

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned On Briefs May 12, 2015

IN RE: TANASIA A.

**Direct Appeal from the Juvenile Court for Sumner County
No. 2013 JV 646 Barry R. Brown, Judge**

No. M2014-01696-COA-R3-JV – Filed May 27, 2015

This case involves a petition for grandparent visitation filed by the paternal grandparents of the child at issue. The trial court granted the petition for visitation pursuant to Tennessee Code Annotated section 36-6-306. Because the trial court did not make appropriate written findings in accordance with Tennessee Rule of Civil Procedure 52.01, we do not reach the merits of this appeal. We vacate and remand for appropriate findings of fact and conclusions of law.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Vacated and Remanded

BRANDON O. GIBSON, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY ARMSTRONG, J., joined.

M. Todd Cathey, Hendersonville, Tennessee, for the appellant, Autumn T.

Bobby A. and Frances A., appellees did not participate on appeal.

MEMORANDUM OPINION¹

I. Background

The child at issue in this case was born in 2012. Thus, at the time of appeal, the

¹Rule 10 of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

child was less than two years old. Tavoras A.² (“Father”) and Appellant Autumn T. (“Mother”) are the biological parents of the child. Mother and Father were never married. Father is currently incarcerated, and the child resides with Mother. The paternal grandparents, Bobby A. and Frances A. (hereinafter “Mr. and Mrs. A”) filed a petition for grandparent visitation in the Juvenile Court for Sumner County pursuant to Tennessee Code Annotated section 36–6–306 on February 26, 2014, seeking to establish visitation with the child.³

In a hearing conducted on March 26, 2014, the Juvenile Court for Sumner County continued the matter to allow Mother to retain an attorney and ordered a home study to be conducted on Mr. and Mrs. A. In the home study, conducted by CASA, Mr. and Mrs. A reported that they were extensively involved in the child’s life until Mother and Father ended their relationship, which occurred before the child’s first birthday. Since then, Mother has not allowed Mr. and Mrs. A to see the child, except for one visit in December of 2013. After conducting the home study, CASA expressed no concerns regarding the home.

The juvenile court conducted a hearing on June 18, 2014. Special Magistrate Samantha Grossland presided. Over Mother’s objection, the court granted Mr. and Mrs. A temporary visitation with the child during alternating Saturdays until the final hearing on August 6, 2014. Counsel for Mother immediately filed a motion for a re-hearing by the elected Judge, Barry R. Brown, and for a stay of the ruling by the Special Magistrate granting temporary visitation.

The juvenile court granted a stay of the visitation granted to Mr. and Mrs. A. pending the final hearing. The court found that the visitation granted was premature and not based upon proper procedure. After the final hearing, the juvenile court entered an order on August 11, 2014, granting Mr. and Mrs. A visitation for a period of four hours during alternating months beginning September 20, 2014. Mother timely filed a notice of appeal to this Court.

²In cases involving a minor child, it is this Court’s policy to redact names in order to protect the child’s identity. In this case, in order to preserve both clarity and the anonymity of the child, we will redact the names of individuals sharing the child’s surname and will refer to those individuals by their given name and the first letter of their surname.

³Tennessee Code Annotated section 36-6-306(a) provides juvenile courts with concurrent jurisdiction over grandparent visitation cases “in matters involving children born out of wedlock.” The child in this case was born out of wedlock, and, therefore, the juvenile court had jurisdiction to hear the petition. Appeal from the juvenile court to this Court is proper pursuant to Tennessee Code Annotated section 37-1-159(g).

II. Issues Presented

Mother presents the following issues for review on appeal, which we have slightly reworded:

1. Whether the trial court erred in granting visitation to the paternal grandparents without first finding that there was a risk of substantial harm in denying the visitation.
2. Whether the trial court erred in granting visitation to the paternal grandparents without a showing that visitation is in the best interest of the child.
3. Whether the trial court erred in basing its order on the assumption that the grandparent-grandchild relationship always benefits the child.

