STATE OF MINNESOTA
IN COURT OF APPEALS
A09-176

Cynthia Laramy Ahler, petitioner,
Respondent,

vs.

Janell Pasbrig,
Appellant,

Andrew Evans,
Respondent Below.

Filed October 6, 2009
Affirmed
Minge, Judge

Hennepin County District Court
File No. 27-FA-06-6000

Michele K. Schorbahn, Jonathan J. Fogel, Fogel Law Offices, P.A., Parkdale Plaza, Suite 318, 1660 South Highway 100, Minneapolis, MN 55416 (for respondent Ahler)

Nathan M. Hansen, 2440 Charles Street North, Suite 224, North St. Paul, MN 55109 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

MINGE, Judge

Appellant-mother challenges a district court order granting respondent-grandmother's petition for visitation rights. Because we conclude that respondent had

standing to petition for visitation, respondent demonstrated that visitation would not interfere with the parent-child relationship, the district court did not abuse its discretion in determining that the visitation schedule was in the best interests of the child, and the district court's application of Minn. Stat. § 257C.08 (2008) was not unconstitutional, we affirm.

FACTS

Appellant Janell Pasbrig is the mother of W.E., born June 2, 2003. Respondent Cynthia Ahler, a pediatric nurse practitioner, is the paternal grandmother of W.E. When W.E. was approximately three months old, appellant and W.E. moved into respondent's home. Appellant and W.E. lived with respondent for at least 19 months while appellant was completing a two-year educational program. Appellant paid for most of her own food. Although appellant was not charged rent, there was testimony that she received approximately $200 in the form of extra reimbursements for car insurance and that it could be characterized as rent.

In 2005, appellant completed her coursework and moved from respondent's home. Over the next year, W.E. regularly spent time with respondent, including weekend and overnight stays in her home. When appellant ended that visitation in mid-2006, respondent petitioned the district court for visitation. The matter was resolved by agreement in May 2007, and respondent continued to have W.E. in her home for at least one overnight visit every other weekend. The visitation continued until June 2008, when appellant again discontinued visitation.

Appellant alleged that visitation was discontinued due to an incident at respondent's home involving W.E. and W.E.'s 13-year-old cousin. It was alleged that while at respondent's home, the cousin exposed himself to W.E. and asked W.E. to expose himself in return. There was no allegation that either child touched the other. Because appellant was concerned about possible sexual abuse, she took W.E. to the doctor. Although a report of the incident was made as required by law, the doctor found no evidence of abuse. Appellant also stated that she felt that W.E. was poorly supervised by respondent and that W.E. would often exhibit bad behavior, such as defiance, upon his return from visitation with respondent.

Respondent again pursued her petition for court-ordered visitation with W.E. Respondent asserted that visitation had been cut off when she declined to pay appellant for part of W.E.'s child-care expenses and that, based on her ongoing relationship with W.E., it would be in the child's best interests to continue to spend time with her. Respondent expressed skepticism that the 13-year-old cousin acted improperly, but agreed that the cousin would not be in the house when W.E. visited, and stated that she would observe restrictions upon her visitation rights to accommodate concerns of appellant. Respondent asserted that such visitation would not harm appellant's parent-child relationship.

The district court found that appellant and W.E. had resided with respondent for over a year and that:

> [I]t is in the best interest of the child to continue an active regular relationship with [respondent] provided it takes place in a safe, appropriate environment. This relationship is

> important to the child and [respondent] is committed to continuing it and nurturing it. [Respondent] was credible in her stated commitment to adequately supervise the child and to ensure he is not exposed to the older cousin . . . .

The district court further found that "the evidence does not persuade the Court to find that the grandparent visitation will interfere with [appellant's] relationship with the child." The district court then granted respondent visitation for one 24-hour period every other weekend on the conditions that W.E. have no contact with the older cousin during the visitation, that respondent provide transportation, and that respondent provide appellant with a written statement of any behavioral concerns she observes during visitation. This appeal follows.

D E C I S I O N

The district court has broad discretion to determine what is in the best interests of a child regarding visitation, and its determination will not be reversed absent an abuse of discretion. *Olson v. Olson*, 534 N.W.2d 547, 550 (Minn. 1995). "However, the interpretation and construction of statutes are questions of law that this court reviews de novo." *Lewis-Miller v. Ross*, 710 N.W.2d 565, 568 (Minn. 2006).

I.

The first issue is whether the district court erred in concluding that appellant's minor child "resided with" respondent for over 12 months, and therefore respondent had standing to petition the court for visitation. Minnesota law allows a grandparent to petition for reasonable visitation rights only in limited circumstances:

> If an unmarried minor has resided with grandparents or great-grandparents for a period of 12 months or more, and is

> subsequently removed from the home by the minor's parents, the grandparents or great-grandparents may petition the district court for an order granting them reasonable visitation rights to the child during minority. The court shall grant the petition if it finds that visitation rights would be in the best interests of the child and would not interfere with the parent and child relationship.

Minn. Stat. § 257C.08, subd. 3 (2008). This court has previously stated that the "resided with" language "has one reasonable interpretation: the grandchild must live with the grandparents for at least twelve months." *Joel v. Wellman*, 551 N.W.2d 729, 731 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996). In *Wellman*, this court refused to interpret "resided with" as requiring a "custodial residence" or that the 12 months be consecutive. *Id.*

Appellant argues that it is "undisputed" that the relationship between appellant and respondent was purely a landlord-tenant relationship, and that such a relationship does not give respondent standing to petition for visitation under the statute. We disagree. Respondent has standing under the plain language of the statute because W.E. resided with respondent, his grandmother, for a period in excess of 12 months. The statute does not preclude respondent from qualifying for visitation because she received some compensation for the cost of having both W.E. and appellant living with her.

