they were with Oliver.

Jennifer asked Oliver not to take A.W. around Drew's family because of their "hateful" accusations. Jennifer considered their treatment of her and her daughters so hurtful she explored having Drew's body exhumed to refute their claims. When she inquired at the funeral home, she was assured such an extreme measure was unnecessary because Drew had been treated by doctors in three different hospitals and if foul play had been suspected, an autopsy would have

been ordered. Oliver never directly accused Jennifer of killing Drew, but she did accuse her “of running him over.” When asked whether she believed Jennifer had killed Drew, Oliver responded, “I would hope not.”

In July of 2015, Oliver took A.W. to Blazer’s, not telling Jennifer anyone else would be present. Oliver, however, unilaterally called Angel, another granddaughter, and arranged for Angel’s son—who is about A.W.’s age and with whom A.W. enjoys spending time—to be at Blazer’s. Jennifer tried to reach Oliver repeatedly during the outing, but Oliver never answered—later claiming she could not hear her cellphone inside the building. Jennifer testified her own cellphone works fine inside Blazer’s. When Oliver returned A.W. to Jennifer, A.W. revealed she had seen her young cousin at Blazer’s, prompting Jennifer to ask whether Angel had also been there. Oliver confirmed she had. Jennifer told Oliver, “I didn’t want my children around the family that had had nothing to do with them, that they don’t even know.”

Things were normal until Christmas 2015, when Jennifer offered to let Oliver take the girls for a holiday meal. Oliver told A.W. one of Drew’s nieces—Kaylie, who had “tried to make some type of peace” with Jennifer—would be present. During the visit, Jennifer texted her older daughter to see how things were going. The child responded it was “awkward” because of the people present. Jennifer texted Oliver, telling her “she had went against what I had asked her to do again,” and then telephoned Oliver, asking her to bring the girls home. Oliver complied, but drove erratically—claiming she was unfamiliar with her son’s new

car and she didn't want to damage it. Jennifer later saw pictures of the gathering which included several members of Drew's family. According to Jennifer, Oliver took Jennifer's oldest daughter into a side room and screamed at her, saying she had "ruined Christmas" by telling Jennifer Drew's "family was there." Christmas 2015 was Oliver's last visit with either of Jennifer's girls.

Jennifer testified she did not oppose Oliver having a monthly visit with A.W.—so long as Oliver would honor her request that the child not be around other members of Drew's family. Oliver testified she did not believe it would be prudent for Jennifer to attend every visitation because her presence would stifle Oliver's opportunity to do "grandmotherly things" with A.W.

The DRC prepared a four-page report containing findings of fact, a statement of the law, and legal conclusions tied to the factors discussed in *Vibbert v. Vibbert*, 144 S.W.3d 292, 295 (Ky. App. 2004), and quoted with approval in *Walker v. Blair*, 382 S.W.3d 862, 869 (Ky. 2012). Oliver now appeals from the trial court's adoption of the DRC's report and rejection of her petition for grandparent visitation.

ANALYSIS

We begin by noting there is no claim Jennifer is an unfit parent. A fit parent's wishes are the starting point for the trial court's determination of whether grandparent visitation is in a child's best interest. *Walker*, 382 S.W.3d at 870-71.

Both parties agree we are to review the trial court's findings of fact for clear error, and its application of the law to those facts *de novo*. *Id.* at 867.

Oliver argues the DRC’s report, which the trial court adopted in full, is unsupported by substantial evidence. Jennifer disagrees, maintaining the DRC’s report contains sufficient findings, the trial court had to presume Jennifer could impose limits on Oliver’s desire for grandparent visitation with A.W., and Oliver failed to overcome that presumption by clearly and convincingly proving visitation with her was in A.W.’s best interest.

KRS⁵ 405.021(1) authorizes a circuit court to order grandparent visitation when doing so is in the child’s best interest. To make the determination, the court is to consider:

a broad array of factors . . . including but not limited to: the nature and stability of the relationship between the child and the grandparent seeking visitation; the amount of time spent together; the potential detriments and benefits to the child from granting visitation; the effect granting visitation would have on the child’s relationship with the parents; the physical and emotional health of all the adults involved, parents and grandparents alike; the stability of the child’s living and schooling arrangements; the wishes and preferences of the child.

Vibbert, 144 S.W.3d at 295. An eighth factor to consider is “the motivation of the adults participating in the grandparent visitation proceedings.” *Walker*, 382

S.W.3d at 871. In *Massie v. Navy*, 487 S.W.3d 443, 447 (Ky. 2016), our Supreme Court unanimously held all factors “need not be considered when determining whether grandparent visitation is clearly in the child’s best interest.” It is sufficient that “several relevant factors” are considered in reaching the decision. *Id.*

⁵ Kentucky Revised Statutes.

Moreover, when a grandparent fails to sustain its burden, “parental opposition alone is sufficient to deny” visitation. *Walker*, 382 S.W.3d at 871.

In deciding a request for grandparent visitation, the trial court must presume the parent has the right to impose “any limitations” on the request for visitation. *Fairhurst v. Moon*, 416 S.W.3d 788, 792 (Ky. App. 2013). The trial court must further presume the parent is imposing the restrictions in the child’s best interest. *Robison v. Theele*, 461 S.W.3d 772, 778 (Ky. App. 2015). Against this backdrop we evaluate the trial court’s rejection of Oliver’s request.

First, the DRC’s report, which the trial court “adopted in its entirety,” sets forth the eight factors mentioned in the modified best interest standard announced in *Vibbert* and recites facts for each, discounting those which do not apply. Most notably, since 2010, and especially in the last year, the amount of time Oliver has spent with A.W. has declined without proof of detriment. Furthermore, because Oliver cannot say Jennifer did not cause Drew’s death, there is a real possibility A.W. could hear Oliver or members of Drew’s family accuse Jennifer of playing a role in her father’s death and cause a chasm to develop between A.W. and her mother.

Second, Jennifer never opposed Oliver spending time with A.W. She merely placed restrictions on the visits, asking that they be limited to once a month, occur in Jennifer’s presence, and be with Oliver only—without other family members. Jennifer expressed definite concerns about the way Drew’s family had treated her and her daughters since her husband’s unexpected death.

Whether her concerns are rational is not open to debate—the court must presume she is acting in her daughter’s best interest.

Third, and perhaps most importantly, Oliver must respect Jennifer’s wishes. Jennifer is—after all—the parent. Jennifer twice learned—after the fact—that Oliver had schemed for members of Drew’s family to have contact with A.W.—something Jennifer has tried mightily to prevent. Oliver’s testimony indicates an unwillingness to abide by Jennifer’s wishes.

Because she disagrees with Jennifer, and personally desires a unified family, Oliver deliberately creates ways to place A.W. with members of Drew’s family in contravention of Jennifer’s wishes. As evidence, we set forth an excerpt from Oliver’s testimony while being cross-examined by Jennifer’s attorney:

COUNSEL: Knowing that -- and you knew at Christmastime -- that Jennifer still requested that you not bring the girls around other family members, you knew that at Christmastime, right?

OLIVER: She had been at that birthday party in October, and so I thought, “Great, this is the beginning of settling everything.” And so I didn’t purposefully go against any directive because I hadn’t been given one that specific day.

And I thought -- because as soon as my son and his wife and the kids found out that I was going to have the girls, they said, “Oh wow, can we -- You know, we would love to see them again. So how about we come over and have dinner?”

I didn’t see anything wrong because she had seen them -- or she had gone to the birthday party and seen them all -- all the same people --

COUNSEL: What did you tell Jennifer you were gonna do -- you and the girls were gonna do during this Christmas visitation?

OLIVER: I said we were gonna go to breakfast. You know, whether they wanted to go to Blazer's or not, you know, I was gonna kind of leave it, you know, up to them. And so that was basically all I said. I didn't say anything specific.

COUNSEL: You didn't tell her that your fam -- the rest -- other family members were coming over?

OLIVER: No, because they, you know, really hadn't confirmed that until that morning when I was at brunch -- or breakfast -- I'm sorry -- with the girls at IHOP.

COUNSEL: Okay, okay.

I'm guessing at this point, you're -- just really want to see [A.W.]; is that right?

OLIVER: We all do, yes, uh-huh (affirmative).

COUNSEL: Okay, well, it's not about "we." It's -- You're the Petitioner here. You understand that?

OLIVER: Yes, of course, I do.

.....

COUNSEL: Okay. So what you're wanting is you're wanting to have [A.W.] and bring [A.W.] around the rest of this family; that's what you want to --

OLIVER: I think [A.W.] has a right --

COUNSEL: I'm asking you what you want.

OLIVER: Yes, I --

.....

I believe that we all have [A.W.'s] best interest at heart. We all love her. We've been there from the day she was born. We want to be part of her life. We want her to know her daddy's family. We want her to know her daddy's childhood. We want her to know all of the things about her dad that we -- I believe that only we can give her.

COUNSEL: I understand you say that, but Christopher just said he's not really tried to have a relationship with [A.W.] at all because he's "busy." Do you -- do you recall -- he just said that. Do you remember him saying that?

OLIVER: Christopher works a lot, yes, he does.

COUNSEL: Okay.

OLIVER: But, if given the opportunity, he would be there for [A.W.] in a heartbeat.

COUNSEL: Okay. He hasn't tried yet, though, has he?

OLIVER: When you come up against a brick wall numerous times, yeah.

COUNSEL: Do you believe that Jennifer killed Drew or had something to do with his death?

OLIVER: I don't know. We have never had a toxicology report. My granddaughter Courtney went for months after we lost Drew trying to get medical records, trying to get a toxicology report that I believe you were supposed to get for her, but it never

came to -- to be. And so all I know is things that my son shared with me. And --

COUNSEL: So you think maybe she did?

OLIVER: I would -- I would hope not. I think there was some hurtful things that transpired during the marriage.

As noted by the DRC and endorsed by the trial court, Jennifer is presumed to act in her daughter’s best interest. Oliver testified she spent time with A.W., but that alone will not overcome the presumption Jennifer knows what is best for her daughter. We saw no evidence Oliver “shared such a close bond [with A.W.] that to sever contact would cause distress to the child.” *Walker*, 382 S.W.3d at 872. Furthermore, because Oliver has demonstrated an unwillingness to abide by Jennifer’s decisions, we have no grounds on which to declare clear error by the trial court in its finding of facts, nor in its application of the law. Under *Walker*, 382 S.W.3d at 871, Jennifer’s “opposition alone” is sufficient reason to deny visitation. Therefore, we affirm the order entered by the Meade Circuit Court overruling Oliver’s petition.

ALL CONCUR.

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