III. Discussion

This is an appeal from a decision made by the trial court following a bench trial; therefore, Tennessee Rule of Appellate Procedure 13(d) governs our review. This Court reviews the trial court's findings of fact *de novo* upon the record of the trial court with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). We review questions of law *de novo* with no presumption of correctness. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002).

Because we must first address the trial court's order, we do not reach the merits of this appeal. Rule 1(b) of the Tennessee Rules of Juvenile Procedure provides that the Tennessee Rules of Civil Procedure govern all cases involving "the termination of parental rights, paternity cases, guardianship and mental health commitment cases involving children, and child custody proceedings under T.C.A. §§ 36-6-101, et seq. [and] 36-6-201, et seq" The Grandparent Visitation Statute, Tennessee Code Annotated section 36-6-306, is not specifically listed in Rule 1(b) of the Tennessee Rules of Juvenile Procedure. However, the Advisory Commission Comment to the 2006 amendment to Rule 1(b) of the Tennessee Rules of Juvenile Procedure specifically states:

Rule 1(b) is amended to ensure that children and their families in specified domestic relations cases pending in the Juvenile courts enjoy the same procedures, rights, and rules as those children and families have in similar cases pending in Circuit, Chancery, or other courts with concurrent jurisdiction.

As mentioned previously, juvenile courts have concurrent jurisdiction with circuit and chancery courts in grandparent visitation cases. Considering the concurrent jurisdiction in light of the Advisory Commission Comment, it is our view that the Tennessee Rules of Civil Procedure apply in this case.

Effective July 1, 2009, Rule 52.01 of the Tennessee Rules of Civil Procedure was amended to read as follows:

In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rules 41.02 and 65.04(6).

Tenn. R. Civ. P. 52.01(emphasis added). The current version requires the trial court to make findings of fact and conclusions of law regardless of a request by either party. *Douglas v. Caruthers & Assocs., Inc.*, No. W2013-02676-COA-R3-CV, 2015 WL 1881374, at *9 (Tenn. Ct. App. Apr. 24, 2015). The requirement is not a mere technicality but serves the important purpose of facilitating appellate review by “affording a reviewing court a clear understanding of the basis of a trial court’s decision.” *Id.* (quoting *Lovelace v. Copley*, 418 S.W.3d 1, 34-35 (Tenn.2013)). “Without such findings and conclusions, this court is left to wonder on what basis the court reached its ultimate decision.” *In re K.H.*, No. W2008-01144-COA-R3-PT, 2009 WL 1362314, at *8 (Tenn. Ct. App. May 15, 2009) (quoting *In re M.E.W.*, No. M2003-01739-COA-R3-PT, 2004 WL 865840, at *19 (Tenn. Ct. App. Apr. 21, 2004)).

Generally, when a trial court does not meet the requirements of Rule 52.01, the appropriate remedy is to vacate the judgment and remand to the trial court for written findings of fact and conclusions of law. *Douglas*, 2015 WL 1881374, at *10. Nevertheless, this Court “may ‘soldier on’ when the case involves only a clear legal issue, or when the court's decision is ‘readily ascertainable.’” *Hanson v. J.C. Hobbs Co.*, No. W2011-02523-COA-R3-CV, 2012 WL 5873582, at *10 (Tenn. Ct. App. Nov.21, 2012) (quoting *Simpson v. Fowler*, No. W2011-02112-COA-R3-CV, 2012 WL 3675321, at *4 (Tenn. Ct. App. Aug. 28, 2012)). Such circumstances do not exist in this case. The

trial court's order merely states, in relevant part, "Upon testimony presented and review of the record, the Court grants visitation to the paternal grandparents . . . for a period of four (4) hours during alternating months." The order simply does not indicate how or why the trial court reached its decision or what factual findings led it to rule as it did. Thus, after reviewing the record and the trial court's order, we conclude that appellate review is hindered by the trial court's failure to comply with Rule 52.01.

IV. Conclusion

For the foregoing reasons, we vacate the judgment of the trial court and remand to the trial court for appropriate findings of fact and conclusions of law. Costs of this appeal are taxed to appellant, Autumn T., and her surety, for which execution may issue, if necessary.

BRANDON O. GIBSON, JUDGE