Despite appellant's assertions, the record does not reflect that respondent's relationship with appellant was a mere landlord-tenant relationship. At the evidentiary hearing, respondent stated that appellant had over-reimbursed respondent for car insurance "to the tune of a couple hundred dollars" and, when asked, stated "I suppose you could consider that to be rent." Contrary to appellant's arguments, this is not an

admission that appellant was respondent's tenant. Even if respondent and appellant's relationship was that of a landlord and tenant, the statute focuses on the relationship between the grandparent and the grandchild. The record clearly reflects that respondent's relationship with W.E. was that of an active grandparent. The district court specifically found that respondent not only provided housing for W.E. but also provided "care and comfort to the child by way of affection, supervision, meal preparation, and the love, care and concern normally found between a grandparent and grandchild who were residing together with the child's mother." We conclude that respondent had standing to bring the petition.

II.

The second issue is whether the district court erroneously failed to place the burden of proving non-interference with the parent-child relationship on respondent. The supreme court has held that, in third-party visitation cases, "in order to afford due deference to the fit custodial parent, the burden of proof must be on the party seeking visitation, and the standard of proof must be clear and convincing evidence." *Soohoo v. Johnson*, 731 N.W.2d 815, 823 (Minn. 2007). Although the district court should articulate its standard for evaluating the record, its failure to do so does not prevent an appellate court from determining that the grandparent-petitioner demonstrated by clear and convicting evidence non-interference with the parent-child relationship. *See id.* at 824-25 (applying the third-party visitation statute and finding petitioner demonstrated by clear and convincing evidence that there would be no harm to the parent-child

relationship despite the district court's application of the preponderance of the evidence standard).

Appellant argues that the district court did not make necessary findings regarding interference with the parent-child relationship. The record reflects that the district court heard testimony and reviewed affidavits submitted by both appellant and respondent. Respondent presented testimony about her previous relationship with appellant and W.E., and the previous visitation arrangement. This testimony indicates that, at a minimum, appellant and respondent had worked together to care for W.E. and that until shortly before litigation began, W.E. was spending one night every other weekend with respondent. The district court, in reviewing the testimony and affidavits, found that visitation would not interfere with the parent-child relationship because (1) the visitation would be only two days per month; (2) appellant's concerns regarding the presence of the older cousin would be addressed because the order prohibited it; and (3) appellant's concerns about W.E.'s behavior would be addressed in the court-ordered written reports from respondent. The district court explicitly held that "grandparent visitation with [respondent] will not interfere with the parent and child relationship between [appellant] and the child."

Because there was ample testimony regarding the prior visitation arrangement, and because of respondent's willingness to address appellant's concerns regarding visitation, we hold that respondent demonstrated by clear and convincing evidence that the visitation would not harm the parent-child relationship.

III.

The third issue is whether the district court abused its discretion in ordering visitation in the amount of one 24-hour period every two weeks. The district court has broad discretion to determine what is in the best interests of a child regarding visitation, and its determination will not be reversed absent an abuse of discretion. *Olson*, 534 N.W.2d at 550. "Generally, the reasonableness of an award of visitation turns on the specific facts and circumstances of each case." *Soohoo*, 731 N.W.2d at 826. "The district court, having heard the witnesses, is in the best position to determine what is reasonable under the circumstances." *Id*. When addressing grandparent visitation, the court's "paramount commitment" is to the best interests of the child. *Olson*, 534 N.W.2d at 549.

Appellant's primary argument supporting a claim that the district court abused its discretion is that appellant will not have W.E. in her custody for approximately 26 days per year. The district court, however, looked at the past relationships among respondent, appellant, and W.E., and determined that a 24-hour period every other week was appropriate. As previously stated, in making this decision the district court took into consideration appellant's concerns regarding the older cousin, W.E.'s behavioral problems, and transportation. This court has approved of varying amounts of grandparent-visitation time as within the district court's discretion under the circumstances presented. *See Foster ex rel. J.B. v. Brooks*, 546 N.W.2d 52, 53-54 (Minn. App. 1996) (affirming visitation from 10 a.m. to 6 p.m. on the third Sunday of each month); *Gray v. Hauschildt*, 528 N.W.2d 271, 274 (Minn. App. 1995) (affirming

visitation in the amount of two days per month with one overnight visit). Based on the previous visitation between W.E. and respondent, the visitation ordered by the district court is not an abuse of discretion.

Appellant further argues that if another grandparent sought visitation, appellant's parenting time with her child would be significantly decreased. However, if another grandparent seeks visitation, appellant can request modification of the existing visitation arrangement with respondent. *Foster*, 546 N.W.2d at 53.

Because the district court considered the best interests of the child and the effect of the visitation on the parent-child relationship, because appellant may request modification of the visitation with respondent if it is in the best interests of the child or if her parenting situation changes, and because this court reviews the district court's decision for abuse of discretion, we affirm the district court's determination of visitation time.

IV.

The fourth issue is whether the district court's application of Minn. Stat. § 257C.08, subd. 3, was unconstitutional as applied. Appellant's argument rests solely on appellant's characterization of respondent and W.E.'s relationship as that of a mere landlord and tenant. As previously discussed, this assertion is not supported by the record. The district court specifically found that the relationship between respondent and W.E. went beyond providing shelter to providing "care and comfort to the child by way of affection, supervision, meal preparation, and the love, care and concern normally found between a grandparent and grandchild who were residing together with the child's

mother." Because appellant's as-applied challenge is based entirely on assertions unsupported by the record and in direct conflict with the district court's findings, we conclude appellant's constitutional challenge is without merit.

Affirmed.

Dated: